

MINUTES OF THE CITY COUNCIL OF LAUREL

February 28, 2023

A regular meeting of the City Council of the City of Laurel, Montana, was held in the Council Chambers and called to order by Mayor Dave Waggoner at 6:32 p.m. on February 28, 2023.

COUNCIL MEMBERS PRESENT: Emelie Eaton Heidi Sparks
 Michelle Mize Richard Herr
 Casey Wheeler Irv Wilke
 Richard Klose Jodi Mackay

COUNCIL MEMBERS ABSENT: None

OTHER STAFF PRESENT: Michele, Braukmann, Civil City Attorney
 Brittney Moorman, Administrative Assistant
 Kurt Markegard, Public Works, and Planning Director
 Kelly Strecker, Clerk/Treasurer
 Matt Wheeler, Public Works Superintendent
 Stan Langve, Police Chief
 Brent Peters, Fire Chief

Mayor Waggoner led the Pledge of Allegiance to the American flag.

MINUTES:

Motion by Council Member Wilke to approve the minutes of the regular meeting of February 14, 2023, as presented, seconded by Council Member Eaton. There was no public comment or council discussion. A vote was taken on the motion. All eight council members present voted aye. Motion carried 8-0.

CORRESPONDENCE: None.

COUNCIL DISCLOSURE OF EX PARTE COMMUNICATIONS:

Council Members Mize, Sparks, and Mackay received emails in favor of Ordinance No. O23-01. They each said they would read those received emails during the public comment period of the agenda item.

PUBLIC HEARING: None.

CONSENT ITEMS:

- **Claims entered through February 24, 2023.**
A complete listing of the claims and their amounts is on file in the Clerk/Treasurer's Office.
- **Approval of Payroll Register for PPE 2/19/2023 totaling \$207,222.79.**

The Mayor asked if there was any separation of consent items. There was none.

Motion by Council Member Klose to approve the consent items as presented, seconded by Council Member Eaton. There was no public comment or council discussion. A vote was taken on the motion. All eight council members present voted aye. Motion carried 8-0.

CEREMONIAL CALENDAR:

Mayor Nottingham from Fromberg, MT, presented Mayor Waggoner with a plaque for the assistance he offered during the flooding event this past summer. The City of Laurel provided containers for damaged items to be properly disposed of and hauled those containers to the landfill. The City of Fromberg was grateful to have the City of Laurel's help during its time of need.

DW

REPORTS OF BOARDS AND COMMISSIONS:

- Budget/Finance Committee Minutes of February 14, 2023.
- Tree Board Minutes of January 19, 2023.

AUDIENCE PARTICIPATION (THREE-MINUTE LIMIT):

Corey McIlvain, 903 6th Avenue, stated he is a 20-year member of the Laurel Volunteer Fire Department. He spoke in favor of better communication between the Fire Department and City Administration. As the Fire Association President, he formally requested that the Fire Department be placed on the next Workshop to have a discussion. He also stated that the Mayor had asked for a Chief recommendation to be brought forward. There was a vote on Sunday, and that recommendation is Brent Peters.

Mayor Waggoner stated he would place the Fire Department on the March 21st Workshop Agenda.

Barb Emineth, 501 Alder Avenue, read the attached letter into the record.

Juliane Lore, 709 Roundhouse Drive, read the attached letter into the record.

Kasey Felder, 1434 McMullen Lane, read the attached letter into the record.

Steve Krum, 249 24th Avenue West, read the attached letter into the record. He also handed out a copy of the brief in support of the motion for summary judgment to each Council Member.

SCHEDULED MATTERS:

- **Appointment of Steven Hurd to the Police Commission for the remainder of a three-year appointment ending April 30, 2024.**

Motion by Council Member Sparks to approve the Mayor's appointment of Steven Hurd to the Police Commission for the remainder of the three-year appointment ending April 30, 2024, seconded by Council Member Wilke.

Steven Hurd, 1704 Duval Drive, introduced himself to Council.

There was no council discussion. A vote was taken on the motion. All eight council members present voted aye. Motion carried 8-0.

- **Resolution No. R23-13: A Resolution Of The City Council Adopting The Transportation Coordination Plan, Laurel Transit, For The City Of Laurel.**

Motion by Council Member Herr to approve Resolution No. R23-13, seconded by Council Member Wilke. There was no public comment or council discussion. A vote was taken on the motion. All eight council members present voted aye. Motion carried 8-0.

- **Resolution No. R23-14: A Resolution Awarding The Bid And Authorizing The Mayor To Execute All Contract And Related Documents For Russell Park Landscape Improvements.**

Motion by Council Member Mackay to approve Resolution No. R23-14, seconded by Council Member Wilke. There was no public comment or council discussion. A vote was taken on the motion. All eight council members present voted aye. Motion carried 8-0.

- **Resolution No. R23-15: A Resolution Of The City Council Authorizing The Approval Of The Independent Contractor Service Contract With Forestry Fuels And Fire.**

Mayor Waggoner stated this resolution could be removed from the agenda. The final price came in at \$4,500, which is under the \$5,000 threshold needed to bring this item before Council.

Motion by Council Member Mize to remove Resolution No. R23-15 from the Council agenda, seconded by Council Member Wilke. There was no public comment or council discussion. A vote was taken on the motion. All eight council members present voted aye. Motion carried 8-0.

- **Ordinance No. O23-01: An Ordinance Amending Title Six Of The Laurel Municipal Code (LMC § 6.16.010) Relating To Prohibited Certain Animals. (First Reading)**

Motion by Council Member Mize to adopt Ordinance No. O23-01, seconded by Council Member Eaton.

DJ Poollet, 809 8th Avenue, spoke in favor of allowing chickens within City limits. In particular, the sizable investment it takes to own chickens and that chickens are very good for gardens.

Kris Keys, 420 7th Avenue, spoke in favor of allowing chickens within City limits. In particular, he would like to see local eggs at the farmer's market.

The attached letters of support from Stephanie Lavelly, Missy Ritchie, Haillie McComish, Kristine Williams, Megan Keys, Linda Strawbridge, LeeAnn Burley, Paige Farmer, and Braven Warner were read into the record.

Allison Mackay, 404 E. 9th Street, spoke in favor of allowing chickens within City limits.

There was no council discussion. A roll call vote was taken on the motion. Council Members Sparks, Herr, Wilke, Mackay, Wheeler, Mize, and Eaton voted aye. Council Member Klose voted no. Motion carried 7-1.

ITEMS REMOVED FROM THE CONSENT AGENDA: None.

COMMUNITY ANNOUNCEMENTS (ONE-MINUTE LIMIT):

There is a fundraiser for the summer lunch program through SOW Ministries. They are raffling off a 65-inch TV. Tickets are \$20 a piece, and only 100 tickets will be sold. Many churches in town assist with the SOW Ministries summer lunch program.

COUNCIL DISCUSSION: None.

MAYOR UPDATES:

Mayor Waggoner stated the walking path at Riverside Park is open. Some cleanup needs to be done, but it is open to the public.

UNSCHEDULED MATTERS:

- **Resolution No. R23-16: A Resolution Of The City Council Amending Resolution No. R21-130 To Allow Upcharge To Bid With SWS Equipment, LLC For The Purchase Of A Roll-Off Container Truck For The City Of Laurel's Public Works Department.**

Mayor Waggoner stated this resolution is for a surplus charge.

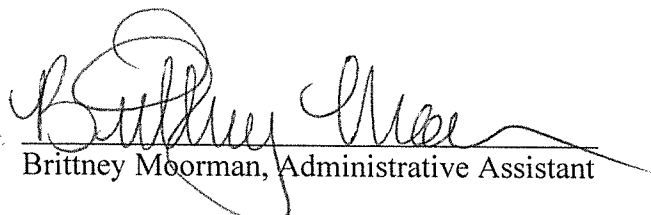
This roll-off truck was ordered two years ago and will be here tomorrow. The increase is \$4,800, and this surcharge is like other surcharges Council has seen previously.

Motion by Council Member Eaton to approve Resolution No. R23-16, seconded by Council Member Wilke. There was no public comment or council discussion. A vote was taken on the motion. All eight council members present voted aye. Motion carried 8-0.

ADJOURNMENT:

Motion by Council Member Eaton to adjourn the council meeting, seconded by Council Member Wilke. There was no public comment or council discussion. A vote was taken on the motion. All eight council members present voted aye. Motion carried 8-0.

There being no further business to come before the Council at this time, the meeting was adjourned at 7:28 p.m.

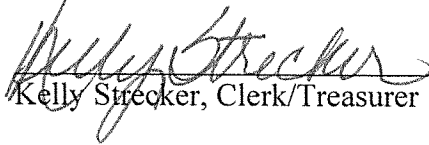

Brittney Moorman, Administrative Assistant

Approved by the Mayor and passed by the City Council of the City of Laurel, Montana, this 14th day of March 2023.



Dave Waggoner, Mayor

Attest:



Kelly Strecker, Clerk/Treasurer



Barb Emineth

501 Alder Ave. Laurel

- Council copy -

Most citizens of Laurel are assuming since construction on the Northwestern Energy power plant has begun that it's a done deal which is not so.

I came before you in July of last year and shared with you that the opinion of our city attorney was just that, her opinion on this matter. Because the environmental groups have opposed the plant we are still waiting for a judge to decide if the parcels of land being built on are under city or county zoning jurisdiction and until that decision has been made I feel the city should consider this issue city business which is pending. I am speaking tonight because I feel the people who call this city home should be aware of this fact.

