

**May 8, 2024**

The Lincoln County Board of Commissioners met for a regular session on May 8, 2024 in the Lincoln County Courthouse, Libby, Montana. Present were Commissioner Hammons, Commissioner Letcher, Commissioner Teske, Administrative Assistant Jennifer Brown and Clerk and Recorder Corrina Brown.

Zoom participation: Adam Blackwell, Alyssa Ramirez, Bill Cripe, Bryan Alkire, Chanel Geer, Connie Oar, Crystal Denton, Denali Sagner, Feleisha Storkson, Jeff Smith, Jesse Haag, Jim Hull, John, Kathi Hooper, Kenny Raymone Jr., Maranda, Mary Handy, Megan, Melanie Howell, Michelle Byrd, Noah Pyle, Rae, Ray Stout, Rebecca Nelson, Robin Blumberg, Ryan Olsen, Sarah Long, Scott Shindledecker, Shannon McLaughlin, Sharlee Miller, Shawn Smith and Wyatt Franke.

Commissioner Letcher opened the meeting with the **Pledge of Allegiance and Prayer**.

10:00 AM **Health Department:** Present were Bryan Alkire, Kathi Hooper, Noel Duram and Steve Woolley.

Kathi Hooper, Health Department, presented the health department Update. PHEP, Public Health Emergency Preparedness Task Order 25-07-6-1-032-0 renewal was presented. **Motion** to reauthorize the PHEP grant by Commissioner Hammons. Second by Commissioner Teske. No public comments. Motion carried. Immunization Task Order 25-07-4-31-125-0 to renew funding was presented. **Motion** to reauthorize the immunization program grant by Commissioner Teske. Second by Commissioner Hammons. No public comments. Motion carried. Zero to Five requested a Headwaters grant funded temporary employee to begin in June. **Motion** by Commissioner Hammons to allow the Health Department to hire a temp summer program coordinator paid through the grant. Second by Commissioner Teske with the grant funding stipulation. No public comments. Motion carried.

Environmental Health	Litter/Community Decay Violations	Solid Waste & Recycling
Air Quality- Residential burning closed in Libby area	2 new complaints last month	Camera updates – Libby Creek installed, testing Troy & Happy’s Inn pending test results
10 management burn applications received	13 properties not in compliance all were referred to Sheriff’s Office	Greenbox sites – Evergreen Hauling contract extension under discussion
Septic permits – 82 applications to date in 2024. 45 in Eureka 30 in Libby 7 in Troy	10 properties with compliance plans -3 were added since last month	Libby landfill expansion – draft Environmental Assessment from DEQ is expected the week of May 20 <sup>th</sup>
	8 properties closed	Eureka transfer site update: Bryan advised of working with contractor and engineer
	3 properties unable to locate property owners -Discussion of county ordinance	A/R: Kathi noted about \$55k in past due and has asked the CA to consider placing past due refuse bills on property taxes

10:30 AM **Administrative Issues/Old Business: Approve Minutes / Attorney Alan McCormick Engagement Letter / Montana Wood Products Association:** Present were Jesse Haag, Steve Woolley and Noel Duram.

- Review of May 1, 2024, meeting minutes for approval: **Motion** to approve the May 1, 2024 minutes by Commissioner Hammons. Second by Commissioner Teske. No comments. Motion carried.
- Attorney Alan McCormick engagement letter. **Motion** by Commissioner Teske to approve engagement of Garlington, Lohn & Robinson, PLLP. Second by Commissioner Hammons. No comments. Motion carried.
- Commissioner Letcher discussed the Montana Woods Products Association request that Lincoln County become a member in support of wood products and the industry. **Motion** by Commissioner Teske to approve the 2024 membership to Montana Wood Products Association at an Allied Associate level. Second by Commissioner Hammons. Commissioner Teske requested this be invoiced annually. No public comments. Motion carried.
- Commissioner Hammons advised the ARP Building agreement is being finalized.
- Commissioner Letcher advised Town of Eureka is holding up the water/sewer project at the fairgrounds, pending an approval letter. Funding for this project is good through the end of this year. He will meet with them to follow up.

10:45 AM **Public Comment Time - Non-Agenda Items:** Present were Steve Woolley and Noel Duram.

11:00 AM **Forestry Budget Meeting:** Present were Jennifer Nelson, Noel Duram and Steve Woolley.

Jennifer Nelson, County Forester, provided a preliminary budget. She noted the following: Bark Beetle grant has one remaining charge for spraying weeds at J Neil’s Park prior to closing out. Local Government Assistant grant for Forester Support of \$7,118. DNRC Western States grant of \$189,222 remaining, mainly for private land fuels reduction. DNRC Rabbit Tracts grant of \$75,956 remaining and has received an extension for use on private grounds. Title III limited use grant of about \$114,000 as part of Secure Rural Schools fund. Jennifer proposed reducing her grant funded hours to part-time in lieu of full retirement. Commissioners consented to coordinating her part-time hours through Human Resources.

