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Erik K. Mack, AICP  
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Flathead County Planning & Zoning  
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*Sent via E-Mail*

RE: *Montarise Developments, LLC November 2, 2022, Petition for Zoning Amendment*

Dear Mr. Mack:

I am writing on behalf of Friends for Responsible Rural Growth (FFRRG) in opposition to Montarise Development, LLC's November 2, 2022, application for a zoning amendment changing approximately 155.9 acres from SAG-5 to R-2.5 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 January 11, 2023, hearing on this matter. Attached herewith please find a review of the Abelin Traffic Services traffic impact study (TIS) prepared for FFRRG by Traffic Engineer Rick Nys with Greenlight Engineering.

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 buffer area between the two urban areas. As this letter will set forth, among FFRRG's 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 on November 2, 2022; the November 2022 Montarise Village Traffic Impact Study (received by the County November 21<sup>st</sup>); and related documents. Because the Planning staff has *not* yet provided the public with a Staff Report, we are unable to comment yet on the position the County will take. Accordingly, we intend to submit supplemental comments responding to the Staff Report prior to the Planning Board's January 11<sup>th</sup> hearing.

While this second proposal from Montarise is different and seemingly less dense than the original proposal the Planning Board rejected in September, 2022, it still contains numerous infirmities. 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 and substantially comply with the Growth Policy.*

In the application APEC cites several provisions of the Growth Policy in support of the applicant's request for approval. While this discussion in the application makes certain assertions and assumptions about what the development will look like, it is notable that the developer has not yet submitted an application for subdivision, so all these specific details remain subject to change. But based on those assumptions, the proposed development still fails to "substantially comply" with the Growth Policy.

As an example, the developer cites to Goal 7: "consider existing community character in commercial land development" calling this development "small scale and low impact." However, the "existing character" is reflected by the dispersed development allowed and currently existing in the largely SAG-5 lands surrounding the proposal, and a change to R 2.5, with 103 dwelling units is not in line with the "existing character;" a fact the applicant acknowledges when it states that R-2.5 "creates twice the density of SAG-5." Under Goal 7, they also cite Policy 7.3 which encourages "small-scale, impact mitigated and compatible commercial development in accessible, developing rural areas with good access..." However, as discussed in Mr. Nys' attached report, this proposal does not have "good access." In fact, the development will cause intersection failures at the intersections of US 93 and KM Ranch Rd and US 93/Bowdish Road.

They developer cites Goal 11, “protection of scenic resources”, and “development that consider(s) the scenic settings”. But again, this is based on design elements that are hypothetical at this point. In fact, this area remains largely highly dispersed and rural, and the “scenic resource” in this area is the wooded terrain along the west side of Highway 93—the last such stretch before the landfill and the greater development to the south. The “lasting impression of the Flathead Valley” (Policy 11.1) here would be the expansion of sprawl between Whitefish and Kalispell.

The developer cites Goal 16—“safe housing that is available, accessible and affordable”. However, while the developer touts this goal, the application does not show that the developer intends to dedicate any of the housing to affordable housing. Further, in light of the traffic problems this development will cause or exacerbate, discussed by Mr. Nys, we question whether this is “safe” housing.

In addition, the proposed zoning does not substantially comply with the following additional provisions of the Growth Policy:

- Vision: Protect the Views; Manage Transportation; Maintain the Identity of Rural Communities
- G.2 Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.
- P.2.1 Create **land use regulations that are directly linked to the vision outlined in the Growth Policy.**
- G.3 Preserve the cultural integrity of private and public agriculture and timber lands in Flathead County by protecting the right to active use and management and allowing a flexibility of private land use that is economically and environmentally viable to both the landowner and Flathead County.
- P.3.5 Identify reasonable densities for remote, rural development that do not strain the provision of services or create a public health or safety hazard.
- P.4.3 Identify a desirable gross density for rural residential development **that retains land values**, preserves the agricultural character of the community and allows for **efficient provision of government services** (law enforcement, fire protection, transportation, etc.)
- P.6.5. Conserve resources and minimize transportation demand by encouraging redevelopment and infill of existing commercial areas in the county.
- G.7. Consider **existing community character** in commercial land development.
- G.8. Safe, healthy **residential land use densities that preserve the character of Flathead County**, protect the rights of landowners to develop land, protect the health, safety, and general welfare of neighbors and efficiently provide local services.
- G.11. Protection of scenic resources available to both residents and visitors.
- P.11.1. Identify critical gateway areas that provide lasting impressions of Flathead County to both residents and visitors.

