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July 6, 2022  
*Sent via E-Mail*

Erik K. Mack, AICP  
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RE: FCZ-22-05; *Montarise Developments, LLC*

Dear Mr. Mack:

I am writing on behalf of Friends for Responsible Rural Growth (FFRRG) in opposition to Montarise Development, LLC's application for a zoning map amendment changing approximately 155.9 acres from SAG-5 to R-1 zoning (the "Application"). Lindsey Hromadka of Weinberg & Hromadka is also representing FFRRG with me on this matter. Please convey these public comments to the Planning Board in advance of its July 13<sup>th</sup> hearing on this matter.

FFRRG is a group of residents of the central Flathead Valley between Whitefish and Kalispell who are concerned about the scope of growth in what was until recently a rural or semi-rural area between the two towns. As this letter will set forth, among their concerns are traffic, and the impacts of suburban development outpacing the infrastructure to support it; potential impacts to water quality and the environment; compliance with the growth policy; and the negative impact such growth has on this rural and semi-rural buffer.

Our comments today are based on the Application submitted on behalf of the developer by APEC Engineering; the April 28, 2022, Staff Report; and related maps and documents submitted by the applicant. In addition, we recently obtained a copy of the "Montarise Village Traffic Impact Study" by Abelin Traffic Services, dated March 2022, and

submitted to the County on March 10, 2022. As discussed below, this document is not specifically referenced in the Staff Report, but it certainly raises more questions than it answers, and in and of itself provides grounds to deny the application.

We urge you to deny the application, for the reasons set forth below.

Under Montana zoning law, approval of the Application is unlawful. Mont. Code Ann. § 76-2-203 states:

- (1) Zoning regulations **must** be:
  - (a) made in accordance with a growth policy; and
  - (b) designed to:
    - (i) secure safety from fire and other dangers;
    - (ii) promote public health, public safety, and the general welfare; and
    - (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

*First, the Application is not in accordance with the Growth Policy.*

The public's vision in the Growth Policy is to:

- (1) *protect the views.*
- (2) Adequately manage transportation.
- (3) *maintain the identity of rural communities*
- (4) properly manage and protect the natural and human environment

The staff report says that this application generally complies with the Growth Policy “because the R-1 zoning would continue to allow for ag uses.” However, based on the application, this statement is false. We know that the applicant has no intention of continuing ag uses. Our understanding is they have simultaneously submitted a subdivision and PUD application that asks for high density housing and even contains a commercial component. The application for the zoning change is specifically for a residential development, *not* for silvicultural or agricultural uses.

Approving this zone change does not substantially comply with the Growth Policy but instead undermines what the community came together to say what they wanted for the future of their community. Indeed, the Staff Report acknowledges that the proposed R-1 zoning classification “would appear to contrast with the current (suburban agricultural) designation. Staff Report, p. 7. While the Report goes on to state that the staff may, after adoption, “update” the zoning map to conform with the zone, staff does not have authority to do so. And, as noted, the zoning must first comply with the Growth Policy, not the other way around.

*Second, the County is without the information it needs to determine that the zoning is designed to: 1) secure safety from fire and other dangers such as traffic; 2) promote public safety; and 3) facilitate the adequate provision of transportation as required under Mont. Code Ann. § 76-2-203.*

As quoted in the staff report, MDT had not concluded its analysis as to whether the development will significantly and permanently impact the state's transportation system as reviewed by MDT's System Impact Action Process. Without this information, the County does not have what it needs to evaluate whether the zoning is designed to secure safety from traffic danger and whether the zoning will promote public safety and facilitate the adequate promotion of transportation in the County. Recommending approval of this zone change without this critical information is premature.

Additionally, Montarise did not submit a Traffic Impact Study (TIS) with its zoning application, nor did the Staff review a study prior to issuing the Staff Report. That is puzzling because the developer *did* submit a TIS on March 10, 2022, with its subdivision application. This information, of course, is critical to an understanding of whether the zoning will comply with the statutory requirements cited above. Nevertheless, the Staff Report states:

Comments from the County Road and Bridge Department state, 'after completing a review of the zone change, we do not have any concerns on the requested change. However, we will be interested to see the (TIS) prepared by Abelin . . . when it is available. . . . Until we see the traffic using KM Ranch as compared to Hwy 93 it is difficult to know of any potential impacts.

In other words, the County Road and Bridge Department, which is the agency of the County most knowledgeable about transportation issues, doesn't have "any concerns" with the development, even though it has not seen or evaluated the TIS. The TIS in fact concludes, incidentally, by admitting that the development will "create capacity issues." (Montarise TIS, p. 9) How can the County say that this development will not affect public health, safety and welfare, and promote public safety and facilitate adequate provision of transportation if it willfully ignores the issue of traffic entirely?

