



## Lambert raises legal issues about countywide zoning

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The County Commission doesn't have the authority to zone the entire county just for housing density, and it can't allow the creation of new citizen-initiated zoning districts once countywide zoning is in place, Gallatin County Attorney Marty Lambert has concluded.

The commissioners, who are considering countywide zoning as part of its effort to get a handle on the area's rapid population growth, had asked Lambert to review state laws.

What he found may be a setback, but his conclusions don't mean the commission needs to scrap its plans, since it wanted to clear up these kinds of legal issues before it moved forward.

"That was one of the first questions we needed to have answered," Commissioner Joe Skinner said Friday.

The commission launched a new initiative this year to control growth and preserve the county's farmlands and open space.

A central component would be "top-down" zoning of the county's unzoned lands to set up a single density for homes. Neighbors would still be allowed to petition the county to create their own zoning districts.

But Lambert, answering three questions from the commission, found that state law mandates that commissioners must also adopt regulations on buildings, setbacks, lot areas and occupational and commercial uses when creating a top-down district. Commissioners hoped to avoid all that, in part to win over county residents who have long opposed zoning.

Still, Lambert wrote that state law doesn't mandate any specific formulas for the regulations, so the county could take a "creative approach" to implementing them.

"Nevertheless, you have to wrestle with a more

traditional, detailed look at zoning regulations," he said Friday.

Lambert didn't say that countywide zoning was prohibited, just that the commission doesn't have the authority to create the type of district it's seeking.

Skinner and Commissioner Bill Murdock supported zoning for density only.

Commissioner John Vincent has said he would like to look at restrictions on sexually oriented businesses and gravel pits as well.

"I'm not talking about an expansive extension of what Joe and Bill are thinking of," Vincent said.

On another question, Lambert concluded state law wouldn't allow a citizen-initiated zoning district in an area where a top-down district already is in place.

One facet of the commission's growth-management strategy was to ask unincorporated communities to draft neighborhood plans that could later be used as frameworks for citizen-initiated districts where tougher zoning regulations would be in place.

Four Corners, for example, recently completed a neighborhood plan that spells out community goals for managing growth.

Commissioners did get one small reassurance when Lambert hesitantly concluded that the county could set up a program to trade transferable development rights.

TDRs are intended as a way to direct growth away from rural to urban areas, if it works as planned.

However, Lambert pointed out, there is no state law authorizing TDRs.

Many of the legal questions arose because, unlike Bozeman, Gallatin County doesn't have self-governing powers and is therefore limited to the statutory powers the state Legislature has set out.

Laws could be changed in future legislatures to allow county commissioners to enact the policies they're seeking.

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