

MEMORANDUM

TO: Planning Committee
FROM: Thomas D. Heekin
DATE: April 10, 2018
RE: Swan Valley Regional Plan

Thank you to the committee for the time and effort put into the most recent draft document. Also thanks to Valley residents who participated in the planning process.

Some general observations follow. It seems that certain issues important to Valley residents already are addressed in Missoula County's subdivision review program. These include surface water quality, ground water quality, air quality and wildlife habitat. The first question would seem to be in what respect is the County's existing review program inadequate from the standpoint of Swan Valley residents. It might be helpful to take each of these areas in which the residents have a vested interest and state what is already in place followed by bullet points setting forth what the residents would like to see added. This could be done for purposes of clarity and brevity if nothing else.

I was intrigued by the census and other data that appears in the draft plan. It is, of course, notable that the median age is 55 and that approximately 30% of the residents are 65 or older. I make it into this group with room to spare. But the question becomes how the plan affects persons who may sooner rather than later need to sell their property or incorporate it into their estate planning. It is a question of making a sale or testamentary disposition more difficult rather than easier.

The plan is anticipated to have a 20 year life. Things may be vastly different far sooner than 20 years down the road. Residents should think about the practical effects of the plan on life down the road and on potential buyers or their heirs.

It is also noteworthy that approximately 10% of the land in the planning area is other than public land. The question becomes what actions or conditions on the 10% are likely to have any meaningful effect in the entire plan area.

There are 682 "housing units" in the planning area. 253 are occupied and 429 are vacant. Some of the vacant properties are seasonally occupied. I also learned that residential lots are generally 4-20 acres in size. If we multiply 253 occupied lots by 20 acres we come to 5,000 acres. Apparently there is another 20,000 acres of private land. This raises the issue of who will be more affected by the plan. Is the future to be controlled by a majority of residents or based on the amount of real estate owned? I do not have strong feelings one way or the other on this subject. It is residents who will be immediately impacted by the findings and recommendations in the plan. On the other hand, the practical and financial impacts of the recommendations in the plan may be felt elsewhere.

Finally, a few brief words about business development. My family has owned property in the Valley for a long time. The folks who welcomed and guided us in the early years were Ed and June Underwood, Mel and Nan Nelson, and Warner and Margaret Lundberg. These were among the finest people that I have ever known. Mel was a very funny guy. Fishing in the Underwood pond was a rare and privileged experience. Sitting with Warner and Margaret and discussing the homestead days

which Warner spent on property now owned by my family was an experience to be treasured. My feelings about the Valley start with people such as these.

In the 60's, 70's and 80's the Valley was a happening place. There was logging, log home building and general construction. We went into the Bob with Lloyd and Carolyn Hahn, their daughter and wranglers Smoke and Ed. It was a memorable experience. It was over the 4th of July and we were hit by a significant snow fall.

Ed Underwood was the general contractor in charge of building our original log home. His usual practice was to go into the forest, cut the timber and drag the logs out. He would then peel the logs and begin construction. He decided at age 74 that enough was enough. He, therefore, arranged to buy the logs from Jim Bush at Alpine. Ed finished off the project using local teenagers and tradesmen as needed. In the early days, we had a roof and running water. We had no gas, electricity or telephone. If an important call came in it would go to the Underwoods. June would then drive over to our cabin with the message. One of us would then go to the porch at the Wilderness and return the call on the old pay telephone.

This gets me to the Wilderness. On Saturday night it was likely to be a jumping venue. It would be crowded with people of all ages. There would be a live band backing two singing sisters. It was an occasion not to be missed.

So what has happened. Obviously, logging and log home building have all but disappeared. The general construction that accompanied log home building is also in short supply. The Nelson store and garage no longer exist. The Wilderness and its successors are gone. Baseball games at the north end of the air strip are a part of history. Lucinda tells me that the Stich & Bitch is still thriving.

I think that, if there is to be new business in the Valley, the source of that business will probably come as a surprise as will the nature of the business. The number of folks needed to operate any new business is anyone's guess.

Preservation of the existing businesses is job one. We do not want to lose the Merc, the Hungary Bear or the Condon Center. Will these businesses continue only so long as the current operators are around? This is the starting place on the business front.

After reading the draft plan, I have some fundamental observations and questions. The residents' preferred approach to planning is clearly set forth in the plan. How this approach is to be implemented and where it could lead should be crystal clear. If not, there will be confusion, then disagreement, then litigation. It is best to head off these unintended consequences.

The plan's headline first appears on page 12. Two important sentences read: "Planning area residents have made it clear that they place great value on clean air and water, and preservation of wildlife and wildlife habitat. The community opted to recommend voluntary measures in the form of best management practices." These fundamental premises are echoed on page 24 in these words: "Upper Swan residents must decide what kind of community they wish to have. The information in this plan should be used as a guide for new development. This section of the plan (Land Use) brings that information together to make recommendations for land uses in the planning area."

The residents preference also appears twice on page 25. First, there is this clear statement: "Participants in the visioning sessions and neighborhood review

meetings indicated a decided preference for new development to respect the character and qualities of the community and for it to be compatible with existing development. However, there was no significant support for regulations to accomplish these objectives.” Further down the page, it is stated: “[I]n making a land use decision the governing body must be ‘guided by and give due consideration to’ an adopted growth policy. However, the growth policy cannot be applied in a ‘regulatory’ fashion.”

