

**Planning 101:  
Annexation and Municipal &  
County Zoning**

September 9, 2013

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**Annexation  
Title 7, Chapter 2, Parts 42-47**

- Brings new territory into the boundaries of a municipality
- All annexations must address the provision of municipal services
- Each part has different advantages and limitations
- Tendency is towards landowner benefits and protection
- Roads and rights-of-way must be annexed

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**Required Provision of Services**

- First class cities may address by agreement between the landowner and city.
- Sections 7-1-4111 & 4112 define ranking
- All others must follow service plan provisions of 7-2-4731 and 7-2-4732
  - Defined services
  - Funding sources
  - Capital extensions
  - Special district transitions

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## Required Provision of Services

- Ways to document current and future services
  - Service specific facility plans, e.g. water, police
  - Growth policy
  - Capital improvement plans
  - Annexation report
- Funding sources and timing needs to be addressed

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## Annexation Part 42

- Most expeditious but carries investment risk
- Gives local community considerable control of the process but coordinates with subdivision
- Coordinating ordinance is required
- Addresses cross county border annexations via inter-local agreement

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## Annexation Part 43

- Allows City or landowners to initiate annexation of property adjacent to its boundaries
- Resolution of Intent and notice to affected property owners is required
- Approval may be required by the resident voters of the area to be annexed

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### Annexation Part 45

- Annexation of wholly surrounded land
- No protest or vote allowed
- May not be used to annex some types of non-residential property

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### Annexation Part 46

- Landowner initiated
- May apply to land used for any purpose if annexation complies with growth policy and 100% owner request
- Less than 100% owner petition may require election of both owners and community
- 33.3% electors or 50% ownership; or 50% land area are trigger points

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### Annexation Part 47

- Municipality or 51% of landowners may initiate
- Must adopt resolution of Intent
- Public hearing is required and protest is allowed
- Ordinance of annexation is required
- May have simultaneous process for multiple areas
- Must have a plan for extension of services and consult with county
- Option for court review of the process is provided

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## Deannexation Title 7, Chapter 2, Part 48

- A municipality may remove property from its boundaries
- Petition for removal required – voters or owners
- Resolution of intent, public hearing and protest required
- Deannexation does not excuse from their share of municipal indebtedness

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## Over View of Zoning

- What is Zoning?
- Background Principles.
- General Zoning Concepts.
- Municipal Zoning.
- County Zoning.
- Staying out of Trouble.

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## What is Zoning?

- Zoning is a means to an end
- Zoning is a process
  - Create district(s)
  - Land use standards and procedures
  - Review, evaluation, and revision of regulations and development plans

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## Fundamental Purpose of Zoning

- To conserve and promote the public health, safety, and general welfare.
  - ....but it also provides guidance for future growth and land use changes.
  - ...and can translate a community's vision into the built and natural surroundings.

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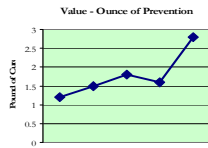
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In vigorous market action, the value of an ounce of prevention rose today to 2.8 pounds of cure



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## Why Zone?

- Legal method by which local government can divide their jurisdiction into use districts that separate incompatible uses and prevent negative impacts.
- Zoning districts (residential, commercial, industrial) protect the safety and stability with standards and regulations.
- Establishes predictability.
- Balance competing rights.
- Communicate community expectations.
- Prevention of problems

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> **“We shape our buildings, and afterwards our buildings shape us.”**  
 > *Winston Churchill*

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**Article II, Montana Constitution**

- Section 3. Inalienable rights.
  - All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

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**Enabling Legislation**

- To advance the purposes of MCA 76-2-301 the legislative body may "...divide the municipality into districts of the number, shape, and area as are considered best suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land."
- MCA 76-2-101 "...whenever the public interest or convenience may require and upon petition..."
- MCA 76-2-201 "For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that has adopted a growth policy pursuant to chapter 1 is authorized to adopt zoning regulations, for all or parts of the jurisdictional area in accordance with the provisions of this part."