11:15 AM **IT Budget Meeting:** Present were Noel Duram, Solomon Alcain, Steve Woolley and Stu Crismore.

Solomon Alcain, IT, presented his initial budget. He mentioned departments are buying their supplies, saving about \$8,000 from his budget. Commissioner Letcher stated departments covering their costs helps understand true department operating costs. Discussion of monthly and yearly licenses and the emergency team alert system.

11:30 AM **Fisher River Fire and Rescue Request for Lincoln County Ambulance Funds:** Present were Jan Ivers, Jeff Holder, Noel Duram, Pat Shira, Penny Kyes, Ross Hubert, Steve Woolley and Stu Crismore.

Stuart Crismore, Chairman and Trustee of Fisher River Valley FSA, sought recognition for ambulance service with a share of the county's ambulance 5 mills. Steve Woolley, FRV FSA Board Trustee, mentioned the County Treasurer is compiling hard numbers of those within the FSA as they would also be within the ambulance service area. He highlighted concerns from residents paying both fire and ambulance service fees without their ambulance service receiving tax funds. They aim to involve the three other ambulance services in an allocation of funds process. Penny advised the application is in process. Stuart stated they have operated for eighteen years and seek recognition financially as a fourth ambulance service. Penny stated they are establishing rules with limits and boundaries for inclusion in the Ambulance District. There was a discussion about the financial stability of all entities involved and fair funding allocation. Stuart requested the State add \$0.50 to area camping fees to support emergency service of areas not funded by property taxes. Rachal Duram, via phone, mentioned the application has been approved but requires amendments. She clarified that a ten-year probation is inaccurate and ambulance services must be Medicare and Medicaid members. She noted fire aspect adds complexity to the process, which has been consistently under review. Commissioner Teske will seek further information and follow up.

12:03 PM **Break**

01:30 PM **Lower Yaak Zoning District-Reopen Tabled Resolution/Vote on Changes:** Present were Brandy Curry, Brett McCully, Chelsea Franke, Creed Harwood, David Crismore, Debra Cernick, Doug Deshazer, Dorothy Mollett, Ed Pedersen, Evan Comella, Glenda Orr, Henry Amos II, Jackie Deshazer, James Hight, Jason Tucker, Jasper Whittle, Jeffrey Barger, Jesse Haag, Jerry Erwin, Jeremy Newmaster, John Chott, John Damon, Judi Tucker, Katrina Newton, Kenneth Royal, Kristin Smith, Kalli Baker Ryals, Marcine Holmes, Martha Cervantes, Matt Franke, Melody Newmaster, Mike France, Owen Baisden, Pam Covey, Paul Johnson, Paulie Nicely, Rhoda Cargill, Rita Gigbel, Robert Bittner, Terry Holmes and Toni Franke. *\*Draft copy of Lower Yaak Zoning District proposal attached & on Planning Dept webpage*

Commissioner Letcher clarified that today's meeting is not intended for voting on the passing or rejection of a zoning proposal. Following the motion to table the decision made at the previous meeting, the matter was sent back to the planning board. Legal counsel has advised that another meeting is necessary to provide specific directions regarding changes to be made by the planning board. Today's discussion will focus solely on any zoning changes proposed by the commission. Commissioner Hammons **motioned** to untable the decision to send it back to the planning board and open it up to the two items we want to discuss. Seconded by Commissioner Teske. No further discussion. No public comment on untabling this. Motion carried.

**Motion** by Commissioner Letcher to change some things in the Lower Yaak Zoning District contingent upon the inclusion of all adjoining property owners to the current proposed district boundaries with the following amendments: Permitted uses are amended to read: Per MCA 76-2-203(a)iii – water facilities, sewage facilities, schools, parks, and other public requirements. Single family and multi-family dwellings permitted accessory dwellings, horticulture, agriculture to include but not limited to the raising and selling of livestock. The raising and selling of hay and other crops, private and commercial gardens and green houses, timber management; meaning growing, harvesting and milling of timber. Montana open graze laws will be applicable to the agricultural portion. Industrial uses that are legal in Montana to include mineral extraction. (we were notified yesterday that you can't restrict mineral extraction through zoning), commercial uses that are legal in Montana. To amend prohibited uses to read: Any use that is illegal in Montana and to strike maximum density and restrictions on the placement of structures and reopen the public comment period for an additional 30 days.

Commissioner Letcher entertained Commissioner Teske's question. That is an awfully long motion with a lot of subcategories, can we address the subcategories individually or do you want to do it as a whole? Commissioner Letcher would prefer to address it as a whole motion. Motion died for a lack of second. Additional motion called for.

