

Friends of Park County

Testimony of Friends of Park County
On the November 21, 2019 Draft Conflict Mitigation Zoning District Regulations

Submitted to the Park County Planning and Development Board
November 18, 2020

Executive Summary

- While conflict mitigation is important, the highest priority for planning and regulation in Park County is the surging demand for residential development and associated sharp increase in home prices and rents, which is making housing unaffordable.
- Friends of Park County recommends that the Planning and Development Board and County Commission use the first six months of 2021 to gather facts about projected rural residential development and its potential for harmful impacts on taxpayers, ranchers, farmers, foresters, the tourism business, water, wildlife, and the increased risks to life and property from floods and fires.
- This data gathering and analysis would lay the groundwork for carrying out Growth Policy Action 16.3.3: “Develop a future land use map for Park County and adopt it as an amendment to this growth policy.”
- In the meantime, the County should establish a simple monitoring system, with the data available to the public, to keep track of residential development applications, so that it can consider whether interim regulations might be needed while final plans and zoning are being prepared.
- Friends of Park County appreciates the limited time, money and staff to carry out this work and offers to work with other organizations and individuals to supply additional resources.
- The Draft Conflict Mitigation Zoning District regulation is an important step in addressing one of the issues identified in the County’s 2017 Growth Policy. However, we urge the Planning Board to consider whether conventional zoning of the type already used in the County might be a better way to address controversies over proposed high impact land uses instead of the one-size-fits-all, case-by-case review process in the draft which could devolve into a permit approval pathway for inappropriate development.
- If the Planning Board and County Commission choose to proceed with revisions to the draft conflict mitigation regulations, they need to supply missing criteria, reduce some of the complexity and establish a time frame for evaluating its effectiveness.

Introduction

Friends of Park County¹ appreciates the public service contributions of the Park County Planning and Development Board and appreciate the opportunity to comment on the County's November 21, 2019 Draft Conflict Mitigation Zoning District Regulations (which we will refer to as the "draft ordinance" or "draft regulations.")

The County's draft regulations are an important effort to address a serious problem - expensive and challenging disputes over applications for permits for high-impact uses like mines, asphalt plants, gravel pit and tire dumps.

We recognize, and applaud, the County's willingness to consider the adoption of county wide land use regulations, which have been a source of controversy in the past. Presenting this draft for public comment is an exercise in leadership that benefits the community, no matter the outcome.

However, as explained below we believe there are two higher priority issues that should be the focus of the County's efforts. And if the County chooses to continue its work on the draft ordinance it needs to make some significant revisions to it.

The draft conflict mitigation zoning ordinance, while potentially useful, is a much lower priority than addressing the two biggest challenges facing Park County – rapidly rising demand for residential development and associated soaring price of housing.

We understand that the draft ordinance was intended to deal with a very specific problem – high impact and highly controversial proposed land uses.

Although that is a worthwhile goal, we believe the County needs to focus its limited time and resources on the two biggest and related challenges facing rural Park County- the rapidly rising demand for residential development and the associated surge in housing prices.

Consider the headline from an article in the Washington Post on October 20 discussing the situation in Western Montana: *New homes on the range: Weary city dwellers escape to Montana, creating a property gold rush.*

We know from experience around the West that rural subdivisions and ranchettes often:

- Increase demands for new roads, fire and police protection and other facilities and services and related maintenance, which translates into tax increases for residents.
- Cause serious conflicts with farming, ranching and forestry.
- Contribute to groundwater depletion and pollution.

¹ Friends of Park County was founded to promote thoughtfully planned growth in order to protect and enhance Park County's vibrant communities, sustainable working lands, and healthy natural resources. To learn more about our perspective, you may wish to read our principles, attached as Appendix B to this testimony.

- Destroy wildlife habitat and reduce wildlife populations.
- Put more people and property into harm's way from wildfires and floods.

These potential impacts (and others) are the reason we urge the County to initiate a new program to understand and prevent or mitigate these cumulative impacts from scattered homesite development.

We recommend that the Planning Board and the County spend the first six months of 2021 in gathering information about residential development trends and their potential impacts. These impacts will be different in different parts of Park County and therefore require a more tailored approach than a one size fits all regulation.

This analysis and consideration of the tools that will avoid or reduce adverse impacts can serve as the first step in carrying out Growth Policy Action 16.3.3: “Develop a future land use map for Park County and adopt it as an amendment to this growth policy.”

