

CREATING A C_ITIZEN L_INITIATED Z_ONING D_ISTRIC_T

GENERAL PROCEDURE

Case Study: Sweet Grass County, Montana

COMPILED: OCTOBER 1999

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*GRAPHIC ON THE COVER BY CLINT MCRAE.

BACKGROUND

A number of landowner groups have asked for some guidance in how to proceed with Citizen Initiated Zoning but, until now, have had to do much of the research themselves, sometimes ending in frustration or failure because of legal technicalities. This book, sponsored by the Northern Plains Resource Council, involved a great deal of input by the Sweet Grass County Planning Office, Clerk & Recorder's Office, County Attorney, County Commissioners, and several volunteers. This is a comprehensive, step by step, explanation of the process land-owner groups can use to create a "Citizen Initiated Zone" in Sweet Grass County.

WHAT IS ZONING?

It is widely held in Montana that "a man can do with his land what he wants." Zoning, many believe, takes away that freedom. The controversy around this topic is alive and very real in Sweet Grass County. For those landowner groups who feel threatened by commercial or residential development, however, zoning offers more protection for the freedom they have always had and provides legal dimensions to that freedom which automatically insures their preferred use of the land – without having to fight for it. The primary purpose of citizen initiated zoning is to make sure the needs and intentions of a majority of the landowners in the area are met more satisfactorily than without zoning.

Citizen Initiated Zoning must comply with the SGC Growth Policy Plan (Master Plan). It simply puts teeth into it. Landowners draft the area and uses of land to be included in their special "zoning district."

An interested group of landowners can create a zoning district. Montana law states how this can be done: you must have agreement from no less than 60% of the landowners who own at least 50% of the land in the area to be zoned. There is time to comment and ask questions as the process develops. It is a democratic process. The majority rules. In a zoning district, developers and commercial enterprises are aware from the outset whether their ideas will work in that particular area. Time and energy spent trying to prevent or allow certain activities is eliminated because it is clear, and easily enforceable.

Creating a zoning district is a serious undertaking. The result is a self-determined future.

DEFINITION OF TERMS

SGC GROWTH POLICY PLAN (MASTER PLAN): This is the document created initially in 1977 and updated periodically (most recently 1998-99). This plan was created from citizen input and shows the desired use of land for the present and future of Sweet Grass County.

MONTANA CODE ANNOTATED (MCA): This is the statute or law in Montana which establishes the format for citizen initiated zoning districts. The MCA statute is included here as Appendix A.

FREEHOLDERS: The term is synonymous with “landowner” but not with “taxpayer.”

DEVELOPMENT PATTERN: A plan that describes what the “development district” will look like. A description of permitted land uses and densities, and may include other items. It establishes the framework from which regulations will later be drafted. The citizen committee, made up of the interested landowners, drafts the development pattern and the Planning & Zoning Committee finalizes and adopts it.

REGULATIONS: These are rules and instructions that are authorized by state or local ordinance. They are legally binding.

COSTS ASSOCIATED WITH THIS PROCESS: The costs are paid by the landowners requesting the zoning district and are shown in the title box at the beginning of each “Step” of the process outlined in this book.

ENFORCEMENT: This addresses violations against laws, ordinances, rules, and regulations. It is the procedure by which an authority (administrator, governing body, sheriff, etc.) may act to bring the violator into compliance or pursue punishment. Punishment of a violation is the responsibility of judges and courts.

ADMINISTRATION: An administrator manages and supervises laws, ordinances, rules, and regulations. The authorities mentioned above can also be considered administrators. Administrators can be elected officials, many are employees, and by the definition of their job they are the appointed administration.

SURVEY: A surveyor should be used to prepare the map and will need to look at the original survey documents. This will ensure accuracy of the map. The Montana Attorney General has written that “if the signatures were obtained on the petition as a result of reference to the map, the map defines the boundaries of the planning & zoning district. However, if the map was created from the narrative legal description set forth in the petition, the narrative controls.” This means that if you use a map, it must be accurate. It obviously takes some time to locate and copy titles and corporation papers, and logically the cost would be less if the landowner committee obtains these documents, eliminating

Definition of Terms Continued...

the time for the surveyor to locate them in the Clerk & Recorder’s office. These documents are .25/copy.