Commissioner Teske suggested addressing the permitted and prohibited uses individually in a discussion, ensuring everyone has a clear understanding of the document. **Motion** by Commissioner to go through the document; uses, prohibited uses, space and bulk requirements, develop standards and regulations, non-conforming lot uses and structures, violations and severability clause and have discussion of items in there that are at conflict. Second by Commissioner Hammons. Commissioner Teske advised this will be cleaner. Call for public comment on the motion.

Noel Duram commented, tyranny comes in many forms; peers and neighbors and encouraged the commission to vote down this motion and vote down the entire thing. No further comments. Commissioner Hammons and Teske voted eye. Motion carried.

Commissioner Letcher began with permitted uses: single family dwellings; objecting to just single-family dwellings as multifamily dwellings should be allowed if DEQ approval allows for more than a single-family dwelling. At the last meeting apartment buildings were deemed acceptable, then duplexes and townhouses should also be considered, especially when addressing housing shortages in the county. Kristin advised attached housing, two is a duplex, three is a triplex, anything over three is considered multifamily. Density is a formula for the number of dwellings per acre. There is a provision that allows for accessory dwellings. Kristin advised density or acreage would drive additional housing aside from the allowed accessory dwelling. Commissioner Letcher stated DEQ, or sanitation and water will determine how many living units can be on a piece of property. Commissioner Teske advised this comes back to lot size vs density. Kristin advised there is no requirement of maximum permitted density it was something the residents of the district desired. Matt Franke advised he was not opposed to striking this from the document if it moves the process forward. **Motion** by Commissioner Teske to remove maximum permitted density of one primary dwelling for twenty acres, striking from the document. Second by Commissioner Hammons. Public comment.

Jim Hight questioned if the size of the septic system determines how many people can be on it. Jesse Haag, Planning Director, advised septic permitting is tied to the number of bedrooms in a house. Maintaining setbacks for well and septic becomes increasingly challenging on smaller parcels, and there's a possibility of running out of space. There isn't a specific stated limit for the number of dwellings; it depends on the setback requirements permitted by the parcel's physical characteristics.

Evan Comella informed the group these two subdivisions have already undergone review by the planning department and have received preliminary approval. Commissioner Teske further clarified that the zoning under discussion does not impact these subdivisions, nor properties already established.

Terry Holmes clarified that his property was divided through a family transfer and mentioned ongoing efforts regarding a property line adjustment. He noted that factors such as water and sewer specific to the parcel will determine the permissible size of lots, as the state of Montana imposes specific requirements that must be met.

Jeff Barger emphasized that the decisions being made will impact every property owner in the county. He emphasized the importance of preserving property owners' freedom to use their property as they see fit. He added usage should be considered with the septic systems and leaching process.

Rhoda Cargill addressed the space and bulk requirements, noting that the space requirement should be consistent in the zoning district as it is elsewhere in the county. The determining factor is the existing setback requirement for wells and septic systems. She added that alternative solutions, such as mound systems where traditional septic systems are not feasible, are acceptable. She noted the current process functions effectively and questioned creating different size requirements in the district compared to those county-wide. If approved, she cautioned the district will serve as a showcase for the county, creating a patchwork within the county that will be a nightmare. No further comment specific to striking space and bulk requirements. Motion carried.

Commissioner Letcher advised regarding dwelling units he'd like to see permitted uses include all sizes of dwelling units based on DEQ review and availability of water. Kristin advised the intent was the primary dwelling and one accessory dwelling per parcel. She added when subdividing with no density requirement they can propose something that can be reviewed. **Motion** by Commissioner Teske to strike single family dwelling and add multifamily dwelling as the term for permitted uses number 1, in lieu of and amended to single/multi-family dwellings. Second by Commissioner Hammons. Call for public comment on adding multi-family dwelling to permitted uses.

Jeff Smith (zoom), Attorney, commented if adding multifamily you may want to add a definition of it because single family dwelling is already defined in the document. The growth policy did include various uses, and this may be a good opportunity to do so. Commissioner Teske amended his **motion** to add the definition in Section IV Definitions for to-be-determined multifamily dwellings unit. Second by Commissioner Hammons. Open again for specific public comment.

Terry Holmes questioned the definition of a multifamily home. Kristin explained that it refers to one structure containing multiple residential units, such as a condominium, fourplex, or duplex.

Owen Baisden suggested that individuals should be permitted to rent out their homes if they move. Commissioner Teske will confirm, yet he and Kristin believe that renting out a single house is not typically considered a commercial activity.

Noel Duram stated if we are gutting the zoning issues line by line, shouldn't we re-evaluate even having the zoning. No further comments on adding multifamily units to definitions. Motion carried.