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## Zoning Types

- Euclidian – district focused
- Performance – outcome focused
- Form Based – development configuration focused

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## Zoning Districts

- Often divided into categories of:
  - Agricultural
  - Residential
    - Single-household
    - Multi-household
  - Commercial
    - Professional Offices
    - Retail
  - Industrial
    - Warehousing/Light Manufacturing
    - Heavy Industrial/Manufacturing
  - Mixed use

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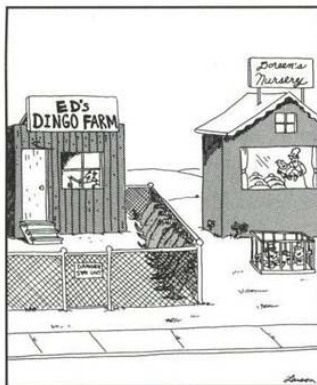
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Trouble brewing

The Far Side®  
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MAY  
9  
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## Uses Permitted

- Each zoning district has uses that are allowed outright, with Special Review/Conditional Use approval or not permitted.

TITLES AND DESCRIPTION OF INDUSTRIES	Residential Detached	High-Density Residential	Community Commercial	Office Professional	General Business District	Community Industrial	Highway Business	Public	Adult Day Care Center
SR - SPECIAL REVIEW									
A - ALLOWED									
75 AUTOMOTIVE REPAIR, SERVICE, AND PARTS (EXCEPT BUS/COACH)			A	A	A	A	A		A
7313, 7319 Truck rental and leasing; utility trailer and recreational vehicle rental			A	A	A	A	A		SR
752 Automobile parking	A	A	A	A	A	A	A		A
7542 Car washes		SR	SR	A	A	A	A		SR

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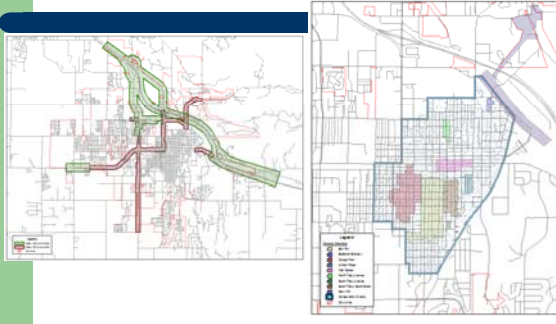
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## Overlay Districts




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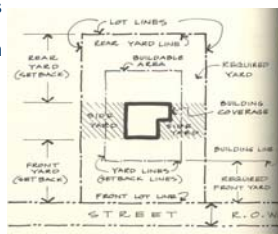
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## Allowed Building Envelope

- Each zoning district has requirements for minimum setbacks from property lines, maximum allowed height and lot coverage and minimum required lot area. These requirements create a "building envelope".




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## Standards

- Uses
- Physical performance
  - Storm water control, parking, set backs
- Discretion vs. prescriptive criteria
  - Compatibility with adjacent development
  - Setbacks




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## Review Criteria

### 18.34.090 SITE PLAN AND MASTER SITE PLAN REVIEW CRITERIA

- A. In considering applications for site plan approval under this title, the Planning Director, Board of Adjustment, City Commission, DRG, and when appropriate, the ADR staff, DRB or WRB shall consider the following:
1. Conformance to and consistency with the City's adopted growth policy;
  2. Conformance to this title, including the cessation of any current violations;
  3. Conformance with all other applicable laws, ordinances and regulations;
  4. Relationship of site plan elements to conditions both on and off the property, including:
    - a. Compatibility with, and sensitivity to, the immediate environment of the site and the adjacent neighborhoods and other approved development relative to architectural design, building mass and height, neighborhood identity, landscaping, historical character, orientation of buildings on the site and visual integration;
    - b. Design and arrangement of the elements of the site plan (e.g., buildings, circulation, open space and landscaping, etc.) so that activities are integrated with the organizational scheme of the community, neighborhood, and other approved development and produce an efficient, functionally organized and cohesive development;
    - c. Design and arrangement of elements of the site plan (e.g., buildings, circulation, open space and landscaping, etc.) in harmony with the existing natural topography, natural water bodies and water courses, existing vegetation, and to contribute to the overall aesthetic quality of the site configuration, and