“PUBLIC INTEREST OR CONVENIENCE”: County Commissioners are required to decide if the request for a zoning district is good for Sweet Grass County, or, in other words, is the request in the “public interest or convenience.” Their criteria for this decision is based on the law (MCA) and the Sweet Grass County Growth Policy Plan (Master Plan).

PLANNING & ZONING COMMISSION (P&Z COMM.): This group has already been established in Sweet Grass County and consists of the 3 Commissioners, the Road Supervisor, and the Clerk & Recorder. The P&Z Commission will be the same for all zoning districts, but must be officially designated for each separate district. The P&Z Commission will finalize the pattern of development and make recommendations to the County Commissioners for adoption of a resolution to create the district. The P&Z Commission is authorized to provide for the issuance of permits for building unless the adopted regulations of the zoning district state otherwise.

“PHYSICAL & ECONOMIC DEVELOPMENT PATTERN”: The P&Z Commission will create a physical and economic development pattern to show specifically what is being created in the zoning district.

Physical factors that need to be considered when addressing the development of the area includes location and size of development, character of the land, acceptable limits of change to the land, etc.

Economic development should address type of use, preference for type of enterprises allowed, and a projection of needs to sustain these types of enterprises.

REGULATIONS: Rules to govern the zoning district are created by the Planning & Zoning Commission.

12-Steps Check List/Time Table (use this space to work out your technical plan)

- STEP ONE: PREPARE & PLAN THE PROCESS (form landowner committee)
- STEP TWO: NOTIFY LANDOWNERS & COLLECT INPUT
- STEP THREE: DRAFT & REVISE MAP & REGULATIONS
- STEP FOUR: COUNTY REVIEW
- STEP FIVE: PETITION
- STEP SIX: ACTION ON PETITION BY COUNTY COMMISSIONERS
- STEP SEVEN: PLANNING & ZONING COMMISSION RECOMMENDATIONS
- STEP EIGHT: PUBLIC HEARING
- STEP NINE: REGULATIONS
- STEP TEN: RESOLUTION
- STEP ELEVEN: ADOPTION BY THE COUNTY COMMISSIONERS
- STEP TWELVE: ADMINISTRATION & ENFORCEMENT OF REGULATIONS

DEVELOPING A VOLUNTARY PLANNING & ZONING DISTRICT
GENERAL PROCEDURE
Sweet Grass County, Montana

Counties which have adopted a comprehensive master plan are authorized to create planning and zoning districts under MCA 76-2-101 to 112.

Joseph P. Mazurek, Attorney General, State of Montana
28 June 1999

STEP ONE: PREPARE & PLAN THE PROCESS

➤ **Landowner Committee**

\$ No Cost

Time: 1 day

Form a landowner committee. Organize a few landowners who are interested in creating a District and form a committee responsible for coordinating the process. This will spread out the work more realistically and educate more people more quickly in the language and content of this process. Others can be invited to become involved in the work as interest and energy are generated. The amount of time required from the committee members will depend on the degree of interest and level of opposition of other landowners. It is important to inform and keep the commissioners in the loop. They will ultimately be asked to approve the district and will be better prepared to act if they are aware of the action. Each member of the committee should be familiar with this 12-step procedure.

The committee will be responsible for:

- ✓ informing other landowners about their idea for the District;
- ✓ collecting input;
- ✓ engaging a surveyor to draw up a map of the area to be included in the District;
- ✓ creating a draft of regulations that describe the use of the land in the District; and
- ✓ generally shepherding the process from beginning to end.

Landowners will be responsible for costs associated with the zoning process including surveyor's drawing of district boundaries, copies, and attorney fees. In other counties, depending on the size of the district, the costs of the entire process seems to range from \$1,000 to \$10,000.

STEP TWO: NOTIFY LANDOWNERS AND COLLECT INPUT

- Landowner Committee
- \$ Copies of: Information, Questionnaire, Map
- \$ Postage

Time: 14 – 21 days

To be successful in establishing a zoning district you must gain commitment and approval from at least 60% of the landowners who own at least 50% of the land in the proposed District. Gathering input is the beginning of that commitment.

Information should be provided to those landowners describing the:

- reason for gathering their input;
- possible boundaries for the district;
- proposed uses for the land;
- a brief outline of the steps involved in the process;
- a timetable developed by the committee; and
- enforcement and administration of the district.