Commissioner Letcher introduced accessory dwelling unit, not to exceed one dwelling unit per legal lot of record. Commissioner Teske read the definition from page 2. Commissioner Letcher stated his concern with the 1000 square feet given a 30 x 30 garage with an apartment above is beyond 1000 square feet. Kristin advised the living space is what is calculated, not the entire building (the apartment and not the garage). Commissioner Letcher questions the justification for the 1000 square feet restriction. Kristin advised this language was presented for consideration.

Matt Franke advised he mirrored this from another zoning district and local subdivision covenants regarding buildings.

Chelsea Franke questioned having already removed the density requirement is this a moot point. Our intention was to not have 2,500 square foot homes right next to each other as it takes away from the character of the neighborhood.

**Motion** to strike the gross 1000 square feet requirement from the definition of accessory dwelling by Commissioner Letcher. Second by Commissioner Teske. Public comment.

Jacob Franke, of Department of Revenue, advised if there is a kitchenette above a garage, they add a fixture for any additional living spaces beyond the living area, the remainder remains a garage.

Terry Holmes sought clarification on adding a guest house to his property, featuring two levels totaling 1000 square feet each. He was assured there was no longer a 1000 square foot restriction. Terry then inquired about potential restrictions if his two grandchildren were to relocate to his property. Commissioner Letcher clarified that under the proposal, he would be allowed one additional dwelling. Terry then mentioned the family transfer subdivision option in the state of Montana.

Jackie Deshazer noted the importance of getting rid of this due to the issue of affordability and finding family space. She sees a trend toward multifamily living arrangements. She stated if you own 40 acres and have completed necessary environmental safeguards like obtaining septic, soil samples, and perk tests, why add this restriction? She stated subdividing is costly and our aim is to enable people to remain in the community.

Rhoda Cargill received confirmation of the 1000-foot requirement and one multifamily family dwelling, and one accessory dwelling would be allowed within the proposed zoning district. She confirmed barns and outbuildings would not be included. No further comments regarding striking the 1000 square feet requirement. Motion carried.

Commissioner Letcher advised current document states livestock, all livestock must be maintained in fenced area, so as not wander onto neighboring parcels or within 200 feet of Pine Creek. He suggested adding a provision to adhere to Montana open range laws. Also, the requirement of being 200 feet from Pine Creek seems excessive. He recommended reducing it to 100 feet unless there's a law prohibiting it. Commissioner Teske noted the existence of a setback for

structures on lots adjacent to Pine Creek. Jesse clarified the building setback for South Yaak and West Pine subdivisions were given preliminary approval with a 200-foot buffer per FWP recommendations and this was added to be consistent. Commissioner Letcher noted better grazing is closer to water and has concerns restricting livestock from going down to the creek. He added with a Forest Service grazing permit the open range laws apply. Discussion of cattle sent out to range and returning freely and open range laws stipulate property owners fence them out. Open range doesn't apply to all livestock and is an allotment granted through the Forest Service along with how a water right can be applied to cattle. Commissioner Letcher would like to adhere to open range laws. Commissioner Teske questioned a need for item 5 given existing laws. Kristin suggested adding a clause with the exception of open range allotments. **Motion** by Commissioner Letcher to amend number 5 to read: All livestock must be maintained in a fenced area so as to not wander onto neighboring parcels, with the exception of open range laws, striking within 200 feet of Pine Creek. Seconded by Commissioner Teske. No further discussion. Public comment.

Paul Johnson commented Mr. Baisden doesn't have water rights to Pine Creek so the cattle thing is a moot point. Creed Harwood outlined open range law which apply to areas outside of cities or townships, an allotment with the government is not needed. Within town limits, if an animal is hit, the owner is liable for damages. Outside of town, there is no requirement for animal allotments and the driver is responsible for damages caused, including to the animal. Fences must consist of three wires spaced no more than fifteen feet apart. It is understood that if you live outside a city or township, it is your responsibility to fence animals out. If neighbors share a boundary, the person standing on the left side when facing each other is responsible for building and maintaining that fence, split halfway.

Jim Hight received confirmation that the 200 foot area they would graze along Pine Creek was initially designated as a wildlife corridor, and it remains designated as such.

Rhoda Cargill acknowledges open range laws and was advised that a zoning district does not trump state law. She added that it should be struck down. She also mentioned water rights, if they are not used beneficially, you risk losing them.

Creed Harwood stated that within open range, you do not have to have water rights for livestock to use the water. The only restriction is if there was environmental damage being caused downstream. It then involves DEQ and EPA, in order to deny animals access to water in open range areas. No further comments in regard to open range and the 200-foot setback. Motion carried.