If it turns out those parcels are under city jurisdiction and that one of the three is designated agricultural and not heavy industrial then I hope the city would be prepared to assert their power and request that Northwestern Energy come before this council asking for a zone variance to be voted on by our current council members!

Whether you are for or against this power plant please remember this is still the United States of America and as US citizens we have a right to express ourselves and oppose whatever we feel is not in the best interest of our fellow man.

As elected officials all of you need to feel empowered ^{fearlessly} enough to enforce this city's ordinances as well as our zoning regulations, they are in place for good reasons. Thank-you for your time. Barbara A.S. Emineth 2/27/2023

A handwritten signature in black ink that reads "Barbara A.S. Emineth". The signature is written in a cursive style with a large, sweeping initial 'B'.

2/28 Council statement -

I am Juliane Lore. I live at 709 Roundhouse Drive, Ward 4. I'm speaking to you tonight as a resident, and also as your City Prosecutor. I'd like to offer some perspective and support of a colleague whose ethics and excellence are a standard I try to live up to every day, Michele Braukman, our City Attorney. Inspired by Ray Southworth, another hero, who spoke here a few weeks ago in support of you, Council. Shocked us all a little, he didn't come to bring any issue or problem up at all, just to shine light and say he sees who you are and the amazing things you achieve and the service you give. He knew the people at these tables don't hear that very much.

So - Last meeting I was watching online, and we all saw a simple budget request, a misdirected one, just business, explode into something ugly, and into a troll fest online, get way out into the weeds and for some inexplicable reason, it appears our City Attorney was targeted for much of the ugliness that nobody was debunking on Facebook.

I'm here to channel some Ray, and shine some light, Facebook –make sure there's an accurate public perception on her character and her contributions to our City. I'm still a little in disbelief that she signed on, she's had such a big career already, and Laurel can be .. challenging.

I will share, or remind, everyone that Michele Braukman came up not like most lawyers do, from families of lawyers, but without any silver spoon. She knew from the time she was very small the only way she would rise up was through achievement, and work. And she worked, and she rose up, and she worked, and she graduated summa cum laude at her law school – and that was Notre Dame, and that was on a full ride. That's bootstraps. Respect!

Then she made a family, she's a Mom of four – at the same time, she worked her way up to partner at Moulton Bellingham in Billings, and that firm is the cream of the crop. There, she represented the City of Billings for twenty years in the same capacities that she serves us now... before she opened her own firm, created three jobs, and was just voted runner-up best PI attorney in Billings in the Readers Choice Awards sponsored by the Gazette I believe? She doesn't need this gig - She may only keep us on because she has a sense of humor? And a huge heart?

I know it is not the money – I'll remind everyone here that when the previous attorney retired, she took the same contract, no new money - less the health insurance. Those funds went back in the City kitty, she didn't ask for it. We will never see any contractual rate decrease on succession ever again. The impact on city budget was positive when she came on board in real numbers starting on day one.

Then – the Splash park! The Mayor's answer to a loved resource that had fallen to decay. I respect the myriad of legal issues with conversion, operation, all the impressive work she's doing right there - but.. her firm gave TEN THOUSAND DOLLARS. Personally – her money – so that Laurel could use that as matching funds for donors. \$10,000 is 1/5 of her contract for a year, and she gave that back to the City so that we could have this joy – and this is opening this summer. Respect.

A very few, quick highpoints on the some of the things she's done for the City just recently, any one of which are huge achievements – projects stalled or sidelined for years -

We had our budget cycle – and then – did a complete revision of all city rates and fees. For the first time, my department is collecting reasonable fees and covering its own supply costs. Some department fees and rates were adjusted for first time in decades I understand. It was a huge project. It needed done, it was past time. She took it head on, not piecemeal, now it's done, and we're making money. Respect.

The HR functions she's taken on, a huge hole in the City for years – now we have cohesive policies and procedures coming together. She's provided the introduction of information for every department head and for Council that standardizes uniform pay ranges, lines us up with statewide salary increases and duties, sets employment expectations. We have transparency and confidence with this guidance – and that means us retaining great staff, and attracting quality new talent – stopping the “braindrain”. That's all her hard work, late at night.

(I ended here – I would have finished with this:)

Michele – just thank you –we see you. I know you're always doing our heavy lifting, our heavy listening, writing, mediating, managing, often working out of pocket, and probably always tired. The lawyers are just workhorses, hired guns. Good ones are anyway. They know their service to their client is never about themselves. You exemplify that. Respect.

February 27, 2023

Dear Mayor Waggoner and City Council Members,

We know that the city is in charge of zoning the donut area where NorthWestern Energy is building its power plant. We encourage the city to immediately follow its established procedures regarding industrial development. In 2021, the City Attorney understood that this was the jurisdiction of the City of Laurel while Yellowstone County continues to take the position that it is not the County's jurisdiction to zone. It is unclear why the office of the City Attorney changed its position and what is causing it to abdicate its authority over zoning land which would protect existing landowners' properties, business, and public health and safety.

Prior to construction, it is common practice for developers to file for permits, ensure zoning aligns with the city's plan, and to comply with any other city or county approval processes before construction begins. Yet, here in Laurel, NorthWestern Energy is building its gas plant without approval from the county or the city. It is being done on land that is zoned agricultural, which appears to be a violation of our zoning regulations.

Our hope is that the City of Laurel will stop using taxpayer dollars on unnecessary litigation, and instead focus its energy and time towards its community members who are asking for help protecting our properties, businesses, and health and safety. NorthWestern Energy **must** be held to the same standards as any developer and go through the appropriate process to build in our community. Simply put, it should be required to follow the same laws as everyone else.

We hope that the City will support its zoning authority as well as our Constitutional rights of free speech, open government and public participation in the decision making process.

Please remember, Laurel is more than a City government. It is made up of people inside and outside the city limits who are all working to help and care for each other, this is a community. All good things start as an idea, and good people need to work together to see ideas through to reality. We urge you to settle this litigation and require NorthWestern to follow the city's zoning requirements, just as any other developer would be required to do.

Sincerely,
Thiel Road Coalition
Montana Environmental Information Center
Northern Plains Resource Council

Steve Krum, 249 24th Avenue West, Laurel, Montana.

Mr. Mayor, Council Members. I am here asking the city to save the money and spend it where it is most needed, supporting the Laurel Community by agreeing the **city** has jurisdiction over NorthWesterns' parcels. The County has already said that it does not have jurisdiction over the area.

For those in the city and surrounding community, contractors and residents alike must acquire proper permits and ensure zoning is correct, if not, follow the proper procedures to do so, **yet**, NWE is building a gas-fired plant without any construction permitting from the state, county or city and doing so on agriculturally zoned property, this is wrong! If Laurel does not accept the authority given to them by state law to zone up to 2 miles outside their city limits, then what is the point of spending 10's of thousands of dollars and 2 years of employee and contractor time on a growth plan for future land use around the city? Without this zoning authority, what is happening to the Laurel community right now with what NWE is doing will open a door for a free for all in building around the city limits of Laurel. Any kind of business can be built, where they want, regardless of the city's growth plan, and no regard whatsoever for the property owners' rights they are building next to.

Will the city council stand up and stop wasting money on unnecessary litigation and focus their energy and time towards our community members asking for help protecting their properties, their businesses and their health and safety? Require NWE to follow the zoning regulations and permitting process. Do not let NWE continue to bulldoze their way into our community at the expense of all our rights.

Laurel is more than just a city; it is a community made up of people inside and outside the city limits. We are a community with common interests. Mr. Mayor and Council Members, **please** follow the law, follow the regulations, and follow Laurel's growth plan, which NWE has chosen to ignore. Protect your citizens from the air and noise pollution from this plant. When it is too late, and the air and noise pollution is much worse than stated, the Laurel Community will have no recourse. Please protect your people, Thank You.

Amanda D. Galvan
Mary Cochenour
Emily T. Qiu
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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

THIEL ROAD COALITION,
NORTHERN PLAINS RESOURCE
COUNCIL, and MONTANA
ENVIRONMENTAL INFORMATION
CENTER,

Plaintiffs,

v.

CITY OF LAUREL, YELLOWSTONE
COUNTY, and NORTHWESTERN
ENERGY, INC.,

Defendants.

