

Friends of Park County

P.O. Box 23, Pray, Montana 59065

Promoting thoughtfully planned growth in order to protect and enhance Park County's vibrant communities, sustainable working lands, and healthy natural resources.

Testimony of Friends of Park County on Mountain View Subdivision
Preliminary Plat Application
presented to the
Livingston Planning Board
August 17, 2022

Friends of Park County appreciates the many contributions Print for Less and its CEO have made to the economy and civic life of Livingston and Park County, so our testimony today should not be seen as a criticism of them.

Instead, our testimony is a sign of the respect for the City's officials who have been entrusted with the responsibility to faithfully and impartially administer the City's land use regulations and the laws of Montana.

Friends of Park County respectfully requests that you deny or remand the Mountain View Subdivision preliminary plat application for three reasons, detailed below.

[View Suggestions for a Few Additional Improvements to the Draft Livingston Growth Policy.](#)

- 1. The Planning Board has the legal authority to consider the subdivision's consistency with the 2021 Growth Policy and should do so. Aspects of the subdivision seem to conflict with the Growth Policy.**

The City's subdivision ordinance provides:

III-B-4 Planning Board Hearing, Consideration and Evidence

c Consideration-Evidence

In making its decision to approve, conditionally approve, or deny a proposed subdivision, the governing body may consider the following, as applicable:

- (i) an officially adopted growth policy;*

Montana Code Annotated 76-1-605 describes the use of an adopted growth policy. Those portions that allow the Planning Board to consider the Growth Policy in the review of this subdivision are highlighted:

(1) Subject to subsection (2), after adoption of a growth policy, the governing body within the area covered by the growth policy pursuant to 76-1-601 must be guided by

and give consideration to the general policy and pattern of development set out in the growth policy in the:

(a) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(b) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;

...

(2) (a) A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law.

Note: The City's subdivision ordinance, quoted above, gives you this authority.

(b) A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy adopted pursuant to this chapter.

Note: In other words, as long as there are other grounds for withholding, denying or imposing conditions, then the Growth Policy can provide additional grounds for your action.

Here are some of the goals, objectives and strategies in the Growth Policy that the Planning Board should consider in reviewing the application:

Goal 3.1: Prioritize infill over expansion by taking advantage of existing and planned infrastructure, such as transportation, energy, water, and sewer facilities.

Goal 3.4: Encourage the responsible growth of Livingston by evaluating proposed developments against the ten principles of Smart Growth...

Strategy 3.4.3.2: Encourage development near transit routes and active transportation infrastructure to promote development that produces minimal strain on the environment and existing transportation infrastructure.

Objective 6.2.3: Make a good first impression to [sic] visitors.

Objective 8.2.7: Prioritize existing roadways and utility infrastructure to ensure connectivity and avoid leapfrog development.

Strategy 8.2.7.1: Prioritize roadway construction or improvements in areas that have been dedicated as mixed use or higher density in the Growth Policy.

2. **The Planning Board must base its decision on findings of fact, not conclusions unsupported by evidence. In the absence of facts and evidence it must either deny the application or send it back to the staff, applicant and interested persons to present and evaluate evidence that will provide a basis for findings of fact and a decision.**

Montana state law and the City's subdivision regulations require the staff to prepare and the reviewing bodies to make "findings of fact" in support of their decisions to approve or deny an application.

A finding of fact requires the consideration and evaluation of relevant evidence and information. For many critical criteria the staff report does not reference any facts but just offers an unsupported assertion. For example:

1. Effect on Agriculture

*1) Would the subdivision remove agricultural or timberlands with significant existing or potential production capacity? **No.***