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## Review Criteria

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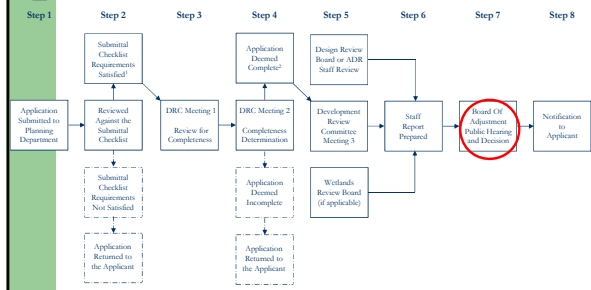
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## Zoning Review Process Example




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## Process Differences

- Quasi-Judicial Actions
  - Project specific
  - Compliance with adopted rules
  - Restricted access – ex parte communication
- Legislative/Administrative Actions
  - Developing policy
  - Open access to public

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## Municipal Zoning (76-2-301 thru 76-2-328, MCA)




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## Municipal Zoning Enabling Act (76-2-301 thru 76-2-328, MCA)

- Adopted in 1929.
- Patterned after the Standard State Zoning Enabling Act published by the U.S. Department of Commerce in 1926.
- Authorizes cities and towns to create zoning districts and, regulate the construction of buildings and the use of land within these districts.
- Zoning regulations and map must be in accordance with an adopted growth policy.

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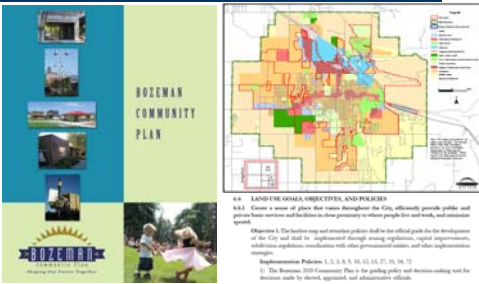
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## Growth Policy Required Before Municipal Zoning



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## Criteria for Municipal Zoning - Part 1 (76-3-304, MCA)

- Zoning regulations must be:
  - Made in accordance with a growth policy; and
  - Be designed to:
    - Secure safety from fire and other dangers,
    - To promote public health, public safety and the general welfare,
    - Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

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### Criteria for Municipal Zoning - Part 2 (76-3-304, MCA)

- In adopting zoning governing body must consider:
  - Reasonable provision of adequate light and air;
  - The effect on motorized and nonmotorized transportation systems;
  - Promotion of compatible urban growth;
  - The character of the district and its peculiar suitability for particular uses;
  - Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

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### Establishing Zoning

- Legislative Body adopts Zoning Regulations to implement zoning and specify permitted uses in each zoning district.
  - Regulations will identify staff person to be responsible for day to day administration and enforcement of zoning regulations.
- Adopt an official zoning map to identify the zoning on each parcel within area or jurisdiction.

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### Creation of Zoning Commission

- Appointed by legislative body to:
  - Recommend the boundaries of the various original districts and appropriate regulations to be enforced therein.
  - Hold a public hearing on zone changes before submitting its final report, and
  - The legislative body shall not hold its public hearings or take action until it has received the final advisory report of such commission.

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## Municipal Zoning – Creation Process

- MCA 76-2-303.(2) A public hearing must be held with at least 15 days' notice of the time and place of the hearing must be published in an official paper or a paper of general circulation in the municipality.

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## Valid Protest on Zone Changes

- A valid protest is triggered by a petition signed by owners of:
  - 25% or more of the area of lots *included* in a zone change; or
  - 25% or more of the lots that are *within 150'* of the lot included in a proposed zone change.
  - Now includes condominium owners individually
- If a protest petition is received that triggers the valid protest, it requires:
  - A favorable vote by two-thirds (2/3) of the present and voting members of the legislative body. Therefore, if there are 5 members present, it would require a favorable vote of at least 4 of the members for the application to be approved.