Case No. DV-56-22-1087-OC
Hon. Jessica Fehr

**BRIEF IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
INTRODUCTION	1
LEGAL BACKGROUND	2
UNDISPUTED FACTS.....	3
I. CITY AND COUNTY LAND USE PLANNING	3
II. NORTHWESTERN ENERGY'S GAS-FIRED PLANT.....	5
III. CITY OF LAUREL ZONING PROCEEDINGS	7
STANDARD OF REVIEW.....	9
STANDING	9
ARGUMENT.....	11
I. THE CITY OF LAUREL HAS ZONING JURISDICTION IN THE EXTRATERRITORIAL AREA AROUND THE CITY	11
A. The City Created a Growth Policy that Extended its Zoning Jurisdiction and Authority to the Extraterritorial Area.	12
B. The City Created a City-County Planning Board to Exercise Zoning Jurisdiction in the Extraterritorial Area.	13
C. The City has Expressly Exercised its Extraterritorial Jurisdiction, and Now Cannot Ignore its Jurisdiction for its Convenience.....	14
II. YELLOWSTONE COUNTY DOES NOT HAVE ZONING AUTHORITY IN THE EXTRATERRITORIAL AREA AROUND LAUREL	15
A. The County Admits that it has Never Adopted a Growth Policy that Asserts Jurisdiction Over Laurel's Extraterritorial Jurisdiction.....	16
B. The County Admits that it Has Not Enacted Any Lawful Subdivision or Zoning Regulations in the Extraterritorial Area Around Laurel.	17
CONCLUSION.....	19

TABLE OF AUTHORITIES

STATE CASES

*Bridger Canyon Prop. Owners’ Ass’n, Inc. v. Plan. & Zoning Comm’n
for Bridger Canyon Zoning Dist. & 360 Ranch Corp.,
270 Mont. 160, 890 P.2d 1268 (1995)*..... 3

*Broadwater Dev., LLC. v. Nelson,
2009 MT 317, 52 Mont. 401, 219 P.3d 492* 9

*State ex rel. Christian, Spring, Sielbach & Assocs. v. Miller,
169 Mont. 242, 545 P.2d 660 (1976)* 17

*State ex rel. Diehl Co. v. City of Helena,
181 Mont. 306, 593 P.2d 458 (1979)* 17

*Heffernan v. Missoula City Council,
2011 MT 91, 360 Mont. 207, 255 P.3d 80* 3, 9, 10

*Little v. Bd. of Cnty. Comm’rs of Flathead Cnty.,
193 Mont. 334, 631 P.2d 1282 (1981)*..... 3

*Park Cnty. Env’t Council v. Mont. Dep’t of Env’t Quality,
2020 MT 303, 402 Mont. 168, 477 P.3d 288* 9

*Phillips v. City of Whitefish and Bd. of Comm’rs of Flathead Cnty.,
2014 MT 186, 375 Mont. 456, 330 P.3d 442* 13, 18

*Quigg v. Slaughter,
2007 MT 76, 336 Mont. 474, 154 P.3d 1217* 9

*Williams v. Bd. of Cnty. Commr’s,
2013 MT 243, 371 Mont. 356, 308 P.3d 88* 2

CONSTITUTIONAL PROVISIONS

Mont. Const. Article II, § 8..... 2

STATE STATUTES AND LEGISLATIVE MATERIALS

Sen. Comm. Hr’g on SB 97 Before Sen. Comm. on Loc. Gov’t (Jan. 12,
1999)..... 18

STATE REGULATIONS AND ADMINISTRATIVE MATERIALS

MCA § 2-3-101 2

 § 7-1-4111..... 11, 12

 § 75-2-311..... 16, 17

 § 76-1-103(4) 15

 § 76-1-601..... 12, 17

 § 76-1-602..... 2, 17

MCA § 76-1-603	17
§ 76-1-606.....	15, 18
§ 76-2-201.....	15, 18
§ 76-2-301.....	2, 11, 12
§ 76-2-310.....	2, 11, 12, 13-14
§ 76-2-311.....	<i>passim</i>
§ 76-2-311(2)	13

RULES

Mont. R. Civ. P. 56.....	9
--------------------------	---

OTHER AUTHORITIES

Laurel Mun. Code 1.20.010(f).....	4, 14
17.08.620	14
17.44.020	5

INTRODUCTION

The Thiel Road Coalition, Northern Plains Resource Council, and Montana Environmental Information Center (Plaintiffs) filed this declaratory action seeking clarity over which government entity—the City of Laurel or Yellowstone County—maintains zoning jurisdiction over a 36-acre property where NorthWestern Energy is actively constructing a 175-megawatt methane gas-fired power plant.

NorthWestern's property is situated within the City of Laurel's extraterritorial zoning jurisdiction and was previously zoned, in part, as agricultural open space—a designation that would prohibit the building and operation of NorthWestern's power plant. Yet, after months of unsuccessfully lobbying the Laurel City Council for a zone change to accommodate its heavy industrial use, NorthWestern abandoned its rezoning request and is now plowing forward with construction of the plant in violation of the current zoning designation and without government oversight. Meanwhile, the City of Laurel, after previously recognizing its zoning jurisdiction in the impacted area, suddenly disclaimed its enforcement authority over its extraterritorial zoning area, originally alleging that Yellowstone County has zoning jurisdiction in the area, even though Yellowstone County has admitted that it lacks authority and jurisdiction to zone in the area.

While this dispute continues, Plaintiffs, who live and recreate near the plant site, are directly impacted by NorthWestern's 24-hour construction of its plant. Because the City has abandoned its zoning authority, Plaintiffs have no avenue to participate in local government process to oppose NorthWestern's heavy industrial use in an area zoned for open agriculture. Troublingly, the City has actively dismissed and discouraged Plaintiffs' attempts to raise concerns about the proposed plant. Plaintiffs are now left without any forum to advocate against the building of this plant which, if constructed, would severely impair Plaintiffs' members quality of life. The plant's 18 exhaust stacks would not only dominate Plaintiffs' residential and recreational viewsheds, but would also generate constant noise emanating beyond the property's boundary, require 24-hour lighting that would obscure Montana's rural night sky, and emit a steady stream of hazardous pollutants.

Legal clarity is urgently necessary to allow Plaintiffs—including City of Laurel residents who would be directly harmed by the plant’s construction—to direct their concerns and advocacy to the appropriate governing body, and to ensure that the governmental body in control of zoning jurisdiction can act confidently in applying and enforcing its zoning regulations on NorthWestern’s parcels. Absent such relief, NorthWestern will continue constructing its massive power plant on the banks of the Yellowstone River without the proper zoning designation and without oversight from the governing authority.

LEGAL BACKGROUND

The Montana Supreme Court has long recognized that local government planning, including the adoption of zoning laws, promotes public health, safety, and the general welfare of a community “by separating incompatible land uses, such as industrial and residential.” *Williams v. Bd. Of Cnty. Commr’s*, 2013 MT 243, ¶ 42, 371 Mont. 356, 308 P.3d 88. To help ensure compatible land use, Montana law empowers local municipalities to restrict the use of property inside of and within a proscribed distance outside of city limits, referred to as the “extraterritorial area,” for both subdivision and zoning jurisdiction. MCA §§ 76-2-301, -310, -311.

A city claims its zoning jurisdiction over an extraterritorial area by adopting a growth policy that includes the jurisdictional area. *Id.* The importance of an underlying growth policy as a prerequisite to a city or county exercising jurisdiction in the extraterritorial area cannot be overstated. Importantly, the process for adopting a growth policy includes opportunities for public participation in local government decision-making, which allows Montanans to exercise their constitutional right to participate. Mont. Const. Art. II, Sec. 8; MCA § 2-3-101 (legislative intent to secure the right of Montanans to participate in government decision-making); MCA § 76-1-602 (public hearing requirements for planning boards adopting growth policies). Indeed, the Montana Supreme Court recognizes growth policies as “the preeminent planning tool” available to governing bodies, lauding the policies as “the product of extensive study, deliberation, and *public involvement* ... [resulting in a] final product [that] is a well thought out, long range,

detailed and comprehensive planning document which takes into consideration past, present, and anticipated land uses in the jurisdiction and which is debated and adopted in an atmosphere that is free, to the extent possible, from the influence of special interests and political expedience.” *Heffernan v. Missoula City Council*, 2011 MT 91, ¶ 76, 360 Mont. 207, 255 P.3d 80 (citation omitted) (emphasis added).

Recognizing the importance of these growth policies, the Montana Supreme Court continues to hold that without the prerequisite growth policy in effect “counties have no authority to institute permanent zoning classifications.” *Bridger Canyon Prop. Owners’ Ass’n, Inc. v. Plan. & Zoning Comm’n for Bridger Canyon Zoning Dist. & 360 Ranch Corp.*, 270 Mont. 160, 168–70, 890 P.2d 1268, 1273 (1995) (holding that a growth policy, formerly described as a “master plan,” is a condition precedent to permanent zoning) (quoting *Little v. Bd. Of Cnty. Comm’rs of Flathead Cnty.*, 193 Mont. 334, 350–53, 631 P.2d 1282, 1291–93 (1981)).