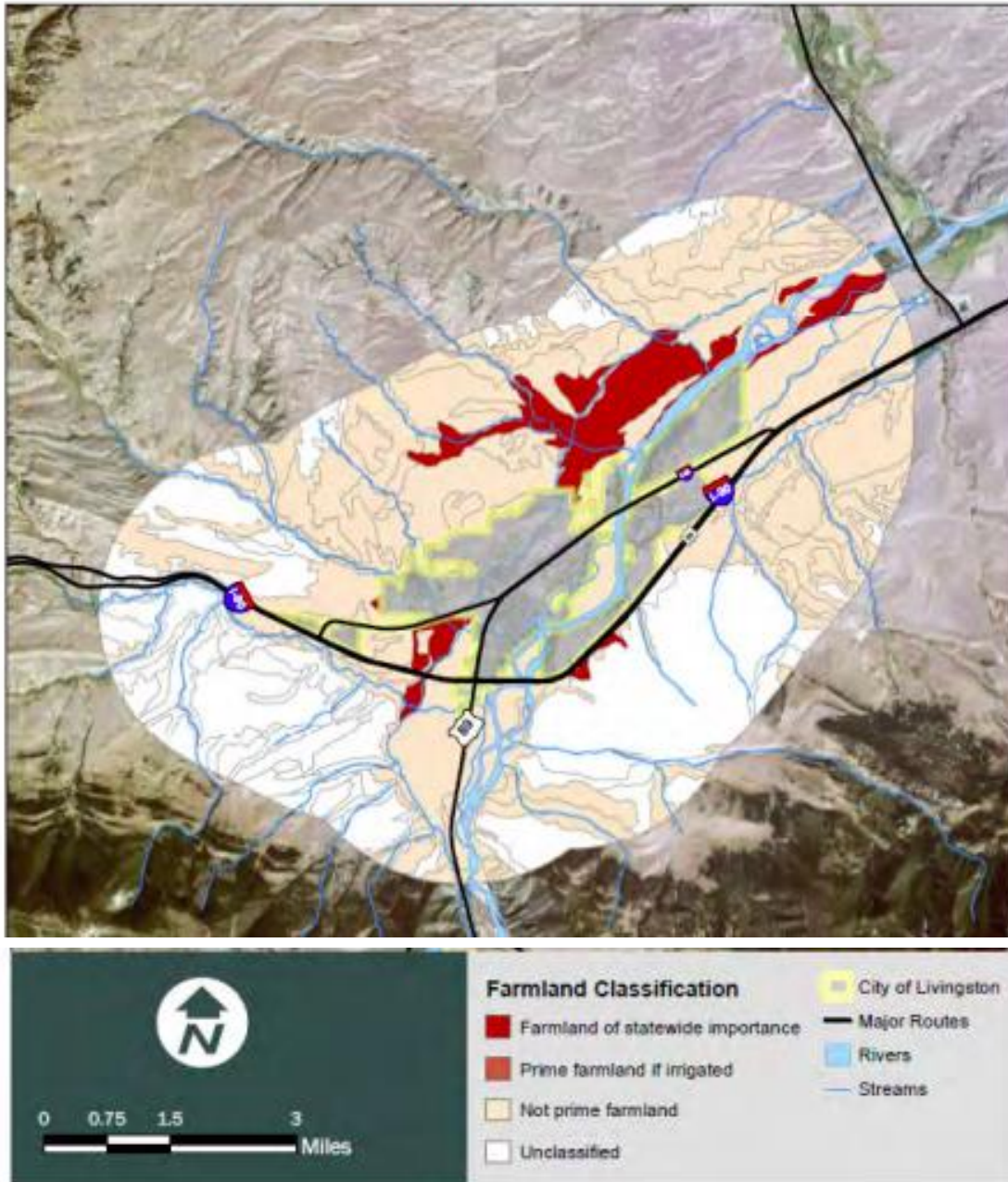
*2) Would the subdivision remove from production agricultural lands that are critical to the area's agricultural operations? **No.***

*4) How would the subdivision affect the value of nearby agricultural lands? **Not applicable.***

An unsupported statement of the conclusion without reference to any facts is not a finding of fact at all.

Readily available information does not support these conclusions. For example, Exhibit 2.7 "Farmland in the Extraterritorial Jurisdiction" in the 2021 Growth Policy shows there are agricultural lands on, and near, the subject property:

Exhibit 2.7: Farmland in the Extra-Territorial Jurisdiction



This is just one source of information on this subject.

The following findings are also unsupported conclusions that not based on any facts in the staff report and therefore cannot be a basis for a decision by the Planning Board:

3. *Effect on Local Services*

- 1) (a) No information about additional costs is provided
(b) Answer does not respond to the question about “who will bear the costs.”
(c) No facts related to capacity to fund additional costs provided.
- 2) Unsupported conclusion about additional efficiency of service provision
- 4) No basis provided for the estimate of \$300,000 in additional revenues; what are the assumptions about the types of future development and their assessed value?

4. *Effect on Natural Environment*

The questions about possible effects on the natural environment in subsections 1) a), b), c), and f) are answered with a conclusion without any supporting evidence, without any analysis of those facts that support the conclusion. It is also interesting that the staff report found that there was no known hazard in the form of “high winds.”

5. *Effect on Wildlife and Wildlife Habitat*

The responses to the questions in 1) and 2) are conclusions unsupported by evidence.

6. *Effect on Public Health on Safety*

The responses to the first questions is a conclusion unsupported by evidence. The response to the second and questions state are “None have been identified.” It is the responsibility of the staff and the Planning Board to affirmatively review available information and analyze it rather than treat the absence of information from third parties as grounds for a conclusion about facts.

3. The City’s conclusions of law must address the standards in the regulations as they are written, not modifications or re-interpretations of them.

In some cases, the staff report modifies or reinterprets the question posed by the subdivision ordinance and responds to that modified or reinterpreted version that is not in the city code.

Here are two examples:

1. Effect on Agriculture

*3) Would the subdivision create significant conflict with nearby agricultural operations (e.g. creating problems for moving livestock, operating farm machinery, maintaining water supplies, controlling weeds, applying pesticides or would the subdivision generate nuisance complaints due to nearby agricultural operations)? **No. There are no intensive agricultural activities in the immediate area.***

The code inquires about “nearby agricultural operations, not “intensive agricultural activities” in the “the immediate area.”