Commissioner Letcher mentioned a couple other things he wanted added to permitted uses agriculture; to include but not limited to raising and selling of livestock, raising and selling of hay and other crops, private and commercial gardens and green houses, timber land-growing harvesting and milling of timber. Commissioner Teske read MCA 15-1-101; (a) The term "agricultural" refers to: (i) the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes... He added it goes on to describe commercial. Discussion of leaving both definitions of horticulture and agriculture. **Motion** by Commissioner Letcher to replace horticulture with agriculture under permitted uses and change the definition to include MCA 15-1-101. Second by Commissioner Teske. Commissioner Teske noted commercial use will have to be discussed. Call for public comment.

Brandy Curry inquired what does this have to do with our gardens? Are you talking commercially? Commissioner Letcher advised we are seeking to make it permitted use.

Evan Comella suggested that under the definition of agriculture it is for both personal and commercial use.

Rhoda Cargill had this read in full for clarification and confirmed this is under permitted use. She questioned attempting to define permitted use of parcels of property. Commissioner Letcher stated we are attempting to define agriculture as a permitted use. Rhoda asked if permitted uses are restricted to this? Kristin advised if it's not permitted it is generally considered to be prohibited unless it can fit into the intent. Rhoda restated that the use of your property is permitted to this statement, and I know there are other uses that would be not permitted. Kristin advised to get a permitted use not listed there is a variance request avenue and this only applies to those within this proposed zone.

Creed Harwood asked what the avenue is to get permitted to use your property for agriculture or for fiber material.

Commissioner Teske advised the motion is to use the state definition which is both of what you have described.

Rhoda Cargill advised that obtaining a variance from an unelected board for a zoning district is uncertain. She proposed a more prudent approach: ensuring that any activity permitted on her property is also allowed within the zoning district. She advocated for language affirming her right to use her property as she sees fit, as long as it does not cause tangible harm.

Noel Duram urged the commissioners to consider that dismantling this zoning regulation is an indication this situation is designed only to control somebodies property use.

Creed Harwood, with 40 years of farming and ranching, noted within the US there is 1.5% of the entire 348 million population feeding both the people and livestock of this nation. He strongly recommend we don't restrict that any further.

Jim Hight advised this discussion pertains to this zoning district under consideration. He suggests If individuals dislike the regulations, they should refrain from purchasing property in that area. He also clarified that existing parcels are grandfathered into the current rules.

Marcine Holmes appreciated these points while expressing concern that all contingencies are being considered. She suggested hiring a professional and avoid reactionary decisions. She pointed out some aspects may not be legal or applicable. Commissioner Letcher stated the easiest thing is to put under permitted uses, all uses not prohibited by Montana state law or federal law.

Katrina Newton asked if this zoning is retroactive, who is included and excluded? Commissioner Letcher clarified that the changes would apply only going forward upon approval, with provisions for non-conforming properties already using their land in a specific manner.

Terry Holmes recommended if it is not prohibited by law, then it is permitted.

Chelsea Franke asked Jesse and Kristin the possibility of limiting commercial activities in a proposed district. She suggested that the district could be restricted to only allowing home use and no commercial activities. She mentioned having explored regulations in other counties in Montana where similar restrictions have been successful. Kirstin stated

the recent comment period was for folks within the geographic boundary area of this district. The language that was presented to and reviewed by the Planning Board over several meetings and presented to the commissioners was discussed at nauseum and folks in the district participated in those discussions. The commissioners have the purview to make changes. If someone from the district is saying this is really the end goal the commissioners can make that change or they can continue on. This is the legislative process and it is messy. Chelsea asked if the district could have zero permitted uses except for those explicitly prohibited, with Kristin confirming they are defining the regulations as they proceed. Commissioner Teske suggests that if the petitioning body's sole restriction is commercial use, it would simplify the discussion. Chelsea stressed the importance of a clear definition of commercial activities as their end goal. Kirstin advised the Planning Board spent some time on this commercial definition. She read the current recommended *definition of commercial* means the use of land for the primary purpose of buying, selling or trading of retail or wholesale merchandise or services that specifically attracts vehicular traffic to the property, including institutional or recreational. Does not include home occupations. Commissioner Letcher questioned what do they mean by including institutional or recreational? Kristin advised a big school or camp. Commissioner Teske advised we have commercial as a prohibited use and industrial use, is that something you would want to strike? Chelsea said no, we would want industrial included with commercial. Commissioner Teske read the *definition for Industrial* means the use of land primarily for the purpose of manufacturing, production, fabrication or assembly processes and ancillary services that require the regular use of heavy equipment or semi-trailers; and that produces offensive odor or noise that prevents neighboring property owners from enjoying their own property. Chelsea advised as long as the law does not see that agricultural cannot fit into industrial then we are okay with it. We don't want to zone out agriculture. Commissioner Teske advised what you are proposing would basically strike everything in here except for two prohibited uses. Chelsea agreed to striking prohibited uses number 3, mobile home, trailers, campers, tents, structures temporary... Chelsea agreed to striking number 4 trailers and RV's may not be used as accessory buildings. Chelsea advised number 5 needs to be further defined. Is it a public school or a private for-profit school. Commissioner Letcher stated his concern with eliminating the school in the zoning requirements is MCA 76-2-203(b) (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Commissioner Teske asked for agreement the petitioning party has no issue striking permitted uses. There will not be anything listed specifically for permitted use, correct? One party within the zone agreed.