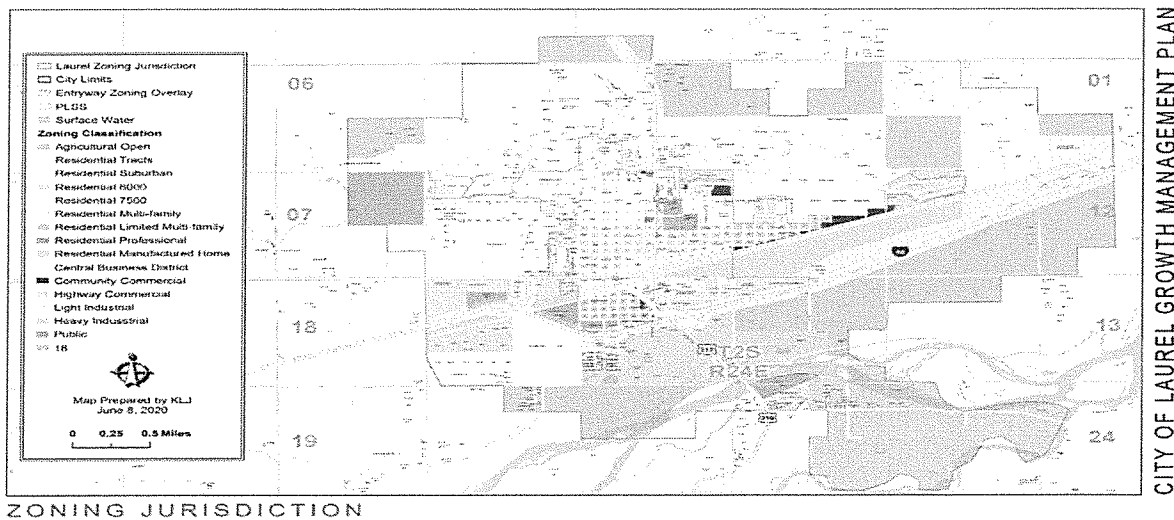
UNDISPUTED FACTS

I. CITY AND COUNTY LAND USE PLANNING

Both the City of Laurel and Yellowstone County have adopted growth policies to guide land use decisions within their jurisdictional areas, but only the City’s growth policy extends jurisdiction to the extraterritorial area within one mile of Laurel city limits. In 1976, the City of Laurel entered into an interlocal agreement adopting a city-county planning board (“Planning Board”) between the City of Laurel and Yellowstone County to act as a zoning commission for the Board’s jurisdictional planning area, which includes the City of Laurel and extends 4.5 miles beyond the city’s limits. *See* Galvan Decl. (attached as Ex. F), Ex. 8 at 6–9. This interlocal agreement was amended in 2014 to update some of the membership requirements of the Planning Board, which includes members living within the City of Laurel, appointed by the Laurel City Council, and members living outside of the city’s limits, but within the Board’s jurisdictional area, who are appointed by the Yellowstone County Board of Commissioners. *Id.* According to the interlocal agreement, it is the function of the Planning Board to “provide planning

recommendations” to the City and the County and “prepare a growth policy.” *Id.* at 7.

Beginning in 2019, the Planning Board, in conjunction with the City of Laurel Planning Department, prepared a growth policy for the City of Laurel. Galvan Decl., Ex. 1 at 4. In 2021, the City of Laurel adopted that growth policy, which explicitly recognizes the City’s zoning jurisdiction as extending “approximately one mile outside the municipal city limits,” as depicted on the map below. *Id.* at 28; *see also* Galvan Decl., Ex. 12 (resolution R21-01 adopting 2020 Growth Policy). Consistent with its growth policy, the City has adopted regulations that authorize the City to exercise extraterritorial zoning jurisdiction. For example, the Laurel Zoning Code notes that it applies “to all lands in the incorporated limits of the city *and any additional territory authorized by ... state statutes,*” and states that Laurel’s “[z]oning and subdivision ordinances and regulations may be enforced within the corporate limits of the city *and within one mile beyond its corporate limits.*” Laurel Mun. Code 1.20.010(f) (emphasis added).



Source: City of Laurel website, https://cityoflaurelmontana.com/sites/default/files/fileattachments/planning/page/133/laurel_zoning_jurisdiction_2020.pdf (last visited Feb. 15, 2023)

Zoning maps recorded with the Yellowstone County Clerk and Recorder’s Office also reflect zoning designations adopted within this extraterritorial area, including on the property where NorthWestern Energy has proposed to build a gas

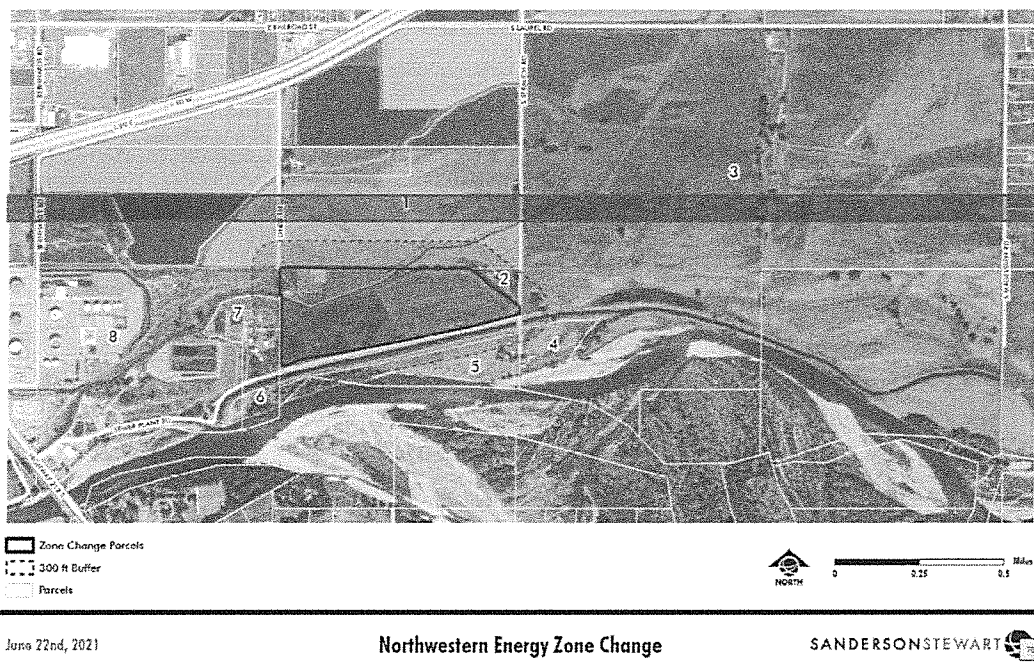
plant. Galvan Decl., Ex. 10 at 4–5. Yellowstone County denies adopting any zoning designations in Laurel’s extraterritorial area. Cnty. Answ. at ¶ 24; *see also* Galvan Decl., Ex. 10 at 4–5.

Yellowstone County likewise has not adopted any growth policy that would divest the City of its zoning authority over the extraterritorial area. Galvan Decl., Ex. 10 at 4–5. Indeed, Yellowstone County’s controlling Growth Policy specifically recognizes that Laurel’s “zoning jurisdiction extends approximately one mile outside the city limits” and disclaims its authority over Laurel, stating that “[t]he town of Laurel lies *outside* the Yellowstone County Planning Board’s jurisdiction and *is not covered* in the Growth Policy.” *See* Galvan Decl., Ex. 2 at 21 (emphasis added); *see also id.* at Ex. 10 at 3. For nearly two decades, Yellowstone County’s growth policies have consistently recognized Laurel’s jurisdiction in the extraterritorial area. *See* Galvan Decl., Ex. 10 at 4–5; *see also id.* at Ex. 2; *id.* at Ex. 3. The County further admits that it has never adopted a growth policy that extends County jurisdiction into the extraterritorial area around the City of Laurel, nor has it adopted any lawful zoning or subdivision regulations in that area that would divest the City of its jurisdiction over the one-mile extraterritorial area. Galvan Decl., Ex. 10 at 4–5.

II. NORTHWESTERN ENERGY’S GAS-FIRED PLANT

At the center of this zoning controversy is NorthWestern Energy’s construction of a 175-megawatt gas-fired power plant on a previously undeveloped 36-acre property on the north bank of the Yellowstone River, situated just outside the City of Laurel. *See* NorthWestern Answ. at ¶ 19. The proposed construction site consists of two parcels: Parcel 2, COS 1677, S15, T02S, R24E; and Parcel 1 COS 1239, S15, T25, R24E. Galvan Decl., Ex. 7 at 66. The parcels, which sit within one-mile of Laurel city limits, are currently zoned, according to official zoning maps maintained by Yellowstone County, partially as “heavy-industrial” use and partially as “agricultural open” use. Galvan Decl., Ex. 10 at 4–5. Under Laurel municipal law, these parcels would need to be rezoned for NorthWestern to lawfully build its power plant. Laurel Mun. Code 17.44.020. The parcels are surrounded by agricultural uses to the north and the east, and a wastewater treatment plant to the

west. See Galvan Decl., Ex. 7 at 74 (map submitted by NorthWestern showing surrounding uses of plant); *id.* at Ex. 9 at 9, 15, 16. To the south, the parcels are bordered by the Yellowstone River, across from which lie the City of Laurel’s Riverside Park, a public boat launch, and a rural residential area. *Id.* Several members of Plaintiff Thiel Road Coalition live in a residential neighborhood directly across the river from the power plant, which, if finalized, would be in plain view from their homes. Felder Decl. at ¶ 6 (attached as Ex. A); Ronan Decl. at ¶ 5 (attached as Ex. B).



Source: Galvan Decl., Ex. 7 at 70 (NorthWestern App. for Zone Change)

The plant, which is proposed to be built approximately 300 feet from the river’s edge, includes the construction of eighteen 9.7 megawatt-electrical combustion engines, each with its own seven-story-tall exhaust stack. Galvan Decl., Ex. 9 at 3, 6, 13. These exhaust stacks would loom over the river corridor, obstructing and dominating Plaintiffs’ residential and recreational views. Felder Decl. at ¶ 7; Ronan Decl. at ¶ 5. The Department of Environmental Quality noted in its environmental assessment for the plant that the plant would also alter the surrounding landscape in several ways, including that it would emit harmful

emissions into the air that would negatively impact the climate; be continuously lit by industrial lighting; and generate noise well above what is typical for the area. Galvan Decl., Ex. 9 at 12–13, 17–19.