The committee should be clear about the reason/purpose/goals for the District. Give everyone the same information and ask everyone the same questions. The committee should **construct a questionnaire** to be used for gathering input. Ask also for comments, questions, or concerns. For strong support, all ideas should be taken seriously. The committee should research answers to questions and follow-up. This initial inquiry will educate and engage others in ownership of the process. *The undecided are, in all cases, your target audience.* (Appendix F)

Suggested ways the committee can collect input:

Option 1: Interview Individual Landowners in the proposed planning District and take careful notes on their responses. Let them share comments not included in the questionnaire. Depending on the population of the area under consideration this could be completed with several committee members talking to just a few neighbors each.

advantages: This method allows one-on-one contact and may make people more comfortable asking questions or expressing concerns than in a larger group.

disadvantages: All persons in the proposed District need to be contacted – even those you know are going to be opposed. This can be intimidating to some interviewers.

Option 2: Send Out A Questionnaire to ALL persons in the proposed District. The committee should set a date for questionnaires to be returned and to send results to all landowners.

advantages: Responses are sometimes more thoughtful. The data are usually easier to compile and more accurate in written form.

disadvantages: A great deal of care must be taken by the committee in expressing on paper the platform for the district. Interpretation or misunderstanding can put an unwanted or negative spin on the intent. If landowners do not return the questionnaire

they will need to be contacted to make sure they received it.

Option 3: Hold A Meeting of all landowners in the proposed District. Choose a neutral site where everyone feels comfortable. Be prepared to include those who favor the District, those who oppose the District, and the undecided. Remember, the undecided are your target audience. (They are also the target of the opposition.)

advantages: Everyone hears the same information at the same time – questions, answers, and discussion. The opposition is in the room and can be faced squarely. It could be an advantage to know how tough the opposition is going to be and on what grounds they are opposed.

disadvantages: The opposition is likely in the room. If the opposition presents a strong case, this can stifle the process and discourage the undecided and those in favor. This is a situation where you are inviting conflict to occur. Keeping energy focused on gathering information and educating everyone can be difficult.

Option Four: Any Combination of Options

advantages: gives committee the flexibility and opportunity to more conveniently reach landowners, establish relationships, answer landowner's questions.

disadvantages: See individual disadvantages above.

References

Appendix A

Montana Code Annotated 76-2-101. Planning and zoning commission and district (1), (2), (3), (5)

STEP THREE: DRAFT & REVISE MAP & DEVELOPMENT PATTERN

- Landowner Committee
- Surveyor
- \$ Surveyor
- \$ Copies of Map & Development documents, titles, deeds, etc.
- \$ Postage

Time: 15 – 30 days

A. Create Map and Development Pattern

A map and development pattern for the area must be drafted by the Committee. The map and regulations are the heart and soul of the District. They must be comprehensive and accurate,

and reflect the comments and concerns received from landowners who are in favor of the district. The draft map and draft development pattern should be distributed to all landowners for review, requesting comments by phone, mail, or a meeting. A development pattern is a plan that describes what the district will look like. It is a description of permitted land uses and densities and may include other items. This can be lines drawn on a map designating areas of acceptable land uses and densities, or narratives defining where these areas will be located based on established criteria. The development pattern establishes the framework from which regulations will later be drafted.

1. The committee should use as a guide the sections of the SGC Growth Policy Plan relevant to the specific intent of the particular zoning district. The development plan must be consistent with and substantially comply with the SGC Growth Policy Plan (Master Plan). (Appendix H) The development pattern should include:
 - statement of purpose;
 - goals and objectives;
 - uses permitted for land within the District;
 - restrictions such as building placement, style, color, setbacks, etc.;
 - exceptions permitted, if any;
 - enforcement proposal; and
 - legal description of boundaries (provided by surveyor).
2. The committee should draft a map of the proposed perimeter of the district and then engage a surveyor to prepare an accurate map and legal description of this boundary. The land included in the boundaries of the district must be contiguous (adjacent). The county is not responsible for preparing this map. Although a surveyor is *not legally required*, it is highly recommended for accuracy. Include copies of deeds, titles, corporate resolutions, Certificates of Survey (COS), subdivision plats, etc., to describe the area (these can be retrieved from the Clerk & Recorder's Office at the SGC Courthouse – copy costs are .25/each) . (Appendix G)
3. Give landowners, planning office, and commissioners an opportunity to review the draft map and development pattern. These could be delivered by the committee members; mailed; or presented for review at a meeting.
4. Get landowner suggestions for a name for the District.