2. Effect on Agricultural Water User Facilities

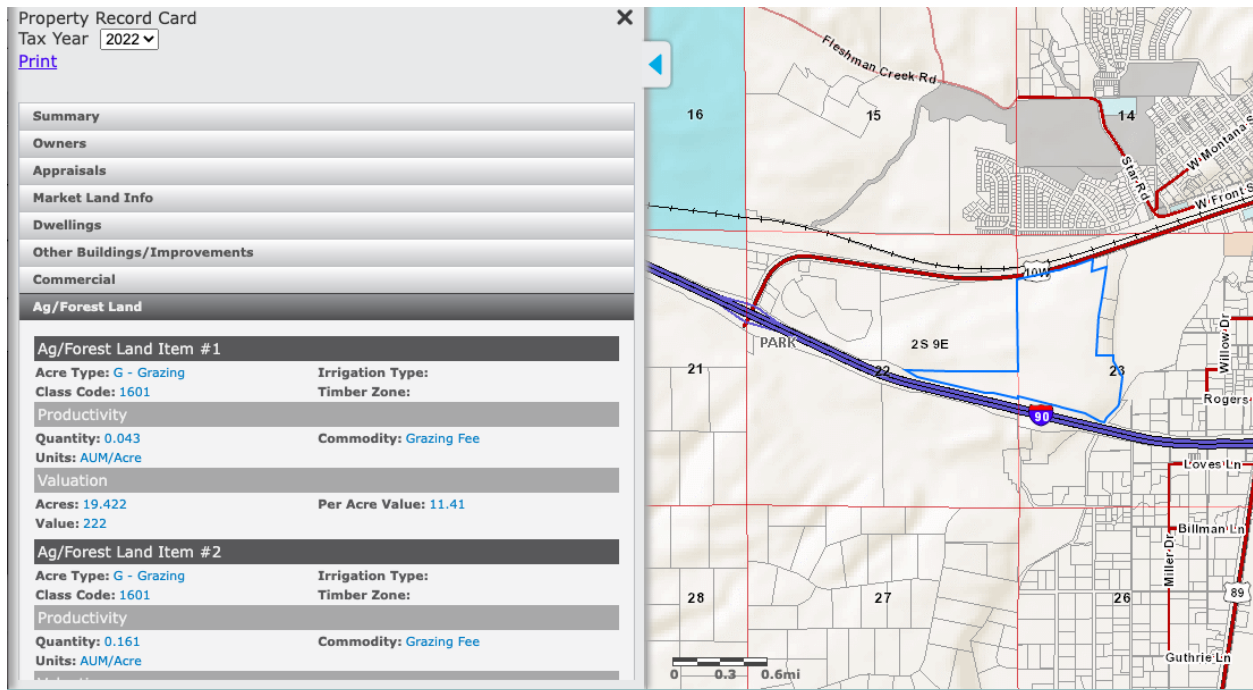
1) Would the subdivision create a significant conflict with agricultural water user facilities (e.g. creating problems for operating and maintaining irrigation systems or creating nuisance complaints due to safety concerns, noise, etc.)? *No ag water user facilities exist on the subject property.*

The question is about the potential for significant conflict with agricultural water user for example with operating or maintaining irrigation systems or complaints due to safety concerns and noise, which could be nearby, not just on the subject property.

The Cadastral Survey indicates there are agricultural operations nearby, grazing and alfalfa production and the latter relies on irrigation:

Property Record Card
Tax Year 2022

Summary
Owners
Appraisals
Market Land Info
Dwellings
Other Buildings/Improvements
Commercial
Ag/Forest Land
Ag/Forest Land Item #1
Acre Type: 1 - Irrigated
Class Code: 1101
Quantity: 1.193
Units: Tons/Acre
Valuation
Acres: 6.399
Value: 3539
Ag/Forest Land Item #2
Acre Type: 1 - Irrigated
Class Code: 1101
Quantity: 3.74
Units: Tons/Acre



There is also agricultural land south of I-90 and elsewhere nearby.

The staff report must address the actual standards in the city’s ordinance not the revised, weaker and narrower revisions to those standards as reinterpreted by the staff.

Conclusions

In conclusion, Friends of Park County believes this application must be denied or remanded back to the city staff to collect and evaluate evidence, apply the actual standard in the ordinance and address the consistency of the application with the Growth Policy.

In addition, the application raises three fundamental issues we hope the Planning Board will be willing to address:

1. The adequacy of the factual information and legal analyses the Planning Board and the City Commission need in order to make the required findings of fact and conclusions of law, not just in this case, but in ally cases.
2. Addressing the contradictions and unaddressed issues in the Growth Policy. (Please see our May 2021 testimony to the City Commission on these points.)
3. The urgent need to translate the Growth Policy into internally consistent, effective regulations, programs and incentives. Until and unless this is done, all of your, your staff’s and the community’s work on the Growth Policy will be rendered meaningless as development proceeds without regard to its admirable goals and objectives.

We thank the Planning Board for their public service.