Another, and obvious, consequence of surging demand for new homes is rapidly rising rents and home prices. This is not a new problem. In Chapter 6 of its Growth Policy the County identified housing as one of the county's “key issues”:

The cost of housing in Park County is on the rise. The median housing value as of 2014 in Park County was \$210,100, which is substantially higher than the median housing value for Montana as a whole, which was \$187,600 in 2014. Perhaps more significant is the fact that median housing values in Park County increased by 112% between 2000 and 2014 compared to 96% for the state as a whole. ... The United States Department of Housing and Urban Development defines housing cost burden as paying more than 30% of household income on housing. In 2014 an estimated 41% of renters in Park County had a housing cost burden, ... 2017 Growth Policy page 26.

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Right now there are a lot of questions about affordable housing that Park County doesn't have the answers to. How much is growth in Gallatin County affecting housing in Park County? Is this growth likely to continue? What is the impact of vacation rentals on the housing market? How can Park County increase work-force housing? 2017 Growth Policy page 28.

What was a “key issue” a few year ago is turning into a crisis today. Here is an excerpt from an article in the Bozeman Daily Chronicle dated September 27, 2020:

Between July 2020 and August 2020, the median price of a single-family home in Gallatin County increased more dramatically than any other time in recent history, jumping from \$487,000 to \$575,450, according to the Big Sky Country Multiple Listing Service's market watch report.²

² Melissa Loveridge, ['Crisis point': How the Gallatin Valley's hot housing market leaves people behind](#)

The time to answer the questions in the Growth Policy and to take action is now, before Park County ends up like Teton County, Wyoming where the people who work in the County cannot afford to live there.

Ms. Barb Oldershaw with the Park County Community Foundation and Park County Housing Coalition has called for a county-wide housing needs assessment.

Friends of Park County seconds this call and urges the Planning Board to recommend to the County Commission that it coordinate that needs assessment with one that may be carried out by Livingston. This kind of assessment is called for in various action steps under Goal 14 in the County's Growth Policy.

Finally, we understand the County has few resources for this work and we will be glad to offer our help finding other funding sources and suggestions of ways to generate quality information at a modest cost.

Recommendations:

1. The Planning Board (and County Commission) should solicit available information about current and possible future trends in rural residential development and its impacts on taxpayers, farming, ranching, farming, wildlife, tourism, water quality and quantity, risks to life and property.
2. In this work, the Planning Board (and County Commission) should coordinate their efforts with the work of its counterparts in Livingston, for those lands within the city's extraterritorial jurisdiction.
3. The Planning Board (and County Commission) should monitor and report on residential development in the County in order to be alerted if development applications accelerate and create a need for interim protections.
4. The County should undertake or commission a housing needs and supply analysis and coordinate that work with Livingston and interested nonprofit organizations.

Although rural development and resulting increases in housing costs are our priority issues, we offer some comments on the draft ordinance.

The County should consider the alternative of using conventional zoning, based on local examples, to evaluate development applications.

A conventional zoning ordinance identifies what uses are allowed outright, what uses are not allowed and what uses are permitted if they satisfy a set of review criteria and comply with any required conditions of approval. The O'Rea Creek Zoning Regulation and the other five citizen-initiated zoning districts in Park County are of this conventional form of zoning.

Conventional zoning often is based on some long-range evaluation and policy making on development patterns and their cumulative effects.

By contrast the draft CMZD is simply a system for processing development applications. It is a one-size-fits-all regulation, not taking into account different conditions in the County. It operates case by case, one by one on each application. The outcomes over the long term from case-by-case decision making are uncertain.

The draft regulations do not provide the clarity of a conventional zoning ordinance, clarity that benefits the county as the decision maker, the applicant seeking permission and the nearby residents concerned about effects on their quality of life and property values.

Recommendation:

As part of its deliberations on the draft ordinance, we recommend the Planning and Development Board consider conventional zoning ordinances as an alternative approach that might address high impact using a traditional rural zoning ordinance and better achieve the purposes in Section II.

The draft regulations need criteria for making decisions on applications.

If you examine the first three paragraphs of Section XI of the draft zoning ordinance you will notice that it lacks criteria to guide the decisions made by the Zoning Administrator and the proposed Zoning Board of Adjustment.