III. CITY OF LAUREL ZONING PROCEEDINGS

NorthWestern initially recognized the City’s zoning authority over the property where it intends to build its gas plant. *See* Galvan Decl., Ex. 7. Beginning in the summer of 2021, NorthWestern began pursuing a zone change request with the City for its two parcels. *See* NorthWestern Answ. at ¶ 27. At the same time, NorthWestern also made representations to agency officials at the Department of Environmental Quality that it believed its parcels were “100% within [the City of Laurel’s zoning] jurisdiction.” *See, e.g.*, Krum Decl. (attached as Ex. C.), Ex. C1 (Email from NorthWestern’s Manager for Lands and Permitting to Mont. Dept. of Env’t Quality); Galvan Decl., Ex. 7 (NorthWestern’s Zone Change App.).

The Laurel City Council took NorthWestern’s zone change application under consideration and proceeded to exercise its jurisdiction over NorthWestern’s parcels. After the city-county Planning Board reviewed NorthWestern’s request, beginning in early October 2021, the City Council discussed NorthWestern’s rezoning application at several public meetings. *See* City Answ. at ¶¶ 30, 33. Ultimately, the City Council set NorthWestern’s zone change application for a public hearing in mid-November. City Answ. at ¶¶ 30, 33; *see also* Galvan Decl., Ex. 5 at 1–2¹; *id.* at Ex. 7 at 3.

After learning about NorthWestern’s application, Plaintiffs began immediately advocating against the plant, including by attending several meetings before the Council and providing public comment regarding their concerns about the plant. Felder Decl. at ¶ 13; Fitzpatrick Decl. at ¶¶ 8–9 (attached as Ex. D); Hedges Decl. at ¶ 10 (attached as Ex. E); Ronan Decl. at ¶ 10; Krum Decl. at ¶¶ 11–12. On November 23, 2021—after several weeks of Plaintiffs appearing before the City

¹ Page numbers identified in this exhibit refer to PDF page numbers.

Council to advocate against NorthWestern’s requested zone change—the City Council voted unanimously to send NorthWestern’s application back to the city-county Planning Board for further review. *See City Answ.* at ¶¶ 30, 33; Galvan Decl., Ex. 5 at 10–11.

Yet in December 2021, only a few weeks after the City Council voted to remand NorthWestern’s zone change request—and despite months of pursuing its zone change request in front of the City Council—NorthWestern abruptly withdrew its rezoning application from City consideration without explanation and commenced construction of the plant. *NorthWestern Answ.* at ¶ 36. The plant is currently under construction on land designated on official zoning maps maintained by Yellowstone County as zoned partially for “agricultural open” use. Galvan Decl., Ex. 10 at 3.

In the immediate aftermath of NorthWestern’s withdrawal, Yellowstone County’s City-County planner continued to represent that the County had no zoning jurisdiction on zoning matters outside of Laurel city limits, extending 4.5 miles into the County. *See Cnty. Answ.* at ¶ 37. Meanwhile, the Laurel City Attorney issued a legal memorandum taking the position that the City lacks jurisdiction to enforce zoning designations in the extraterritorial area, despite the city’s municipal code expressly granting the city zoning enforcement authority in the extraterritorial area. *See City Answ.* at ¶ 38; *see also* Galvan Decl., Ex. 11 (Laurel City Attorney legal memorandum). In that memorandum, the City also advised the City Council to not undertake any enforcement of its zoning designations in the extraterritorial area. *Id.* The City Attorney followed up this memorandum with a letter to members of one of the Plaintiff organizations, stating that the “general ‘lay-person’ can[not] appropriately articulate and understand” the zoning issues, asking them to “cease and desist” organizing constituents, and requesting them to stop communicating with elected officials and staff over this matter. *See City Answ.* at ¶ 44; *see also* Fitzpatrick Decl., Ex. D1.

To date, Plaintiffs have been unable to obtain clarity on which entity holds zoning jurisdiction over NorthWestern’s parcels, with both the City and the County

denying any zoning jurisdiction over the extraterritorial area. Left without an outlet for public participation in the local government zoning process, Plaintiffs filed this challenge, asking the Court to clarify which public entity maintains zoning jurisdiction and enforcement authority for the two parcels where NorthWestern is currently building its power plant.

STANDARD OF REVIEW

In determining whether to grant this motion for summary judgment, the Court must determine whether any “genuine issues of material fact exist” and if “the moving party is entitled to judgment as a matter of law.” *Quigg v. Slaughter*, 2007 MT 76, ¶ 14, 336 Mont. 474, 154 P.3d 1217; Mont. R. Civ. P. 56. Where, as here, no issue of material fact exists, the Court “must simply identify the applicable law, apply it to the uncontroverted facts, and determine who prevails.” *Broadwater Dev., LLC. v. Nelson*, 2009 MT 317, ¶ 15, 52 Mont. 401, 219 P.3d 492.

STANDING

All Plaintiffs have associational standing and Plaintiffs MEIC and NPRC have organizational standing to bring this case as established by the attached declarations. *See* Felder Decl.; Krum Decl.; Ronan Decl.; Hedges Decl.; Fitzpatrick Decl.; *see also Park Cnty. Env't Council v. Mont. Dep't of Env't Quality*, 2020 MT 303, ¶ 22, 402 Mont. 168, 477 P.3d 288. First, each Plaintiff has associational standing because their members have “alleged a threatened injury to their property, recreational, and aesthetic interests.” *Heffernan* ¶¶ 38, 41, 46 (finding standing for a neighborhood association to challenge proposed subdivision where members were concerned about increased noise and traffic, diminished property values, and decreased wildlife presence in the vicinity of their homes). For Thiel Road, MEIC, and NPRC members who live in the neighborhood immediately across the Yellowstone River from the proposed gas plant, members who recreate on the Yellowstone River, and other members who live in and around the City of Laurel, the potential for noise and visual impacts of the plant threatens to rob them of the tranquility and solitude of the area that makes it a desirable place to live and visit and could diminish their property values. Already, these members have experienced

the impacts of NorthWestern’s rushed efforts to finish constructing the plant, hearing the nearly constant noise of construction and experiencing the nearly constant lighting. Felder Decl. at ¶¶ 6–8, 11–12; Ronan Decl. at ¶¶ 5–8.



Source: Galvan Decl., Ex. 13 (Photo of NorthWestern Energy Laurel gas plant construction (Nov. 8, 2022))

Members of each of these organizations were so concerned about their property values and quality of life that they felt compelled to participate in the government process considering NorthWestern’s zone change request to voice these concerns. But these concerned citizens were abruptly stripped of their public participation opportunities when the City of Laurel changed course and abandoned its zoning authority over NorthWestern’s construction site and the City Attorney requested that they stop communicating with local elected city officials and city staff over this matter. Krum Decl. at ¶ 13; Felder Decl. at ¶ 14; Ronan Decl. at ¶ 10; Fitzpatrick Decl. at ¶ 10; Hedges Decl. at ¶ 10.

MEIC and NPRC also each has organizational standing to “file suit on its own behalf to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy ...” as established in the attached declarations. *Heffernan* ¶ 42; *see* Hedges Decl.; Fitzpatrick Decl. MEIC and

NPRC sufficiently allege their investment in the “protection of land, air, water, and communities impacted by fossil-fuel energy projects and other industrial development,” Compl. ¶ 14, as well as their organizational interests in “providing the information and tools necessary to give citizens an effective voice in decisions that affect their lives” *id.* at ¶ 13; *see also* Hedges Decl. at ¶ 3; Fitzpatrick Decl. at ¶ 3. The legal limbo created by the City and the County has paved the way for NorthWestern to construct its plant without government oversight or public input and harms the organizations and their members. These organizations—which exist to protect the environment and to give citizens in Montana a voice in matters impacting their lives—are now silenced because of the City’s sudden abandonment of its zoning jurisdiction and can no longer participate in *any* process because that process was unlawfully relinquished. Plaintiffs’ injuries would be alleviated in this case, through a court order providing legal certainty as to which entity—the City or the County—has planning jurisdiction in the area where NorthWestern is building its plant. The Court’s determination would allow Plaintiffs and their members to direct their advocacy to the appropriate governing body.

ARGUMENT

I. THE CITY OF LAUREL HAS ZONING JURISDICTION IN THE EXTRATERRITORIAL AREA AROUND THE CITY

The City of Laurel has met all the legal requirements to adopt zoning jurisdiction in the extraterritorial area where NorthWestern plans to build and operate its gas plant. Under Montana law, second-class cities, like the city of Laurel, may extend zoning regulations up to two miles beyond city limits. MCA §§ 76-2-301; 76-2-310; 76-2-311; 7-1-4111 (second class city requirements). To establish and exercise its extraterritorial zoning jurisdiction, the City was required to meet two legal prerequisites. First, the City was required to adopt a growth policy that includes the extraterritorial area. MCA § 76-2-310. Second, the City was required to form either a city-county planning board whose jurisdictional area includes the area to be regulated or increase its city planning board to include two representatives from the unincorporated area that is to be affected. MCA § 76-2-311. The City of

Laurel readily satisfied these two legal requirements to extend its lawful zoning jurisdiction over the one-mile extraterritorial area outside the City limits.

Specifically, as shown by the undisputed facts and discussed in further detail below, the City of Laurel’s adoption of a growth policy that expressly claims jurisdiction over land within one mile of the City limits and its creation of the Laurel-Yellowstone County City-County Planning Board satisfy the legal requirements for the City to exercise extraterritorial zoning jurisdiction. MCA §§ 76-2-301; 76-2-310; 76-2-311; 7-1-4111 (second class city requirements). More, the City’s behavior—including its adoption of a municipal code recognizing its extraterritorial jurisdiction and its actions in processing NorthWestern’s zoning change application—only further solidifies the City’s intent to exercise jurisdiction in the extraterritorial area.