Rhoda Cargill emphasized that property buyers should be aware of zoning restrictions. She expressed concern that being involuntarily incorporated into a zoning district sets a precedent that could be problematic. While conservation easements are acceptable, she argued that forcing individuals into a district without their consent is unjust. She insisted that any zoning legislation must include opt-out provisions to safeguard property owners' rights.

Brandy Curry advised this is circular reasoning. She has a small income from her gardening and will protect that right.

Owen Baisden pointed out Lincoln County is one of the most impoverished counties in the state of Montana and any actions to diminish job opportunities would be detrimental. He cautioned against limiting commercial activities, arguing that it contradicts the essence of what draws people to Montana.

Terry Franke received confirmation of the following. The state of Montana has a law to allow ordinary citizens to create a zoning district. He confirmed the petitioners met all the Montana requirements to create a zoning district. Commissioner Teske stated all this was reviewed and assessed by the Planning Board. Terry confirmed Lincoln County met all required public posting and meeting requirements. Terry confirmed the zone will not affect anyone other than those in the zone. Terry confirmed this does not give the county the right to impose zoning regulations on others within the county. Terry confirmed the zone does not affect the existing two preliminarily approved subdivisions.

Jeff Smith, zoom, pointed out this zoning initiative, initially citizen-driven, now represents the petitioners' interests. He highlighted that the proposed zoning affects only one landowner, spot zoning. Jeff argued that if the zoning prohibits commercial development, it could have far-reaching consequences for the entire county, potentially hindering job creation and economic growth. He stressed the importance of aligning zoning decisions with the county's growth policy plan to avoid legal challenges. He recommends defining commercial to not restrict economic growth.

Commissioner Teske questioned the folks impacted, the petitioners, who agreed they were willing to strike the permitted uses section of this document, no longer requiring a discussion on the term agriculture.

Commissioner Letcher *rescinded his motion on the definition of agriculture*. **Motion** by Commissioner Teske to strike section II permitted uses as a whole, sections 1, 2, 3, 4 and 5. Second by Commissioner Letcher. No further discussion.

Open public comment on striking permitted uses.

Jim Hight stated that without any restrictions, the future development is uncertain and potentially harmful. He added the focus is on this specific section of Montana, rather than the entire state.

Paul Johnson advised the growth policy says you should keep neighborhoods the same and urban commercialization kept in the right place. One person in our neighborhood wants a commercial zone.

Commissioner Letcher stated that there are actually another seven properties in the neighborhood that are not included in this proposal. The reason they are excluded is that they would not have met the 60% requirement of this proposal. We have a situation where half the properties have been taken out in an attempt to restrict the remaining half.

Matt Franke stated that there are other individuals not directly adjacent to the zone who are interested in joining, adding approximately 350 more acres to the zone. They are interested in zoning to protect their properties.

Owen Baisden commented if you strike permitted uses, I suggest adding anything not prohibited is allowed.

No further public comment. All in favor say eye. motion carried.

**Motion** by Commissioner Teske to strike 3, 4, and 5 from prohibited uses, leaving any commercial uses, any industrial uses as prohibited. Second by Commissioner Letcher. No further comment. Commissioner Teske read these line items.

Jeff Smith, zoom, suggested if you do so then redefine the definition of commercial. He suggest commercial means use of land for the primary purpose of buying, selling or trading of retail or wholesale merchandise and include does not include home occupations. Commissioner Teske added there are concerns with vehicular traffic. Jeff noted if you specifically define a school, you target my client with spot zoning.

Paul Johnson stated the state legally defined the commercial and industrial part of this. No further public comments. All in favor say eye. Motion carried.

Kirstin assured the commissioners the definitions of commercial and industrial in the document were thoroughly deliberated by the Planning Board and are now presented to the commissioners. Commissioner Letcher would like to see an avenue to allow industrial or commercial use within the highway corridor. Commissioner Teske asked how you would define that if they just have a highway access or address. Commissioner Letcher stated anything with highway access as it does not add traffic to the rural county roads. That traffic is already on the highway. Commissioner Teske advised he would have to review this before committing.