The draft requires the decision maker to consider a very wide range of potential impacts but once they have done that, what is the basis for making a decision whether to allow a proposed use, allow it subject to conditions or to prohibit it?

The word “mitigation” which is at the heart of the regulation means to lessen, or reduce, some adverse impact. But *any* amount of reduction in harm qualifies as “mitigation.” So this means there is no guidance about what level of mitigation is required as part of conditions of approval.

The lack of criteria once again means there is no clarity for decision makers, or applicants of concerned citizens. It means that decisions may be inconsistent, varying widely in outcome from application to application. Most importantly it means the ordinance may fail to achieve the purposes stated in Section II.

We are also concerned that the large number of adverse impacts to be considered and some potentially confusing provisions (which we know, is to be expected in all first drafts) may make the ordinance in its current form cumbersome to administer. If so, it may generate controversy and create additional opposition to any needed form of regulation.

Recommendation:

If the Planning Board recommends and the County Commission decides to proceed with the ordinance in its current form, it should adopt criteria to govern the decision making. Appendix B is an illustration of the kind of criteria that would serve this purpose.

The draft regulations may prove cumbersome and unpopular.

Section XI. of the draft ordinance lists a minimum of 42 different potential adverse impacts that need to be addressed by the Board of Adjustment or Planning Board in making a decision. That requirement alone, may prove to be very burdensome for applicants, concerned residents and the county staff and officials.

The draft regulations also include some confusing and potentially contradictory wording. Those problems are understandable in a first draft of a zoning ordinance of this length.

But this combination of a lack of criteria, a lengthy list of issues to be addressed with evidence and analysis and confusing language may make the regulations cumbersome and frustrating to apply. That experience may lead to avoidable controversy and creating more opposition to any form of land regulation.

Recommendation:

If adopted in this or a similar form, the Planning and Development Board should incorporate a periodic review cycle for evaluation and as needed, revision of the ordinance.

Conclusion

Once again, we express our gratitude for the Planning Board's hard work and will continue to offer our perspectives and assistance as you proceed.

We look forward to offering virtual testimony at your hearing this evening.

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Appendix A

Illustration of Criteria to Guide Decisions on Development Applications

Amend Section XI “Review Criteria” by deleting the last three sentences and adding these subparagraphs:

Approval without conditions: The Zoning Administrator and/or Board of Adjustments shall approve the application if the totality of the evidence clearly shows there will be no negative impacts from the approved land use.

Approval with consensual conditions: The Zoning Administrator and/or Board of Adjustments may approve the application if the totality of the evidence shows that the conditions of approval consented to by the applicant will mitigate negative impacts sufficiently to assure there will be no negative impacts or minimal impacts from the approved land use.

Denial: If the Zoning Administrator and/or Board of Adjustment concludes that the totality of the evidence shows there will be more than minimal negative impacts without conditions of approval or with the conditions of approval consented to by the applicant, it shall deny the application for the proposed land use.

The Zoning Administrator and Board of Adjustment shall consider evidence of potential negative impacts presented in response to the following questions:

At the end of Section XI, after subsection H., add this language describing how decision makers are to evaluate the evidence:

In evaluating the evidence about potential negative impacts, the Zoning Board shall consider the totality of the relevant evidence presented by all participants. Only evidence that addresses the standards in the District is relevant to the decision.

In determining whether there will be negative impacts the Zoning Board will consider not only the impacts of the propose land use, but also the potential cumulative impacts if the same or similar uses are approved, with or without conditions, based on the precedent of the present application.

Appendix B

Friends of Park County's Planning Principles

November 2020 edition

1. Protect the County's working ranch, farm and forestlands.
2. Protect our magnificent landscapes, wildlife and other natural resources.
3. Safeguard our water from pollution and depletion.
4. Do not put people and property in harm's way from fires and floods and other hazards.
5. Give top priority to re-investing in compact, efficient development in Livingston and other communities.
6. Don't waste our tax dollars paying for sprawl.
7. Plan and zone for a wider range of housing in Livingston and other communities.
8. Respect Constitutionally-protected property rights.
9. Say what we mean and mean what we say in our government's land use policies and regulations so that no one needs to hire a lawyer to participate and so that everyone is treated fairly.
10. Base government policies and regulations on a solid foundation of facts.