A. The City Created a Growth Policy that Extended its Zoning Jurisdiction and Authority to the Extraterritorial Area.

In 2019, the city-county Planning Board and the city Planning Department created a growth policy for the City of Laurel that explicitly includes Laurel’s zoning authority over the one-mile extraterritorial area outside the City limits. Galvan Decl., Ex. 1 at 4. This growth policy, which was adopted in 2021 by the Laurel City Council extended the City’s zoning jurisdiction “approximately one mile outside the municipal city limits.” *Id.* at 28; *see* MCA § 76-2-310 (growth policy requirement for city to exercise jurisdiction within two miles of city limits); *see also* Galvan Decl., Ex. 12. This growth policy was adopted in accordance with the legal requirements governing growth policies and contains each of the necessary elements of a legal growth policy. MCA § 76-1-601; *see also* Galvan Decl., Ex. 1 at 3 (referring to the applicable law and describing the growth policy as a “statutory necessity”).

Accordingly, the City of Laurel satisfies the first requirement for exercising extraterritorial jurisdiction in the one-mile area around the City limits by adopting a growth policy that specifically includes the extraterritorial area within the City’s zoning jurisdiction.

B. The City Created a City-County Planning Board to Exercise Zoning Jurisdiction in the Extraterritorial Area.

The City of Laurel also met the second legal requirement for extending its jurisdiction in the one-mile extraterritorial area by creating and adopting a city-county planning board as required under MCA § 76-2-311(2).

In 1976, the City of Laurel and Yellowstone County entered into an interlocal agreement forming a city-county planning board whose jurisdictional area includes the City of Laurel and 4.5 miles outside of the city. *See* City Answ. at ¶ 53; *see also* Galvan Decl., Ex. 12. In 2014, the City amended its original interlocal agreement, retaining the city-county planning board. *See* Galvan Decl., Ex. 12.² This Board—both as originally adopted and as amended—includes official representatives from the County and the City, as well as citizen members, some of whom must live outside of the City limits but within the jurisdictional area of the Board. *See* Galvan Decl., Ex. 8. More, while the City was not required to do so by virtue of the creation of a city-county planning board, the City nonetheless also met the alternative requirement of exercising its extraterritorial jurisdiction by including representatives on the Planning Board who reside in the unincorporated area to be affected. MCA § 76-2-311(2); *see* Galvan Decl., Ex. 8 at 2.

The City's adoption of a city-county planning board that includes the extraterritorial area, in conjunction with its adoption of a growth policy including the extraterritorial area, satisfies the legal prerequisites to the City exercising its extraterritorial jurisdiction and authorized the City to treat property situated in the

² While the City chose to adopt its city-county Planning Board through an interlocal agreement, it is worth noting that the Montana Supreme Court has expressly held that “even without [an interlocal agreement] in place, [a] City ha[s] the power under § 76-2-311, MCA, to zone in the donut up until the County determine[s] to adopt its own regulations” so long as the city meets the legal requirements to do so. *Phillips v. City of Whitefish and Bd. of Comm’rs of Flathead Cnty.*, 2014 MT 186, ¶ 43, 375 Mont. 456, 472, 330 P.3d 442, 454. Accordingly, legal issues related to interlocal agreements are irrelevant, and not belabored here.

extraterritorial area as though it were situated within the City's corporate limits. MCA §§ 76-2-310, -311.

C. The City has Expressly Exercised its Extraterritorial Jurisdiction, and Now Cannot Ignore its Jurisdiction for its Convenience.

After creating the required growth policy and planning board, the City further exercised its extraterritorial zoning jurisdiction and authority by enacting zoning maps, zoning designations, and municipal code provisions—demonstrating the City's clear intent to exercise extraterritorial jurisdiction. For example, zoning maps adopted by the City in 2020, including the map excerpted *supra*, *Undisputed Facts*, claim city jurisdiction within one mile of the City limits. *See* Galvan Decl., Ex. 6 at 70–71 (NorthWestern Zone Change App. zoning maps). Similarly, maps maintained with the County depict zoning designations adopted by the City within the extraterritorial area around the city, including over the parcels where NorthWestern's plant would be situated. *See*, Galvan Decl., Ex. 10 at 4–5.

The City has also repeatedly affirmed its intent to exercise extraterritorial zoning jurisdiction through its adoption of municipal code provisions that claim the City's authority to zone in the extraterritorial area. For example, the City's zoning code applies to “to all lands in the incorporated limits of the city *and any additional territory authorized by ... state statutes*,” which would include the extraterritorial authorizations in the Montana code. Laurel Mun. Code 17.08.620 (emphasis added). Similarly, Laurel's municipal code authorizes that all “[z]oning and subdivision ordinances and regulations may be enforced within the corporate limits of the city *and within one mile beyond its corporate limits*.” *Id.* at 1.20.010(f) (emphasis added).

In addition to repeatedly recognizing City extraterritorial zoning jurisdiction in various enactments, City officials have also behaved as though the City of Laurel has jurisdiction in the extraterritorial area, including over NorthWestern's parcels. For example, the Laurel City Council, when presented with NorthWestern's zone change application within the extraterritorial area, chose to process that request, discussing the request at several Council meetings before ultimately referring the

application back to the city-county Planning Board for further review. *See* City Answ. at ¶¶ 30, 33 (admitting that NorthWestern’s Zone Change Application was an Agenda Item in front of City Council on City Council Meetings scheduled for October 12, 2021 and November 23, 2021); Galvan Decl., Ex. 5 at 10–11 (City Council voted unanimously to remand NorthWestern’s zoning request to the zoning commission). It was not until *after* NorthWestern abruptly withdrew its zone change request that the City Attorney began to publicly disclaim the City’s jurisdiction to enforce zoning regulations in the extraterritorial area.

The City of Laurel’s jurisdiction in the extraterritorial area around the City is legally sound and readily evidenced in the City’s governing documents and behavior. For each of these reasons, the Court should find that the City has jurisdiction to apply its zoning designations in the extraterritorial area around the City of Laurel.

II. YELLOWSTONE COUNTY DOES NOT HAVE ZONING AUTHORITY IN THE EXTRATERRITORIAL AREA AROUND LAUREL

While it is clear that the City of Laurel has zoning jurisdiction in the extraterritorial area around the City, it is equally clear—and Yellowstone County readily admits—that the County *does not* have zoning jurisdiction in the extraterritorial area around Laurel. Under Montana law, county jurisdiction to enact land-use regulations is not assumed. Rather, the law requires that the County, like the City, must take affirmative steps to enact land-use regulations. *See* MCA § 76-1-606 (requiring a growth policy before a county adopts subdivision regulations); MCA § 76-2-201 (authorizing county zoning consistent with the “master plan,” which is synonymous with growth policy, MCA § 76-1-103(4)). The law also includes special requirements for the County to claim zoning or subdivision regulations in the extraterritorial areas immediately abutting municipalities.

Where, as here, a city has claimed jurisdiction in its extraterritorial area, the only way a county can divest a city of its extraterritorial jurisdiction is by, first, adopting a growth policy including the extraterritorial area *and*, second, promulgating lawful subdivision or zoning regulations covering the extraterritorial

area. MCA § 75-2-311. The County has failed to meet either of these requirements and recognizes that it does not have jurisdiction over the Laurel extraterritorial area.

A. The County Admits that it has Never Adopted a Growth Policy that Asserts Jurisdiction Over Laurel’s Extraterritorial Jurisdiction.

In order to exercise zoning or subdivision jurisdiction over the extraterritorial area around the City of Laurel, the County would have to first adopt a growth policy that includes the extraterritorial area. MCA § 75-2-311. And while the County has adopted growth policies, the County admits that it has never adopted a growth policy that indicates an intent to exercise County jurisdiction within the one-mile extraterritorial area around Laurel. *See Galvan Decl., Ex. 10 at 4.* To the contrary, the County admits that all of the growth policies the County has adopted for the past nearly two decades have either been entirely silent on the County’s jurisdiction in Laurel or, more importantly, specifically disclaimed County jurisdiction to enact land-use regulations. *See Galvan Decl., Ex. 10 at 4–5.* For example, the County admits that its 2003 Growth Policy specifically disclaims County zoning authority in the extraterritorial area around Laurel, stating that “[t]he town of Laurel lies *outside* the Yellowstone County Planning Board’s jurisdiction and *is not covered* in the Growth Policy,” and describing Laurel’s “zoning jurisdiction [as] extend[ing] approximately one mile outside the city limits.” *Galvan Decl., Ex. 2 at 21* (emphasis added); *see also Galvan Decl., Ex. 10 at 4.* The County further admits that its 2008 Growth Policy likewise disclaims County jurisdiction in the extraterritorial area around Laurel, largely replicating its 2003 Growth Policy’s description of Laurel’s extraterritorial zoning jurisdiction. *Galvan Decl., Ex. 3 at 31* (disclaiming County jurisdiction over the “Laurel planning area”); *see also Galvan Decl., Ex. 10 at 4.*

In the absence of a controlling County growth policy, the County cannot legally adopt any regulations—zoning or subdivision—in the extraterritorial area around Laurel. Put another way, unless and until the County adopts a growth policy covering the area, Laurel retains jurisdiction in the extraterritorial area.