As the Flathead County Road & Bridge Department stated in its letter dated March 21, 2022, "the estimated daily trip count of 3,066 is a sizeable increase to the road network. Until we see the traffic using KM Ranch as compared to Hwy 93 it is difficult to know of any potential impacts." Traffic on KM Ranch Road is not substantively addressed in the TIS; however, the study concludes that 10% of traffic from this development will *not* utilize Hwy 93 and will instead use KM Ranch Rd. The TIS also incorrectly identifies KM Ranch Road as paved, when in reality, most of KM Ranch Rd is unpaved, and only 33' wide throughout. Approving this zone change without understanding the current traffic usage of KM Ranch Rd, the effect of a significant increase from at least 10% of this high-density development, and the future implications of such an increase on a 33', unpaved, road is inappropriate.

*Third, it is clear that the development would exacerbate rather than secure and promote safety from wildfire and other dangers.* The proposed zone change would escalate traffic danger due to increased traffic, and the use of unsignalized turn lanes on Highway 93. Residents in the development headed north towards Whitefish would also need to turn left onto the highway, an already hazardous activity, which poses a danger to both residents in the area and travelers commuting between north Kalispell and Whitefish. Alternatively, and as stated in

the Abelin traffic report, 10% of the residents of this high-density development would use KM Ranch Road, placing additional traffic on that narrow, dirt road, which is highly problematic.

The property is also located within the Wildfire Urban Interface (“WUI”) and the limitations on emergency egress combined with the increase in traffic associated with this development would endanger public safety in the event of a wildfire or other emergency. The Staff Report incorrectly states that the subject property is within the Whitefish Rural Fire District. It is actually a part of the Whitefish Fire Service Area. The Staff Report seems to suggest they are close to the Whitefish Volunteer Fire Department; however, that location is not staffed and does not house volunteers. Again, the Staff Report incorrectly states that KM Ranch Rd is “paved,” but – for the most part – this is untrue. Staff Report, p. 11.

While no comments were received from the law enforcement or the fire department (Staff Report, p. 11) the Staff Report goes ahead and states that “roads appear capable of providing access for emergency vehicles.” *Id.* Once again, the Staff Report makes assumptions in favor of approval of the development without the necessary information, and without assessing actual impacts to public health, safety and welfare.

*Fourth, the developers have also failed to establish how the development and zone change will facilitate the adequate provision of water, sewerage, and schools given the location and increase in population associated with the project, which can fit as much as 154 additional lots (and as proposed would add 268 additional residential units), and that is without the PUD overlay. The “Whitefish School District did not provide comment on this proposal” even though the development would generate approximately 54 school age children, an extremely low estimation for a 268-unit development. While that district is already at or exceeding capacity, and despite the fact that the district did not comment at all, the Staff Report inaccurately concludes that “it is anticipated that the schools **would have capacity** should any residential growth occur as a result of the proposed zoning map amendment.” Staff Report, p. 13. (Emphasis added.)*

*Fifth, the approval of this zone change would clearly be unlawful as spot zoning. All the surrounding area is SAG-10 and SAG-5; the closest subdivision is 2 miles down the highway. This zone change benefits one developer at the expense of almost all the surrounding neighbors. And again, it is not compliant with the growth policy, which designated this property as sag-5 intentionally. See *Little v. Bd. of County Comm’rs*, 193 Mont. 334 (1981).*

Finally, the Staff Report is riddled with inaccuracies and incomplete information, including the following.

- Most State and local agencies whose input was solicited did not respond;
- There is no build-out analysis as noted by the Staff Report;
- There is no evaluation of the area hydrology to determine if it can accommodate the addition of dozens of new individual septic systems;

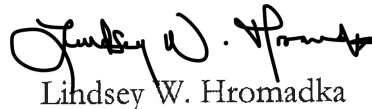
- While touting that the development will “make home ownership more affordable,” there is no indication that affordable housing will be included in the development;
- The statement that “KM Ranch Road is a paved two-lane country road with a 60-foot wide right of way” (Staff Report, p. 10) is false; only approximately a mile of the eight-mile long road is paved;

In conclusion, our client urges the Planning Board to recommend denial of the application as unlawful and not compliant with the Flathead Growth Policy, Zoning Regulations and State Statutes. Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "David K. W. Wilson, Jr.", with a long, sweeping horizontal flourish extending to the right.

David K. W. Wilson, Jr.

A handwritten signature in black ink, appearing to read "Lindsey W. Hromadka", with a stylized, cursive script.

Lindsey W. Hromadka

cc: Clients