

GROWTH POLICIES: The Most Misunderstood Land Use Planning Tool

The most misunderstood land use planning tool in Montana is the Growth Policy authorized by Title 76, Chapter 1, Part 6, MCA. Below are the most heard comments regarding Growth Policies.

- “If you don’t have a Growth Policy, then the County cannot impose zoning.”

This statement is technically true. Without a Growth Policy a county cannot impose Part 2 zoning (Title 76, Part 2, Chapter 2). However, counties can still impose Part 1 zoning or citizen initiated zoning (Title 76, Part 2, Chapter 1). BUT the mere fact that a county adopts a Growth Policy does not mean a county has to adopt Part 2 zoning or abrogate its statutory power to impose zoning. Zoning is a separate statutory process.

- “A Growth Policy affects private citizen’s private property rights.”

A Growth Policy is not a regulatory document (Section 76-1-605(2), MCA) and does not impact private property rights; it is a document that should guide the county in addressing private property rights. The Growth Policy process requires a public hearing (Section 76-1-602, MCA) and the Montana Supreme Court had held that all public comment on a Growth Policy must be considered on the record. A Growth Policy should reflect the planning goals of the community and as much citizen involvement as possible, including the County Planning Board (Section 76-1-603, MCA). Most Growth Policy adoption processes include community scoping meetings before the drafting of the Growth Policy and then ample opportunities for public comment on the draft Growth Policy through public hearings throughout the county and opportunities to review the Growth Policy on-line and submit written or e-mail comments. Successful planning, including the adoption of a Growth Policy, is dependent on public involvement.

- “We have a Master Plan, isn’t that the same thing?”

A Master Plan was the predecessor to the Growth Policy. BUT since October 1, 2006, a Master Plan has had no legal effect in Montana. In 2003 the Montana Legislature amended the Growth Policy statutes and the contents for a Growth Policy (Section 76-1-601, MCA) and gave counties until October 1, 2006 to revise a Master Plan (Section 76-1-604(6), MCA).

- “We have a Land Use Resource Policy/Plan; isn’t that the same as a Growth Policy?”

No. There is no statutory authorization for a county to adopt a Land Use Resource Policy/Plan. BUT a Land Use Resource Policy/Plan can be a part of a county's Growth Policy. A Growth Policy guides and directs the rest of a county's land use planning tools such as subdivision regulations, park plans, infrastructure plans, transportation plans, trail plans, natural resource plans, public facility plans and housing plans. Some federal and state grants require a county to have a Growth Policy to guide development of infrastructure and public facilities in accordance with Section 76-1-605(1), MCA.

- “We can force a federal land management agency to cooperate and coordinate with us if we adopt a Growth Policy.”

While a Growth Policy can be used as a resource management plan for purposes of establishing coordination or cooperating agency status with a federal land management agency, stating that a Growth Policy can force a federal agency to cooperate and/or coordinate with a county is an overreaching statement. The Growth Policy can definitely assist in giving a county a seat at the table with a federal land management agency pursuant to Section 76-1-607, MCA which was adopted by the Montana Legislature in 2013. The Growth Policy is the only land use planning tool that is statutorily authorizes a county to establish coordination or cooperating agency status with a federal land management agency.

- “We adopted our Growth Policy in 2006 so we are good, right?”

Not really. A Growth Policy must be reviewed at least once every 5 years and revised if necessary (Section 76-1-601((3)(f)(iii), MCA). A record should be made every 5 years that the Planning Board (or County Commission if you don't have a Planning Board, which is fodder for another article at a later date) reviewed the Growth Policy. In smaller counties, a revision may not be necessary every 5 years but the record should reflect why not. In other counties, a revision may just include updating demographics or a full blown revision to the document. The review and any revisions should also include ample opportunity for public comment and if a revision is made, a public hearing pursuant Section 76-1-602, MCA should be held and the process requirements in the Growth Policy for revisions and amendments should be followed. Again, public comment should be considered on the record.

- “It is too expensive to adopt a Growth Policy.”

Grants are available for the adoption of a Growth Policy through the Montana Department of Commerce. Some communities have solicited funds from local grant

sources and private donors. Growth Policies can be done in-house or there are several land use planning firms in Montana a county can contract with for the adoption of a Growth Policy.

- “We can’t use a Growth Policy to deny a subdivision, so what good is the Growth Policy?”

It is true that a county cannot withhold, deny, or impose conditions on any land use approval based solely on compliance with a Growth Policy. HOWEVER, a good growth policy guides the development of subdivision regulations and the county’s subdivisions regulations must be adopted in accordance with the Growth Policy (Section 76-1-605(2)(b), MCA). It follows then that if a major revision is made to a Growth Policy, a county’s subdivision regulations may also need to be amended and updated. The required contents for a Growth Policy (Section 76-1-601(3), MCA), must include an inventory of land uses in the county, projected trends for land use, how a county defines the primary review criteria for a subdivision, how a county will evaluate and make decisions based on the primary review criteria for a subdivision and how public hearings for proposed subdivisions will be held. Then there are optional contents for a growth policy that relate to the impacts of a subdivision as well (Section 76-1-601(4), MCA). So with all of that said, the Growth Policy is the basis for a good subdivision review process.