B. Revise Map & Development Pattern

1. The committee should adjust the map and development pattern to address the majority view of petitioning landowners. Preparation of the development pattern and map, reasons for establishing the District, and uses for land within the District are the responsibility of the landowners who favor the District – not the county. The final map and development pattern language will be created by the Planning & Zoning Commission using the landowner draft documents. (see Step Nine)
2. Name the District.

References

<i>Montana Code Annotated 76-2-104</i>	<i>Development Pattern</i>
<i>Montana Code Annotated 76-2-105.</i>	<i>Continuation of prior nonconforming uses.</i>
<i>Montana Code Annotated 76-2-107.</i>	<i>Preparation of resolutions and other materials.</i>
<i>Montana Code Annotated 76-2-109.</i>	<i>Effect on natural resources.</i>
<i>Appendix A</i>	
<i>Appendix B</i>	
<i>ATTORNEY GENERAL OPINION (Item 2)</i>	

STEP FOUR: COUNTY REVIEW

- **Planning Office**
- **Clerk & Recorder**
- **County Attorney**
- \$ Copies of titles @.25/each**

Time: 60 - 90 days

A. Submit a copy of the development pattern to the County Planning Office for review.

The Planning Office and the County Attorney will review the documents to ensure that the plan is enforceable, clear and legal. The Planning office will respond in about 60 – 90 days. The Planning Office has no authority to accept or reject these documents, but provides guidance to the committee. There is no charge for this review process.

B. Submit a topographic or equivalent map and perimeter description of the area to the Clerk & Recorder's office for review.

The names of landowners should be marked clearly on the map. Within 2 - 3 days the Clerk & Recorder will certify that the list of names of the landowners within the proposed District are eligible to sign a petition.

C. Obtain a copy of each property title. Petition signatures must match ownership titles exactly. This includes corporations, partnerships, etc. (Appendix C)

STEP FIVE: FILE A PETITION

- **Landowner Committee**
 - **Clerk & Recorder**
 - **Notary**
 - **County Commissioners**
- \$ Copies of Petition**

Time: Could be done in a few days – could take much longer

A. Signature Collection

A petition requesting that a District be established must be circulated to all landowners in the proposed District. This is done by the committee using the certified list from the Clerk & Recorder's office. (Appendix C)

1. Each landowner who favors the District must sign the petition *EXACTLY* as recorded on the title of each parcel of land they own in the District. The property Title should be used as a reference and attached to the petition to aid the validation process. [NOTE: Any signature that differs IN ANY WAY from the land Title will be voided from the petition.] (Appendix D)
2. A current mailing address must be listed for each landowner along with each individual legal description of the landowner's parcel of land located within the district boundaries. The legal description is on the title.
3. The *list* of signatures must be notarized – not the individual names, but the list itself – stating that the collector of the signatures witnessed the signing by those particular individuals whose names appear on the petition. This notary action is taken after the signatures have been collected. Out-of-town landowners should receive their own copy of the petition, sign it in front of a Notary, and return it to the committee. A copy of their title should be attached to each petition for each signature obtained. (Appendix E)

B. County Review & Validation

After signatures are gathered, and petitions are notarized, submit the original signed petition to the Clerk and Recorder. If 60% of the landowners have signed, the Clerk and Recorder will validate the petition and forward it to the County Commissioners. If the petition does not have 60% of landowner signatures, the petition will be returned. Although 60% is required, it is important to try to get more than 60% because the stronger the support for a district, the more likely it will achieve its goals and feel satisfactory to those living within the boundaries. The validation process should take 3 to 4 days.

STEP SIX: ACTION ON PETITION BY COUNTY COMMISSIONERS

- County Commissioners
- County Attorney
- No Cost

Time: County Commissioners' Meeting

The County Commissioners will review the petition to determine whether creation of the District is in the public interest or convenience using "MCA 76-2-101: Planning & Zoning Commission & District" as criteria for their action. (Appendix A)

1. The County Commissioners will set and advertise a date and time for a public meeting to discuss the zoning district. A letter will be mailed to all landowners within the proposed district notifying them of this meeting.
2. At the public meeting the County Commissioners will review the names. If the required 60% have signed the petition, they will determine whether the establishment of the proposed District is in the public interest or convenience and whether the proposed District should be established. If satisfied, the District will be created. The Commissioners can reject a petition if it does not comply with Montana Code or if it does not comply with the SGC Growth Policy Plan (Master Plan).