Commissioner Teske questioned section III setbacks, structures must be set back at least 100 feet from side, front and rear adjacent properties and highway 508 right-of-way. Commissioner Letcher would like to strike all this as there are existing setbacks and smaller lots may not meet this requirement. Commissioner Letcher **motioned** to change structure setback to 10 feet from side, front and rear. Commissioner Teske inquired how this fits with Highway 508 right-a-way. Kristin advised going from Planning Board recommendation of 100 feet to 10 feet is dramatic. Commissioner Teske suggested an amended motion to 20 feet for safety due to ongoing encroachment issues. Commissioner Letcher **amended his Motion** to change the setback from 100 feet to 20 feet under section III number 2. Second by Commissioner Teske. No further comments. Call for Public comments.

Marcine Holmes clarified this only pertains to those in the zoning district.

Terry Holmes questioned the setback of a fire department structure on his property. Commissioner Letcher advised it would be 20 feet if constructed after this was initiated and if you are in the zone.

Bob Bittner questioned the reasoning behind having two-tiered setbacks. Commissioner Teske explained that within this zone, when properties are subdivided, owners have the flexibility to establish their preferred setbacks. No further public comment. All in favor say eye. Motion carried.

Jeff Barger inquired of rights associated with employer-provided housing and property ownership, the right to sell it and make a profit. He urged the commissioners to remain vigilant of the inherent risks and opportunities of free enterprise, particularly regarding the location of businesses like truck stops and advocated against imposing restrictions.

Commissioner Teske **motioned** to reopen the public comment period for an additional thirty days on the changes to the document. Second by Commissioner Hammons. Jesse advised he will have this document updated. Public comment.

Katrina Newton questioned how Jesse will have time to revise this document. Commissioner Teske clarified Jesse does not make revisions, yet he is going to update as discussed, revising this document to reflect approved changes.

Noel Duram feels there was some dishonesty or back deals based on Mr. Smith's public comment on April 24<sup>th</sup> and the planning board responded and his response was not to him. Jesse's comments were prepared for the commissioners and the courtesy is to provide them to Mr. Smith. He is concerned with the direction of comments. Jesse advised his comments were prepared directly before the meeting and are included with the posted meeting minutes.

Bob Bittner is against opening this up for public comment as this was in the Western News and he's sorry some missed out but all the hoops and hurdles were done. The public had their chance.

Melody Newmaster questioned the timeline. We are not defining commercial and industrial right now and will put that off another 30 days? Commissioner Teske advised he wants to review state statute. Melody questioned how she would know when this was taken up. Jesse advised once the commissioner are finished making changes, per MCA it will then be open for public comment for another 30 days. Commissioner Letcher **rescinded his motion** to reopen the 30-day public comment period and **motioned** to recess this until next Wednesday. Second by Commissioner Teske. Public comment on postponing this until next week.

Terry Holmes understands any property along the state highway has to allow commercial. Commissioner Teske stated they will be researching this.

Jeremy Newmaster asked where to find public posting. Commissioner Letcher advised the Commissioner's agenda is found on the website, on the bulletin boards. Discussion of different posting requirements for different public notices. No further public comment on the motion. All in favor say eye. Motion carried.

04:15 PM **Adjourned**

**LINCOLN COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Josh Letcher, Chairman

**ATTEST:** \_\_\_\_\_

Corrina Brown, Clerk of the Board

## LOWER YAAK ZONING DISTRICT

Created \_\_\_\_\_

### SECTION I – APPLICABILITY

This Zoning District applies to the following property:

The SW ¼ NW Sec. 25. Twp. 33 N., R. 34 W. P.M.M. Book 375 Page 521, Parcel A C.O.S. 2105 Sec. 26, Twp. 33 N., R. 34 W., P.M.M. Book 356 Page 321, Sec. 26, Twp. 33 N., R. 34 W., P.M.M. Book 52 Page 846, Sec. 26, Twp. 33 N., R. 34 W., P.M.M. Book 290 Page 638, Sec. 25, Twp. 33 N., R. 34 W., P.M.M. Book 387 Page 534, Sec. 26, Twp. 33 N., R. 34 W., P.M.M. Book 387 Page 534, Tract 2 C.O.S. 3917RB Sec. 24, Twp. 33 N., R. 34 W., P.M.M. Book 387 Page 534, Parcel D C.O.S. 4259FC Sec. 24, Twp. 33 N., R. 34 W., P.M.M. Book 351 Page 247, Parcel B-2 C.O.S. 4259FC Parcel C C.O.S. 3886RB Sec. 24, Twp. 33 N., R. 34 W., P.M.M. Book 356 Page 97, Parcel A-1 C.O.S. 3886RB Sec. 24, Twp. 33 N., R. 34 W., P.M.M. Book 385 Page 650, and C.O.S. 693 Sec. 24, Twp. 33 N., R. 34 W., P.M.M. Book 377 Page 492, SW ¼ NW ¼ Tract 2B1, Sec. 24, Twp. 33N. R. 34 W., P.M.M. Book 271 Page 412 of Lincoln County, Montana

### SECTION II – USES

#### Permitted uses

1. Single-family dwellings
2. Accessory dwelling unit, not to exceed (1) dwelling unit per legal lot of record;
3. Accessory buildings;
4. Horticulture
5. All livestock must be maintained in fenced area, so as not to wander unto neighboring parcels, or within 200 feet of Pine Creek.