On page 26, the foregoing statements are again reinforced. It is stated there: “[T]his plan recommends a qualitative system for residential and non-residential development based upon outcomes. This system is intended as a guide for Missoula County, in making land use decisions. This system is not regulatory, but should be used with decision-making criteria set forth in state law and/or other long range plans and policies. This plan is intended as a powerful statement of the community’s vision and values; and a statement that should be taken into account in the County’s long-range planning.”

This surely suggests that the plan is more than simply a wish list given to potential developers. The “recommendations” in the plan are intended to be applied by Missoula County in deciding whether to approve a development proposal.

Thus, on page 45 it is noted: “Many of the plan’s action statements can be accomplished through voluntary efforts by citizens in the community.” This leaves open the question whether other actions must be other than voluntary. This issue is underscored in Paragraph 7.4 on page 45 where it is stated: “In a typical long range plan (growth policy, neighborhood plan, downtown revitalization, etc.), land development regulations of some kind are almost always an option for plan

implementation.” It is stated later in the paragraph: “However, it was concluded by the Planning Committee that regulations of any type have insufficient support in the community for them to be recommended in this plan.”

Where can there be confusion and disagreement? First, they can arise from the use of words such as “guide” and “encourage.” Guidance, for example, can be implemented softly by an approach such as “we would like you to take the following actions.” There is also a tougher interpretation such as “follow our guidance or else.”

A second issue arises in connection with the policies adopted by Missoula County in their programmatic subdivision review. When all is said and done, policy can have the same practical effect as a regulation. When a subdivision is being considered by the County, the decision the County makes can be mandated by or at a minimum influenced by a policy that sets forth criteria to be met for a proposed subdivision to be approved.

How is this reality manifested in the draft plan? The plan states upfront on page 4: “This plan provides guidelines, decision-making policy, and criteria for the Swan Valley Community Council, land use planners in the Missoula County Office of Planning and Grants, Rural Initiatives, the Board of County Commissioners, Federal, State, and County agencies, and other private organizations and citizens involved in decisions that affect present and future growth in the Swan Valley.”

On page 5, the terms Policy and Actions are defined. Policies are “a set of principles that guide an agency or organization. Policies are mostly . . . directed toward Missoula County.” Actions are “specific items to be accomplished or programs

to be developed and carried out. Action statements contained in the plan are directed toward both the County and the community as appropriate.”

Words used in the plan such as “encourage” and “discourage” can have different meanings. What form can encouragement or discouragement take? One option would be a friendly chat with a developer. Another option is to develop policies to be followed in the subdivision review process that would either promote approval of a particular subdivision or guaranty disapproval of such subdivision.

This issue is brought into further focus on page 26. Paragraph 3.6 outlines an Asset Based Approach to Future Development. This system “is intended as a guide for Missoula County, in making land use decisions. The system is not regulatory but should be used with other decision-making criteria set forth in state law and/or other long-range plans and policies.” The plan should be taken into account by the County.

It is difficult to envision how proceedings before the Missoula County Planning Board will result in a different ruling than would governance by regulations incorporating the same policies.

On page 31 there is language that suggests the answer to this question. Action Item, #1 is: “Explore forming a local sub-committee of the Community Council that would develop standards that would protect the scale and rural character of the Upper Swan.”

The duality of approach (avocation versus regulation) is continued on page 45. First it is stated: “Many of the plan’s action statements can be accomplished through voluntary efforts by citizens in the community.” Further down on the page is

Paragraph 7.4 Regulations where it is stated: “In a typical long range plan . . . , land development regulations of some kind are almost always an option for plan implementation.” But then there is further language that reminds us that “it was concluded by the Planning Committee that regulations of any type have insufficient support in the community for them to be recommended in this plan.”

The tension between what may or may not be competing approaches comes to a head on page 46. Here it is stated that the attributes desired by the Swan Valley community “cannot be assured without regulations of some kind.” There follow two action statements: “1. Explore a zoning code or permit system that would incorporate standards to protect the scale and rural character of the Upper Swan. 2. Investigate design standards for new development that will retain the visual qualities of the Highway 83 corridor.” The plan advises that “the community still has regulatory options should it decide to explore them.” It seems probable that the desired results can be obtained by working with Missoula County in the course of its subdivision review process. The door is, however, left open for the regulatory approach.

Once again, on page 50, my observations and questions regarding the two ways to preserve the Valley’s assets are brought into clear focus. It is here stated: “However, in discussing how best to meet the objective of protecting these assets the planning committee opted for voluntary measures in the form of best management instead of critical area stands (sic) or similar regulations. (Note: in the event of a subdivision filed, BMPs may become mandatory as conditions of preliminary plat approval in order to meet the primary review criteria set forth both in state law and in the

Missoula County subdivision regulations, to minimize impacts to wildlife and wildlife habitats.” [Emphasis added.]

My intent has not been to take a position regarding the application of a particular policy or on regulation versus the application of policies. My intent has been to comment on what I have read and raise questions. I believe there should be a shared and clear understanding among Valley residents concerning just what the plan says and how, as a practical matter, it will influence and impact future land use in the Valley. Has the residents’ desire for voluntary measures been satisfied? I wonder.