References

Appendix A

*Montana Code Annotated 76-2-101 Planning and zoning commission and district (4), (5)
Montana Code Annotated 76-2-110 Appeal procedure.*

Montana Code annotated 76-1-605

Appendix B

ATTORNEY GENERAL OPINION (Items 4 & 5)

STEP SEVEN: PLANNING & ZONING COMMISSION RECOMMENDATIONS

- **County Commissioners**
 - **Planning & Zoning Commission**
 - **No Cost**
- Time: County Commissioners' Meeting +**

A Planning & Zoning Commission has been appointed by the Commissioners in Sweet Grass County. Members are the three Commissioners, the Road Supervisor, and the Clerk & Recorder. This Commission will prepare a draft pattern of development which will show the Commissioners' recommendations for development of the district, including maps and charts. The development pattern drafted by the landowner committee will be used to create this document, which may include the appropriate types of land uses and structures, and the size of land parcels in future development. The Commissioners can choose to use the draft document provided by the landowner committee without any changes.

"Such development pattern, with the accompanying maps, plats, charts, and descriptive matter, shall show the Planning & Zoning Commission's recommendations for the development of the district, within some of which it shall be lawful and within others of which it shall be unlawful to erect, construct, alter or maintain certain buildings or to carry on certain trades, industries, or callings or within which the height and bulk of future buildings and area of the yards, courts, and other open spaces and future uses of the land or buildings shall be limited and future building setback lines shall be established." [(MCA 76-2-104(2)]

1. The Planning & Zoning Commission will request the Planning Office to assist them in reviewing the area plan and zoning regulations.
2. The Planning & Zoning Commission must make a development pattern for the physical and economic development of the district.

References

Appendix A

<i>Montana Code Annotated 76-2-102</i>	<i>Organization and operation of commission (Planning & Zoning Commission) (1), (2), (3)</i>
<i>Montana Code Annotated 76-2-103</i>	<i>Powers of commission and employees. (1), (2)</i>
<i>Montana Code Annotated 76-2-104</i>	<i>Development pattern. (1), (2)</i>
<i>Montana Code Annotated 76-2-111.</i>	<i>Cooperation by public agencies with commission.</i>

Appendix B

ATTORNEY GENERAL OPINION (Item 2.)

STEP EIGHT: PUBLIC HEARING

- **Planning & Zoning Commission**
- **General Public**

\$ No Cost

Time: 1 day or more

A. The Planning & Zoning Commission will advertise and hold a public hearing prior to adoption of the development district. Additional meetings may be held if necessary.

C. After the public hearing, the Planning & Zoning Commission must adopt the district or any changes by the majority vote. If they reject the district, modifications can be made and the modified district may be adopted.

STEP NINE: REGULATIONS

- **Planning & Zoning Commission**
- **County Attorney**
- **Planning Office**

\$ No Cost

Time: 30-60 days

The Planning & Zoning Commission will prepare official regulations using initial document and intent designated by citizen draft. County Attorney and Planning Office will edit and review final document for accuracy and legality.

References

Appendix A

Montana Code Annotated 76-2-107. Preparation of resolutions and other materials.

Appendix B

ATTORNEY GENERAL OPINION (Item 3.)

ATTORNEY GENERAL OPINION (Item 5.)

STEP TEN: RESOLUTIONS

➤ Planning & Zoning Commission

\$ No Cost

Time: County Commissioners' Meeting

The Planning & Zoning Commission may now prepare and submit drafts of resolutions for the purpose of implementing the district, including zoning and land use regulations. These resolutions will be presented to the County Commissioners for their review and adoption.

STEP ELEVEN: ADOPTION BY THE COUNTY COMMISSIONERS

➤ County Commissioners

\$ No Cost

Time: County Commissioners' Meeting

The County Commissioners may adopt the resolutions submitted by the Planning & Zoning Commission to implement the adopted development district.