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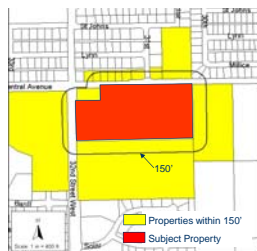
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## Valid Protest Example

- 16 properties within 150'
- 25% of the lots required to trigger Valid Protest
- In this example, 4 properties must sign Protest Petition to trigger a Valid Protest



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### Board of Adjustment

- Legislative body may create and appoint a Board of Adjustment or reserve some or all of the powers granted to the Board of Adjustment.
- Board of Adjustment shall consist of between 5-7 members.
- 4 votes needed to approve any Variance.

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### Variances: From the Terms of Zoning

- To authorize upon appeal such variance from the terms of the zoning ordinance as
  - Will not be contrary to the public interest,
  - Where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and
  - So that the spirit of the ordinance shall be observed and substantial justice done.

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### Interim Zoning (MCA 76-2-306)

- The city or town council, to protect the public safety, health, and welfare may adopt as an urgency measure an interim ordinance prohibiting any uses which may be in conflict with a contemplated zoning proposal which the legislative body is considering or studying or intends to study within a reasonable time.
- Such interim ordinance shall only be applicable within the city limits and up to 1 mile beyond the corporate boundaries of the city or town and shall take effect upon passage after an advertised public hearing.

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### Interim Zoning (continued)

- Such interim ordinance shall only be effective for 6 months from the date of adoption. However, after notice pursuant to MCA 76-2-303 and pursuant to public hearing, the legislative body may extend such interim ordinance for 1 year. Any such extension shall require a two-thirds vote for passage and shall become effective upon passage. Not more than two such extensions may be adopted.

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### Extension of Zoning & Subdivision Regulations Beyond City Limits

- A city or town council that has adopted a growth policy pursuant to chapter 1 for the area to be affected by the regulations may extend the application of its zoning or subdivision regulations beyond its limits in any direction subject to the following limits:
  - up to 3 miles beyond the limits of a first class city;
  - up to 2 miles beyond the limits of a second class city; and
  - up to 1 mile beyond the limits of a third class city or town.
- A City-County Planning Board must also be formed with 2 representatives of the unincorporated area that are appointed by the County Commission.

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### Extraterritorial Zoning & Subdivision Restrictions

- A City or Town cannot adopt extraterritorial zoning or subdivision review if:
  - The County has adopted a Growth Policy and zoning or subdivision regulations; or
  - The municipality has a Commission-Manager form of government.
- Extraterritorial zoning or subdivision review is not building code review.

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## County Zoning (Part 101) (76-2-101 – 76-2-113, MCA)



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## Part 1 or 101 – Citizen Initiated Zoning Districts

- MCA 76-2-101 et seq provides the opportunity for *affected owners of real property* to create a *planning and zoning district* and create a planning and zoning commission (**citizen initiated**).
- Legislature enacted in 1953

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## 101 – Citizen Initiated

- The board of county commissioners may create a zoning district and appoint a planning and zoning commission of seven members (MCA, 76-2-101)
- For the purpose of furthering the health, safety, and general welfare, and
- Adopt a development pattern for the physical and economic development of the district (MCA 76-2-104(2)).
- May not be created within an area zoned by an incorporated city. (MCA 76-2-101(2))

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### Part 2 or 201 – County Zoning Districts

- MCA 76-2-201 et seq allows a County to *adopt zoning regulations for all or parts of the jurisdictional area. (county authorized)*
- Must have an adopted Growth Policy to zone.
- Legislature enacted 1963

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### 201- County Zoning Authorized

If they have adopted a growth policy, the board of county commission may create regulations for the purpose of promoting the public health, safety, morals, and general welfare. (MCA 76-2-201).