#### Prohibited uses

1. Any commercial uses;
2. Any industrial uses;
3. Mobile homes, trailers, campers, tents or any structure temporary in character shall not be used as a primary residence, except on a temporary basis up to six (6) months in duration, which can be extended to another six (6) months, for a total of twelve (12) months, if the landowner is building a home on their property;
4. Trailers and RVs may not be used as accessory buildings. NOTE: Shipping Containers that are well-maintained may be used as an accessory building if they are not visible to adjacent property owners.
5. Schools.

### SECTION III – SPACE AND BULK REQUIREMENTS

1. Maximum permitted density: 1 primary dwelling unit per 20 acres
2. Placement of Structures (Setbacks):
  - a. Structures must be set back at least 100 feet from side, front and rear adjacent properties and Highway 508 right-of-way.

### SECTION IV – DEVELOPMENT STANDARDS AND GENERAL REGULATIONS

1. **Definitions.** Applicable definitions of terms contained below shall apply to this Zoning District, unless otherwise defined herein.
  - a. Accessory Building – A detached building, excluding a second dwelling unit, the use of which is customarily incidental to that of the main building, or to the main use of the premises, and located on the same lot with the main building or use.
  - b. Agricultural - All aspects of farming or ranching including the cultivation or tilling of soil; dairying; the production, cultivation, growing, harvesting of agricultural or horticultural commodities; raising of livestock, bees, fur-bearing animals or poultry; and any practices including, forestry or lumbering operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.
  - c. Commercial – means use of land for the primary purpose of buying, selling or trading of retail or wholesale merchandise or services that specifically attracts vehicular traffic to the property, including institutional or recreational. Does not include home occupations.
  - d. Industrial - means the use of land primarily for the purpose of manufacturing, production, fabrication or assembly processes and ancillary services that require the regular use of heavy equipment or semi-trailers; and that produces offensive odor or noise that prevents neighboring property owners from enjoying their own property.
  - e. Single Family Dwelling- A building designed to be occupied exclusively by one single family.
  - f. Accessory Dwelling Unit - A dwelling unit which is incidental and accessory to the primary residence. The accessory dwelling unit (hereinafter “ADU”) must conform to the following standards: 1) have a gross square footage no greater than 1,000 square feet.
  - g. Non-Conforming Use – The lawful use of land or structures that existed prior to adoption of this Zoning District.



## **SECTION V – NONCONFORMING LOTS, USES AND STRUCTURES**

1. Nonconforming Lots of Record – Buildings in conformance with this Zoning District may be constructed on a lot that does not meet the minimum lot size requirement, if the lot was legally created prior to the adoption of this Zoning District.
2. Nonconforming Structures – A lawful structure that existed prior to the adoption of this Zoning District which could not be built under this district due to restrictions on lot size, dwelling size, setbacks or other such restrictions, may continue to exist and may be replaced if destroyed by fire or other natural disaster. Nothing in these regulations are intended to prohibit the expansion or replacement of structures existing at the adoption date of this Zoning District.
3. Nonconforming Uses- A legal non-conforming use is an existing use of the land at the time these regulations were adopted, the use of which does not conform to these regulations. No such nonconforming use shall be enlarged or increased or extended to occupy a greater area of land than was occupied at the effective date of this district. If a nonconforming use of land ceases for any reason for a period of one hundred eighty (180) days, subsequent use of the land shall conform to these regulations.

## **SECTION VI – VIOLATIONS**

If a violation of these regulations occurs, or is alleged to have occurred, any person may file a written complaint to the County Zoning Office/Planning Board stating the causes and basis of the alleged violation. The Zoning Officer shall record and investigate the complaint. If it is determined that any of the provisions are being violated, the zoning officer shall submit a written report to the Office of the County Attorney for appropriate legal action.

## **SECTION VIII – SEVERABILITY CLAUSE**

In the event any section, part, term clause or provision contained in the Zoning District regulation is held by any court to be invalid, illegal, unconstitutional or otherwise unenforceable, then, nevertheless, all other and remaining sections, parts terms, clauses and provisions thereof and hereof shall continue and remain in force and effect.