References

Appendix A

Montana Code Annotated 76-2-101 Planning and zoning commission and district (4), (5)

Montana Code Annotated 76-2-106. Adoption of development District (1), (2)

STEP TWELVE: ADMINISTRATION OF ZONING REGULATIONS

➤ Planning & Zoning Commission

➤ Planning Office

\$ No Cost

Time: Ongoing

Following the adoption of the district, administration of the map and regulations will be the responsibility of the Planning & Zoning Commission and the Planning Office.

APPENDICES

Copies of Appendix F through Appendix I
are available on request from Northern Plains Resource Council
contact 406-248-1154

APPENDIX A Montana Code Annotated
(included here)

APPENDIX B Attorney General Opinion
(included here)

APPENDIX C Guide for Signature Collection
(included here)

APPENDIX D Signature Collection Statement
(included here)

APPENDIX E Planning & Zoning Petition Form and example from Stillwater County
(included here)

APPENDIX F Sample Questionnaire
(available on request)

APPENDIX G Sample Map & Boundary Description
(available on request)

APPENDIX H Sample Regulations
(available on request)

APPENDIX I Sample Resolution & Adoption by Commissioners
(available on request)

APPENDIX A Montana Code Annotated

76-2-101. Planning and zoning commission and District

- (1) Subject to the provisions of subsection (5) whenever the public interest or convenience may require and upon petition of 60% of the freeholders affected thereby, the board of County Commissioners is hereby authorized and empowered to order and create a planning and zoning District and to appoint a commission consisting of five members.
- (2) No such planning or zoning District may be created in an area which has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.
- (3) For the purposes of this part, the word "District" shall mean any area that consists of not less than 40 acres.
- (4) Except as provided in subsection (5), an action challenging the creation of a planning and zoning District must be commenced within 5 years after the date of the order by the board of County Commissioners creating the District.
- (5) If freeholders representing 50% of the titled property ownership in the District protest the establishment of the District within 30 days of its creation, the board of County Commissioners may not create the District. An area included in a District protested under this subsection may not be included in a zoning District petition under this section for a period of 1 year.

76-2-102 Organization and operation of commission (Planning & Zoning Commission)

- (1) The commission is to consist of the three County Commissioners, the county surveyor, and a county official appointed by the county Commissioners. Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses and must be residents of the county in which they serve.
- (2) The commission may appoint necessary employees and fix their compensation with the approval of the board of County Commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.
- (3) The finances necessary for the transaction of the Planning & Zoning Commission's business and to pay the expenses of the employees and justified expenses of the members of the board must be paid from a levy of not to exceed 1 mill on the taxable valuation of the real property within the District.

76-2-103 Powers of commission and employees.

- (1) In general the Planning & Zoning Commission shall have such powers as may be appropriate to enable it to fulfill its functions and duties to promote county planning and to carry out the purposes of this part.
- (2) The Planning & Zoning Commission and any of its members, officers, and employees in the performance of their functions may enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon.

76-2-104. Development pattern.

- (1) For the purpose of furthering the health, safety, and general welfare of the people of the county, the county Planning & Zoning Commission hereby is empowered and it shall be its duty to make and adopt a development pattern for the physical and economic development of the planning and zoning District.
- (2) Such development pattern, with the accompanying maps, plats, charts, and descriptive matter, shall show the Planning & Zoning Commission's recommendations for the development of the District, within some of which it shall be lawful and within others of which it shall be unlawful to erect, construct, alter or maintain certain buildings or to carry on certain trades, industries, or callings or within which the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

76-2-105. Continuation of prior nonconforming uses.

Existing non-conforming uses may be continued although not in conformity with such zoning regulations.

76-2-106. Adoption of development District.

(1) Adoption by the Planning & Zoning Commission of the development District or any change therein may be in whole or in part, but must be by the affirmative vote of the majority of the whole commission, provided, however, that prior to any such adoption, a public hearing shall have been held not less than 15 days after notice thereof shall have been posted in at least three public places within the area affected.

(2) The resolution adopting the District or any part or parts covering one or more of the functional elements which may be included within the District shall refer expressly to the maps, charts, and descriptive matters forming the pattern or part thereof. The board of County Commissioners shall have the power to authorize such variance from the recommendations of the planning commission as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the decision of the Planning & Zoning Commission will result in unnecessary hardship.