And, while the County indicated its future intent to pass a new growth policy to exert its zoning jurisdiction in the extraterritorial area around Laurel, this future intent does not impact the City's current zoning jurisdiction and authority over the area. Creating and passing a new growth policy is a comprehensive, time-consuming endeavor, as growth policies must legally include numerous elements, including projected growth trends, goals and objectives, and strategies for development and implementation, all of which require forethought, study, and research. MCA § 76-1-601. Moreover, the process of adopting a growth policy also requires adequate time for providing notice to the public and holding a public hearing, as well as time to consider the recommendations and suggestions received from the public. *Id.* at §§ 76-1-602, -603. Realistically, the process would take several months and potentially could carry on for years with no guarantee that the County will ever adopt the policy. In the meantime, the City holds zoning jurisdiction and enforcement authority in the extraterritorial area.

B. The County Admits that it Has Not Enacted Any Lawful Subdivision or Zoning Regulations in the Extraterritorial Area Around Laurel.

The County has also not met the second legal prerequisite to exercise extraterritorial jurisdiction, which is to enact zoning regulations. The County readily admits that it has not enacted lawful subdivision or zoning regulations in the extraterritorial area outside Laurel city limits in accordance with MCA § 75-2-311. Galvan Decl., Ex. 10 at 2. While the County has adopted subdivision regulations, it likewise admits that those regulations were unlawful, and cannot be enforced, because of the lack of a growth policy covering the area to be regulated. *Id.* at 2, 4; *see also State ex rel. Christian, Spring, Sielbach & Assocs. v. Miller*, 169 Mont. 242, 245–46, 545 P.2d 660, 662 (1976) (declaring zoning regulation null and void for the failure to observe the proper procedures upon its enactment); *see also State ex rel. Diehl Co. v. City of Helena*, 181 Mont. 306, 314, 593 P.2d 458, 462 (1979) (same).

The County's unlawful subdivision regulations also illustrate that a growth policy is required to effectuate land use regulations. *See* MCA §§ 76-1-606; 76-2-201. The necessity for a growth policy to precede a County's enforcement of subdivision and zoning regulations is cornerstone to the Legislature's statutory scheme for land-use planning, as demonstrated by the repetition of the requirement throughout the statute. *Id.* The legislative sponsors of key provisions of Montana's land-use statute made clear that underlying and animating the growth policy requirement was a concern about sequencing, explaining that "planning needs to happen *before* the subdivision comes before the board as subdivision regulations are not the appropriate place to address growth the intent behind requiring growth policies was animated by." *See also* Sen. Comm. Hr'g on SB 97 Before Sen. Comm. on Loc. Gov't (Jan. 12, 1999) (transcribed statement of bill sponsor Sen. Lorents Grosfield) (emphasis added).

What lies at the heart of the legal issues in this case, and ultimately resolves these issues, is the County's admission that it has taken neither of the legal steps necessary to exercise zoning jurisdiction in the extraterritorial area around Laurel. The County cannot exercise subdivision or zoning regulation in the extraterritorial area around Laurel because it admits that it has not adopted a growth policy covering the area. In the absence of an applicable growth policy, the County is legally prohibited from exercising zoning authority in the extraterritorial area. *See* MCA § 76-2-311 ("A city or town council or other legislative body may enforce regulations [in the extraterritorial area] ... *until the county board adopts a growth policy* ... and accompanying zoning or subdivision resolutions that include the area"); *see also Phillips* ¶ 43 ("[a] City ha[s] the power under § 76-2-311, MCA, to zone in the donut up until the County determine[s] to adopt its own regulations."). The County does not dispute this legal interpretation and, instead, admits that it does not have legal authority to adopt either zoning or subdivision regulations within the extraterritorial area around the City of Laurel. *See Galvan Decl.*, Ex. 10 at 2, 4.

For each of these reasons, the County does not have jurisdiction in the area, and, accordingly, the City's extraterritorial zoning authority remains intact.

CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court settle this uncertainty in zoning jurisdiction, declaring that the undisputed facts before the Court demonstrate that, as a matter of law, the City has zoning jurisdiction in the one-mile extraterritorial area surrounding the City of Laurel.

Respectfully submitted this 16th day of February, 2023.



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Exhibit A

DECLARATION OF KASEY KRUM FELDER

I, Kasey Krum Felder, hereby declare as follows:

1. I reside at 1434 McMullen Lane in Yellowstone County, just outside the City of Laurel, Montana.

2. I am a member of Theil Road Coalition, Northern Plains Resource Council, and Montana Environmental Information Center (MEIC). I have been a recurring member of Northern Plains Resource Council since 2010. I wanted to support an organization that cares about our environment and the local community. I have been a member of the Thiel Road Coalition and MEIC since 2021.

3. I grew up in Laurel and I have lived here for most of my life. In 2011, my husband and I moved to our property just south of the Yellowstone River in close proximity to the City of Laurel, so our child could play in the dirt with a country upbringing like my own. We love our neighborhood for its rural character, close community, and proximity to the river. Although we live close to town, our neighborhood feels remote. We regularly see wildlife such as turkeys, moose, deer, fox, coyotes, mountain lions, black bears, beavers, and nesting eagles.

4. When we purchased our property, I felt that we had a little slice of paradise just a few miles from town. We have a few neighbors, none of which are too close in proximity. We enjoy hosting family events because it is so peaceful at our house. Parts of our home were built in 1910; our tree row is from the 1950's; we have a rugged old barn that has seen many decades pass and we're lucky enough to be the third owners. Our home is surrounded by flower beds, frequented by many

songbirds and is a truly relaxing place to live. I have been fortunate enough to watch birds migrate through our property every spring. My daughter has learned to love being outside in part to living at our home on McMullen Lane. Our summer days are spent outdoors enjoying the paradise we have.

5. My family has been operating a grape vineyard on our property since 2014. Our long-term goal is to start a winery here in Laurel and be able to list ourselves as a place to visit with the state of Montana's tourism office, in addition to hosting weddings and events at our property. We have been expanding our operation and the variety of grapes we grow each year as we work toward that goal.

6. Our residential neighborhood is directly across the river from Northwestern Energy's proposed plant, which is currently under construction. The plant, when fully constructed, is to be just 300 feet from the river's edge and includes the construction of eighteen 9.7 megawatt-electrical combustion engines, each with its own seven-story-tall exhaust stack, which would obstruct my residential and recreational viewshed.

7. The plant already has and will continue to have negative visual impacts to my family, as well as our entire community. The size of the plant stacks, in addition to the 24-hour exterior lighting of the power plant will impede a nighttime hobby of mine: stargazing. On a clear summer night, my family and I can view the night sky and constellations without difficulty. If the plant gets built, all of my stargazing opportunities and evenings of learning more about astronomy taken away.

8. If the plant does get built to completion, it will be operating 24 hours a day, 7 days a week, 365 days per year. While I sometimes hear the railroad when trains are passing through and it's possible to hear traffic on the new bridge on Highway 212, these noises come and go. In contrast, the power plant will never shut off, and the constant noise will harm our solitude and tranquility in Laurel. Already, I am experiencing the negative impacts of construction, hearing constant noise and seeing constant lighting from my property has negatively impacted my life.

9. If the power plant is constructed, my property value will decline, and our whole town will suffer from a decline in home property values. If the plant gets built, I do not believe my property will be as valuable to future buyers. The plant, if constructed, would also greatly impact my ability to develop my winery and wedding events business on my property.

10. I intend to raise my child in our current home near the Yellowstone River on McMullen Lane. Our family intends to continue our agriculture endeavor in the vineyard to help showcase cold hardy grape varieties that are successfully grown in Montana. I intend to enjoy the wildlife viewing opportunities and recreation opportunities near my home for my entire life.

11. I have become angry about the prospect of having a power plant as my neighbor. I find myself looking north, now seeing the construction progressing and feeling concerned about what will become of this area if the power plant is finished.

My ability to enjoy my property and location have decreased as I watch the plant being built right next door.

12. Regrettably, our community has already been scarred and has suffered from negative aesthetics as a result of construction that has already taken place. Our privacy and tranquility have already been jeopardized. I specifically moved to this location because of the river and country feel of the area, and the construction of the power plant has degraded every single aspect that I enjoy about this area and our community.

13. I have been actively participating in local government processes regarding the zoning of the parcels where the power plant is being built. I was first aware of the plant moving forward with construction at its current location in October 2021. From that date to present I have been attending local, county and state meetings regarding a natural gas pipeline associated with the power plant and the power plant zoning issues. I have attended public hearings and provided public comments at the local, county, and state levels.

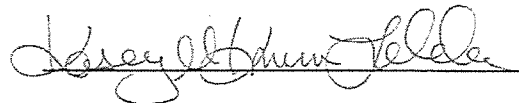
14. Attending local and county meetings left me very frustrated and exhausted with the government process. I often feel that there is no one looking out for my neighborhood and its interests. I feel that government officials are only looking after large corporations. Once NorthWestern withdrew its rezoning application, even the opportunity to participate in public process disappeared, since the Laurel City Attorney discouraged the organizations I am a member of from

reaching out to City Council members about NorthWestern's plant and the related zoning issues.