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### 201 – County Zoning Purposes MCA 76-2-203

- Zoning regulations must be:
  - Made in accordance with a growth policy; and
  - Be designed to:
    - Secure safety from fire and other dangers,
    - To promote public health, public safety and the general welfare,
    - Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

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## 201 - County Zoning Purposes Part 2

- In adopting zoning the governing body must consider:
  - Reasonable provision of adequate light and air;
  - The effect on motorized and nonmotorized transportation systems;
  - Compatible urban growth in the vicinity of cities and towns;
  - The character of the district and its peculiar suitability for particular uses;
  - Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.
- Must be compatible with nearby municipality's zoning

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## 201 - Adoption Process

Pursuant to MCA 76-2-205: Notice of the public hearing (before the planning board) on the proposed zoning district boundaries is published once a week for 2 weeks in newspaper of general circulation and posted in 5 public places. Notice must include:

- The boundaries
- General character of the proposed zoning regulations
- Time and place of the public hearing
- Proposed regulations are on file for public inspection at the office of the clerk and recorder.

At the public hearing:

- Public has the opportunity to be heard

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## 201- Adoption Process (continued)

-After the public hearing, the board of county commission reviews the proposal of the planning board and makes any revisions or amendments. (MCA 76-2-205(3))

-The board of county commission may pass a resolution of intention to create a zoning district and to adopt zoning regulations. (MCA 76-2-205(4))

-Publish for two weeks the passage of intention and declaration of 30-day protest period (and other notice information). (MCA 76-2-205(5))

-Within 30 days after expiration of protest period may adopt the resolution creating the zoning district and establishing regulations. (MCA, 76-2-205(6)) (unless successfully protested)

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### Similarities of 101 and 201

- Applies to unzoned and unincorporated areas (MCA 76-2-101; 76-2-202)
- For the purpose of the public health and general welfare (MCA 76-2-104; 76-2-201)
- Allow continuation of lawful non-conforming uses (MCA 76-2-105; 76-2-208)
- Action to challenge up to 6 months following adoption (MCA 76-2-101; 76-2-202)
- Allow variances (MCA 76-2-106; 76-2-223)
- If protested, may not be considered again for zoning for a 1-year period (MCA 76-2-101; 76-2-205)

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### Differences of 101 and 201

- Annexation into district (MCA 76-2-117)
- Planning and Zoning Commission (MCA 76-2-102)
- Interim Zoning (MCA 76-2-206)
- Effects on natural resources - complete use, development, or recovery of any **mineral**...(MCA, 76-2-209)
- Board of Adjustment (MCA, 76-2-221) Planning Board (MCA, 76-2-204) and County Commission (MCA, 76-2-210 & 220)

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### Major Difference – Growth Policy

- The adoption of a growth policy by the county is not a prerequisite to the creation of a 101 district.
  - The county planning and zoning commission must have adopted a “development pattern” for the area proposed to be zoned
  - However, if the county *has* adopted a growth policy, any development pattern for a county planning district *must substantially adhere* to the growth policy. [48 Op. Att’y Gen. No. 5 (1999)]
- Zoning regulations must be made in accordance with the Growth Policy. (MCA 76-2-203(a))

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## Major Difference - Protest

- If freeholders representing 50% of the land protest the establishment of the district within 30 days of its creation, the board of county commission may not adopt it. **(MCA 76-2-101)**
- The Resolution of Intention to Adopt triggers a 30-day protest period during which if 40% of the land owners on the last-completed assessment **OR** landowners representing 50% of the titled ownership taxed for agricultural proposes protest it, the board of county commission may not adopt the district and may not propose zoning that area for 1 year. **(MCA, 76-2-205)**

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## Major Difference – Interim Zoning

- MCA 76-2-206 allows the board of county commissioners to adopt an interim zoning district or regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare if:
  - Purpose is to classify and regulate uses and related matters that constitute the emergency; **and**
  - within 30 working days, the county: initiates a study or investigation to verify that an emergency exists and to identify the facts and circumstances that constitute the emergency, the potential options for mitigating the emergency, and the course of action that the governing body intends to take, if any, during the term of the interim zoning district or interim regulation to mitigate the emergency.
  - Limited to 1 year and one 1-year extension.