76-2-107. Preparation of resolutions and other materials.

The Planning & Zoning Commission may, for the benefit and welfare of the county, prepare and submit to the board of County Commissioners drafts of resolutions for the purpose of carrying out the development Districts or any part thereof previously adopted by the commission, including zoning and land use regulations, the making of official maps, and the preservation of the integrity thereof and including procedure for appeals from decisions made under the authority of such regulations and regulations for the conservation of the natural resources of the county. The board of County Commissioners is hereby authorized to adopt such resolutions.

76-2-108. Permits authorized

The Planning & Zoning Commission hereby is empowered to authorize and provide for the issuance of permits as a prerequisite to construction, alteration, or enlargement of any building or structure otherwise subject to the provisions of this part and may establish and collect reasonable fees therefor. The fees so collected are to go to the general fund of the county.

76-2-109. Effect on natural resources.

No planning District or recommendations adopted under this part shall regulate lands used for grazing, horticulture, agriculture, or the growing of timber.

76-2-110 Appeal procedure.

Any person aggrieved by any decision of the commission or the board of County Commissioners may, within 30 days after such decision or order, appeal to the District court in the county in which the property involved is located.

76-2-111. Cooperation by public agencies with commission.

All public officials, departments, and agencies having information, maps, and data deemed by the commission pertinent to county planning are hereby empowered and directed to make such information available for the use of the county Planning & Zoning Commission.

76-2-112. Effect on powers of incorporated communities to plan adjacent areas.

The authority heretofore granted by law to the incorporated communities to approve subdivision plats within the unincorporated area adjacent to their corporate limits is not abrogated by this part except and until the board of County Commissioners having jurisdiction over such adjacent area establishes a planning commission and adopts initial regulations for subdivision control within adjacent areas or Districts. Authority of the adjacent municipality shall be suspended on the effective date of the county regulation with respect to all areas governed by county subdivision regulations.

76-1-605 Use of adopted growth policy.

After adoption of the growth policy, the city council, board of county commissioners, or other governing body within the territorial jurisdiction of the board must be guided by and give consideration to the general policy and pattern of development set out in the growth policy in the:

- 1) Authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities.
- 2) Authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;
- 3) Adoption of subdivision controls; and
- 4) Adoption of zoning ordinances or resolutions.

1999 Amendment: Chapter 582 in two places in introduction substituted “growth policy” for “masterplan”; and made minor changes in style. Amendment effective October 1, 1999.

Transition: Section 36, Ch. 582, L. 1999, provided: “A governing body that adopts a master plan pursuant to Title 76, chapter 1, before October 1, 1999, may adopt zoning regulations that are consistent with the master plan pursuant to Title 76, chapter 2, part 2 or 3, until October 1, 20001.”

APPENDIX B

Attorney General Opinion

The following is taken verbatim from the original document.

A copy of the opinion may be obtained from:

Attorney General's Office, Department of Justice, 215 North Sanders, PO Box 201401, Helena, MT 59620-1401

*The opinion was handed down in response to questions presented
by the Stillwater County Attorney in Columbus, MT, and is dated:
28 June 1999*

Question 1. After a county has adopted a comprehensive master plan for its jurisdictional area, is the county authorized to create planning and zoning districts under Mont. Code Ann. 76-2-101 to 112 (Part 1 zoning) or is it limited to zoning pursuant to Mont. Code ann. 76-2-201 to 228 (Part 2 zoning)?

Attorney General Response: Counties which have adopted a comprehensive master plan are authorized to create planning and zoning districts under Mont. Code Ann. 76-2-101 to 112.

Question 2. What, if any, authority does a county planning board have with regard to a planning and zoning district created under Part 1 zoning within the jurisdictional area of the county planning board?

Attorney General Response: A county planning board has no statutory authority over a planning and zoning district created within the board's jurisdictional area pursuant to Mont. Code ann. 76-2-101 to 112. The district's development pattern, which must substantially adhere to the comprehensive master plan, is determined by the planning and zoning commission, subject to the approval of the county commission. However, nothing precludes the planning and zoning commission or the county commission from requesting input from the county planning board during the process of determining and approving the development pattern.

Question 3. In a planning and zoning district lawfully created pursuant to Part 1 zoning, what is the extent of the planning and zoning commission's power to alter the district's boundaries from those boundaries contained in the petition?