- G.14. Solid waste collection facility operation and landfill expansion free from land use conflicts with adjacent property owners.
- P.14.1. Identify a 1,320-foot buffer surrounding the landfill and designate this area only for those land uses compatible with current and future landfill activities. Compatible use types such as industrial should be encouraged in this buffer.

With regard to the buffer around the landfill, which would affect this property, the application does not address this whatsoever. Indeed, rather than acknowledge the buffer and plan the development accordingly, the developers completely ignore it and even have plans for a hospice development within the 1,320-foot buffer. On this basis alone, the application can be denied.

In summary, the proposed development does not substantially comply with the Flathead Growth Policy.

*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 Mr. Nys' report notes, there are serious issues with transportation and traffic related to the intersections of Bowdish and KM Ranch Roads with Highway 93.

The developer's TIS establishes that the intersection of US 93/Bowdish Road will operate at **LOS (level of service) E** and the intersection of US Highway 93/KM Ranch Road will operate at **LOS D** with the approval of the development, and suggest both approaches should be widened and separate turn lanes should be created, without offering any evidence that this will actually mitigate the failing intersections. Nys, 1.

The developers then aver that neither of those suggested tactics will actually work: "the only way to improve the overall traffic operations at the KM Ranch Road and Bowdish Road intersection would be with the installation of a higher form of traffic control such as a traffic signal, roundabout or interchange." Abelin, 9. Again, the TIS does not actually evaluate any of these options and no other alternatives were sufficiently addressed or analyzed in the TIS, which is noncompliant with MDT manuals.

Lastly, after admitting that a "higher form of traffic control" is required to keep the intersections from failing, the TIS states that no changes will be approved for this project by MDT until their access management plan is done in "*several years.*" Abelin, 4.

As Mr. Nyes' review makes clear, the TIS provides no analysis and no mitigation that establishes that the intersection failures will be addressed. Instead, the developer appears to rely upon the future MDT access management project to both analyze and apparently provide the necessary mitigation caused by the proposed development. This is highly speculative and puts the cart well before the horse. The development should be required to analyze and proposed feasible solutions for the problems caused by the development and

should be required to fund such improvements or ensure that funding exists to fix the problems created. Nys, 3.

*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 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.

Additionally, 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.

In summary, this development will further stress the response capability of the Flathead County Sheriff’s office and fire personnel.

*Fourth, the developers have also failed to establish how the development and zone change will facilitate the adequate provision of water, sewerage, and schools.*

David Donohue, a Senior Hydrogeologist with HydroSolutions analyzed the application materials provided, not including the Staff Report, on behalf of FFRRG. Mr. Donohue’s letter is attached hereto. The developers do not include actual data upon which to evaluate impacts to water resources in their application materials. The application includes a brief and unsubstantiated statement that provides no supporting information and no justification to support the declaration that the water column in neighboring wells will be “relatively unimpacted by the proposed development.” According to Mr. Donohue, the applicant must provide the analysis used to establish this statement. Without providing scientifically sound hydrogeologic data, this determination of relative un-impact to water resource is groundless. Among other data, the developer must provide a water usage summary so that the actual impact to the groundwater resource can be evaluated. Further, specific information and plans regarding the use of individual or combined septic systems, including location and site-specific hydrogeologic data, should be provided so that a thorough review of the proposal can be made. Without any actual data, the developers have not met their burden of showing the zone change will facilitate the adequate provision of water and sewerage.

Further, a development of this density is more appropriate near municipalities where water and sewer hookups are available, rather than relying on septic systems and wells, which could adversely affect the water quality and availability of neighboring properties.

*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 and was developed *prior* to the Growth Policy and this area being zoned. 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, 347 (1981). ("Zoning has been held invalid as spot zoning when it is not in accordance with a comprehensive plan.<sup>1</sup>")

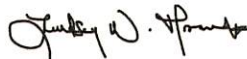
Finally, as previously noted, because the Planning Staff had not yet issued its Staff Report prior to the date these public comments were due, we will plan on supplementing these comments prior to the hearing to address that Staff Report.

In conclusion, our client urges the Planning Board to again 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,



David K. W. Wilson, Jr.



Lindsey W. Hromadka

cc: Clients

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<sup>1</sup> Growth Policies were previously called Comprehensive or Master Plans.