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## Staying Out Of Trouble

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## Limits on Zoning

- Substantive and Procedural Due Process
- Civil rights
  - Protected Speech
  - Assembly
  - Right to participate
- Access to Government and Open Records
- State and Federal Preemption

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## Twelve-Point “Lowe” Test for Zoning and Rezoning

*Lowe v. City of Missoula*, 165 Mont. 38, 525 P.2d 551 (1974)

- (1) In accordance with a growth policy;
- (2) Designed to lessen congestion in the streets;
- (3) Designed to secure safety from fire, panic, and other dangers;
- (4) Designed to promote health and the general welfare;
- (5) Designed to provide adequate light and air;
- (6) Designed to prevent the overcrowding of land;
- (7) Designed to avoid undue concentration of population;
- (8) Designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements;
- (9) Gives reasonable consideration to the character of the district and its peculiar suitability for particular uses;
- (10) Gives reasonable consideration to the peculiar suitability of the property its for particular uses
- (11) Will conserve the value of buildings;
- (12) Will encourage the most appropriate use of land throughout the municipality.

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## Zone Changes: Spot Zoning

In 1981, the Montana Supreme Court adopted a three-part test for spot zoning with *Little v. Board of County Commissioners*, 193 Mont. 334, 631 P.2d 1282. That test is as follows:

1. Whether the requested use is significantly different from the prevailing use in the area;
2. Whether the area in which the requested use is to apply is small, although not solely in physical size. An important inquiry under this factor is how many separate landowners will benefit from the zone classification;
3. Whether the requested change is more in the nature of special legislation designed to benefit one or a few landowners at the expense of the surrounding landowners or general public. Under the third factor for spot zoning, the inquiry should also involve whether the requested use is in accord with a comprehensive plan or growth policy.



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### Zone Changes: What You Cannot Do

- A Zone Change (generally) cannot have conditions placed on it.
- All of the potential uses that are allowed in the zoning district should be considered and not just the use that the applicant is proposing.

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### Covenants ≠ Zoning

- Certain covenants are said to run with the land. **(MCA 70-17-201)**
- Binds only those have ownership. **(MCA 70-17-204)**
- Government generally does not have the authority, unless specifically granted, or obligation to enforce covenants or deed restrictions.
- Can be more restrictive than zoning.
- Zoning overrides less restrictive covenants.

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### 2013 Legislative Changes

- Senate Bill 324: Subdivision by rent or lease alternative:
  - Two part Either/Or approach
  - Zoning can be used to address identified issues
  - Removed rent or lease from definition of subdivision
  - Effective September 1, 2013
- SB 23 Changed the manner and timeframes in which a County can initiate interim zoning

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### 2013 Legislative Changes

- HB 148: Restricted ability to regulate antenna and use of amateur radio service licensees (Ham radios)
- SB 290: Requires notification for changes in use by wholly surrounded county properties.

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### 67-7-101, MCA Airport Compatibility Act

- Parts 1-3 describe regulations for "Airport Affected Areas"
- Not called zoning, but has very similar provisions
- Must be coordinated with any adopted zoning covering the same area.

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### Title 10, Chapter 1, MCA Military Area Compatibility Act

- Creates mechanism to control land use in proximity to military installations in the state.
- Separate authority from Title 76, Chapter 2 but regulations adopted may be included with a zoning ordinance if one already exists.
- Does not require zoning in order to be established.

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## Reference Links

- Montana Code Annotated  
[http://leg.mt.gov/bills/mca\\_toc/index.htm](http://leg.mt.gov/bills/mca_toc/index.htm)
- Montana Association of Planners  
<http://www.montanaplanners.org/>
- American Planning Association  
<http://www.planning.org/>

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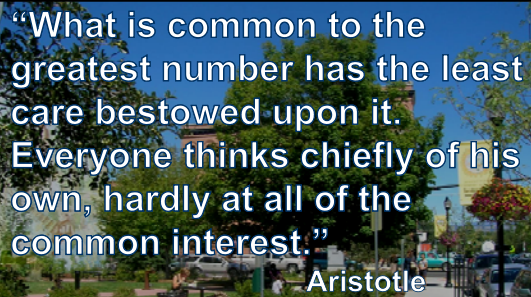
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“What is common to the greatest number has the least care bestowed upon it. Everyone thinks chiefly of his own, hardly at all of the common interest.”  
— Aristotle

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