Attorney General Response: The planning and zoning commission has no power to alter unilaterally the district's geographic boundaries from those boundaries contained in the petition. However, the commission may address boundary issues when adopting the district's development pattern. Any changes to the internal boundaries must be made pursuant to procedures set forth in Mont. Code Ann. 76-2-104-106.

Question 4. Is it permissible for individuals to add their names to and withdraw their names from a petition to create a planning and zoning district once the petition has been submitted to the county commissioners for review?

Attorney General Response: Generally, individual freeholders may not add their names to or withdraw their names from the petition provided for in Mont. Code Ann. 76-2-101, after the petition has been certified and submitted to the county commissioners for their review. It may, in some circumstances, be permissible for the county commissioners to extend the time for addition to or deletion of names from the petition.

Question 5. When a petition to create a planning and zoning district includes a narrative legal description of the district's boundaries and a map showing the district's boundaries which is not consistent with the legal description, which document prevails?

Attorney General Response: When a petition to create a planning and zoning district includes a narrative legal description of the district's boundaries which is inconsistent with the accompanying map of the proposed district, the planning and zoning commission must follow the guidelines found at Mont. Code ann. 70-20-201 to determine the appropriate boundaries.

APPENDIX C

Guide for Signature Collection

1. If property was acquired in different names, i.e., S. Daniel Jones, Sam Daniel Jones, and Daniel Jones, an affidavit must be attached to signature page stating they are one and the same person.
2. Each landowner is counted in the total number of landowners within the boundaries of the district and can sign the petition. If property is held jointly, or as tenants in common, each joint tenant or each tenant is counted as a landowner and may sign the petition.
3. A trust is counted as one landowner. The trustee of the trust must sign the petition as "trustee of the S. Daniel Jones living trust" and provide the copy of the first page of the trust, the signature page of the trust and the page showing that the person signing on behalf of the trust is a current trustee.
4. A corporation is counted as one landowner. Under state law both the president and secretary must sign as "president of Jones, Inc." and "secretary of Jones, Inc." unless the corporation bylaws state otherwise. If so, a copy of the relevant page of the bylaws and the first page of the bylaws must be attached to the signature page.
5. A partnership is counted as one landowner. All partners must sign or the nonsigning partners must authorize one partner to sign for the partnership and a copy of that authorization must be attached to the signature page. The partners must sign as "partner."
6. A limited liability company is counted as one landowner. Depending on what is authorized by the articles of organization or operating agreement, one member or the manager may sign. A copy of the relevant page of the articles of organization or operating agreement and the first page of the articles of organization or operating agreement must be attached to the signature page. The member must sign as "member" or the manager must sign as "manager."
7. A limited liability partnership is counted as one landowner. All partners must sign or the nonsigning partners must authorize one partner to sign for the partnership and a copy of that authorization must be attached to the signature page. The partners must sign as "partner."

APPENDIX D

Signature Collection Statement For Voluntary Planning & Zoning District Sweet Grass County, Montana

I hereby declare that I, _____, collected and witnessed the signature of the person(s) on the attached petition(s) for the proposed voluntary planning and zoning district entitled: "_____. I hereby certify, to the best of my ability, that the signatures on the attached petition(s) are correct.

_____ PRINTED NAME

_____ SIGNED NAME

(Print & sign the name of the person collecting the signatures.)

On this ____ day of _____, ____ (year), before me the undersigned Notary for the State of _____, personally appeared _____, known to me (or proved to me upon oath of _____) to be the person making the above declaration.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Notarial Seal the day and year first written.

_____ Notary Public for the State of _____

Residing at _____

My commission expires: _____

APPENDIX E

Voluntary Planning & Zoning District Petition Sweet Grass County, Montana

We the undersigned support the establishment of a Planning & Zoning District on the property identified on the map, which is further described in the legal description accompanying the map. The purpose of the district is to protect the established character of our area by regulating

future development. Zoning is not being used as a tool for eliminating existing uses.

Property Description	Landowner's Printed Name	Landowner's
Signature	Mailing Address	

Tract 1, COS 445000, T4S, R20E, Sec. 18

Example:

John J. Doe

Example:

John J. Doe

Example:

222 Noname Road

Town, State, Zip

1.

2.

3.

4.

5.