15. I want to participate in the government process involving the zoning of NorthWestern's parcels and the construction of the plant because those decision have a tremendous impact on my property values, my personal and family's enjoyment of my property, and my business development. Yet, I have no way to participate in this process because the zoning designations are no longer being enforced by the city. I believe a clear determination on the zoning jurisdiction would help guide me and my neighbors with knowing where to put most of our energy in public participation at meetings.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of February, 2023, in Laurel, Montana.



Kasey Krum Felder

Exhibit B

DECLARATION OF CARAH RONAN

I, Carah Ronan, hereby declare as follows:

1. I reside at 1721 Nicholas Lane in the City of Laurel, Montana.
2. I am a member of Theil Road Coalition. I have been a member since 2021.
3. I was born in Laurel, and just recently moved back in 2021 with my husband to farm my grandparent's property, which is where I currently reside.
4. The Sundance Lodge recreation area is in our backyard, and it is an amazing place to hike, fish, cross-country ski, and bird watch right in our backyard between two amazing rivers (the Yellowstone and the Clark Fork) on the historic Nez Perce Trail. We love stargazing from our property, being able to see meteor showers, planetary events and the sunrise and sunset on the hills and mountains.
5. Our neighborhood is directly across the river from Northwestern Energy's proposed power plant. Already we were impacted by the laying of the pipeline to the plant, which leaves us with no safe exit strategy for ourselves and our 88-year-old grandmother. As NorthWestern plows forward with building its plant, I hear the construction 24 hours a day, and am already negatively impacted by the lighting for construction, which persists throughout the night. If the plant is built, its exhaust stacks will be visible from my home and my fields where I own and operate a cut flower farm and host farm to table dinners.
6. If NorthWestern's plant is built, I fear that our property value will dwindle, and the pollution and possible toxins we will be exposed to daily with no

regard for our safety or health and wellbeing, the noise that will impact our daily lives, the hazards and implications to our land, animals, farmland and most importantly lives in the event of an “incident” are unfathomable. Our water well has already been impacted since the digging of the pipeline to supply gas to the new plant.

7. I fear that our property value will diminish because no one will want to move to the industrial part of town. NorthWestern is forcing their agenda to place their plant in our backyard and on the banks of one of our most valuable resources, the Yellowstone River, on historic Agriculture land on the historic Nez Perce Trail.

8. The quiet country life will be no more—we will live in an industrial zone. Again, no one wants to live in an industrial zone. I am anxious about the plant moving forward when we don't know the full implications of how this plant will affect our health or the health of the city and county, let alone the Yellowstone River and ecosystem, which includes eagles, both golden and bald, osprey, moose, deer, bobcats, fox, fish, etc.

9. Starting in fall of 2021, collectively, my neighbors and I began to voice concerns about Northwestern Energy's plans. We call ourselves the Thiel Road Coalition. Along with other members of the Thiel Road Coalition, I have been attending Laurel City Council meetings, along with my husband, and addressing the council during public comment since 2021. I have written letters to the editor multiple times and those letters have appeared in the Laurel Outlook and Billings Gazette. I have been interviewed by local TV channels and appeared on the news

multiple times. I testified at the Capitol in front of Governor Gianforte. I also created a two-minute documentary to showcase the harms caused to our community by the building of NorthWestern's gas plant (submitted as Exhibit B1).¹ I filmed and edited all the video footage in the documentary. Exhibit B1 is a true and accurate copy of the documentary I made, and is a true and accurate depiction of my property located at 1721 Nicholas Lane.

10. At first, when I began attending City Council meetings, I felt empowered by the Laurel City Council. They were seemingly concerned about the potential impacts of the plant. But the City Council has now abandoned its zoning authority. I feel like there is mass confusion in that neither the city nor the county want to take ownership of zoning NorthWestern's parcels. Everyone in City Council and the county are pointing the other way. There is no accountability and we are left with no public process to advocate our concerns that our zoning laws are not being followed.

11. It is hard to feel like the elected officials that are supposed to be looking out for us, our land, our health and wellbeing and the future of the area, have absolutely no plan to do so, and instead will go where there is money being offered. Many times in this process I have felt that our concerns are not being listened to or looked into. Its beyond heartbreaking, worrying and maddening.


¹ Also found at:

<https://www.facebook.com/Earthjustice/videos/montana-plant/5540166889415041>

12. The lack of clarity in public participation has made me feel helpless. No one is willing to look out for those of us most affected by the building of this plant.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of February, 2023, in Laurel, Montana.



Carah Ronan

Exhibit B1

.mp4 video file submitted via conventional mail
to Clerk of Court and served via conventional mail to all parties

Exhibit C

DECLARATION OF STEVE KRUM

I, Steve Krum, hereby declare as follows:

1. I reside at 249 29th Avenue West in Yellowstone County, just outside the City of Laurel, Montana.

2. I am currently a member of Thiel Road Coalition, Northern Plains Resource Council, and Montana Environmental Information Center. I have been a member of these organizations since 2021.

3. I was born in Laurel, Montana. Laurel is where I have called home for my entire life. I worked as an Operator, Operations Supervisor, and Zone Supervisor at CHS Refinery for nearly three decades. I am now retired.

4. I met my wife 52 years ago in Laurel. The house we currently live in is the house we bought together after we got married. We had the privilege of raising our three daughters in this home. On this property, we were able to raise our girls surrounded by agriculture and wildlife. Two of my daughters still live in Laurel, and one daughter lives in Billings. One of the two daughters in Laurel, Kasey Krum Felder, now grows grapes on her property and has been able to preserve an agricultural lifestyle similar to the one we raised her in.

5. Laurel is my home. It's a very special place for me, and we have the mighty Yellowstone River by our town, which is a point of pride for our community. The Yellowstone River is a spectacular natural treasure that makes our town special and unique. If a methane burning power plant gets built in this location, a multitude of benefits will be destroyed for our community. A barrage of air, noise,

light, pollution that NorthWestern will add to the valley will take away from our quality of life. It will strip away our recreation opportunities, our solitude, and the character of our town. It will be a permanent visual harm and will permanently impact property values in our community.

6. I am concerned about the existing particulate matter in Laurel for me and my family, and any additional pollution would have a negative health impact on all the people of our community, especially those closer to the proposed plant, my daughter's family included. I have 6 young grandchildren who live in or visit the area, and I am worried about their health. We do not want to add to pollution levels in this area, where children play. It is estimated that the plant would add 1,000 tons/year of air pollution and another 700,000+ tons/year of greenhouse gases which would harm future generations of Laurel, including my own children and grandchildren. The smells we already get from the refinery prove that wind doesn't obey borders or town lines, and there are no such things as predominant winds. On any given day we can see the wind change and come from multiple directions on the same day. I fear that the entire valley will be impacted by the hazards this plant.

7. I live less than 2 miles from where NorthWestern is building its plant without any zoning oversight, despite the fact that city and county maps show part of NorthWestern's parcels as designated for agriculture use. NorthWestern is plowing forward with construction of its methane gas plant, which will consist of eighteen 9.7 megawatt generators; eighteen 13,008 horsepower internal combustion engines, each with its own seven-story-tall exhaust stack; and a massive bank of

cooling fans next to each other, scarring the landscape of Laurel and contributing to climate-harming greenhouse gases. This construction will inhibit the viewshed of where I recreate, and where I recreate with my children and grandchildren.

8. The constant pollutants coming from this plant, including hazardous air pollutants and noise pollution like we have never heard, would be continually coming from this plant and impacting people and wildlife for miles and miles. When I visit my daughter's home by the river, go to Riverside Park for events, or just go down on the river's edge in the Laurel area there will be no escaping the visual and physical impact of this plant as it is currently being built 300 feet from the river's edge just across from our daughter's family home. All fishing, rock hounding and wildlife viewing would be destroyed by this plant's noise and air pollution. NorthWestern's plant would be dominating the environment and ruining everyone's life experience on the river's edge and in the valley.

9. I have been and continue to be interested in participating in government process as it relates to the City of Laurel's and Yellowstone County's planning efforts because these decisions greatly impact my quality of life and my property values. The City of Laurel approved a (new) City Growth Policy on January 12, 2021. One of the focuses of this Growth Policy is to expand recreation opportunities, particularly recreation tied to the Yellowstone River. The river is a natural asset to our town, and we have an opportunity to promote recreational opportunities such as swimming, camping, fishing, boating, stargazing, rock hunting, and observing wildlife. I fear that the construction of this plant would

negate our ability to promote recreation in our town. The external lights from the plant, the noise, and the visual impairments by the exhaust stacks would hinder my enjoyment of camping, fishing, stargazing, and wildlife observations, boating, and other recreational opportunities along the Yellowstone River.

10. My family, friends, neighbors, and I have been participating in local government meetings related to the plant for more than a year, beginning in October 2021 when we learned that the plant was going to be built in Laurel even though the articles in the local paper by NorthWestern appeared to sound as if it was being put on hold. It was at that time that we learned that NorthWestern had applied for zone change and pipeline easement to the City of Laurel and the city council had tabled the application.

11. We attended the next regular meeting on October 26, 2021 in opposition to the zone change and pipeline easement. The city council put the zoning issue on hold and the pipeline easement was rescheduled. After the October 26 meeting, I began attending all council meetings, workshops and special city council meetings called by the City Council. After several more meetings in November 2021 the City Council denied NorthWestern's easement request. In December, I learned that NorthWestern had withdrawn its application for zone change. Even after NorthWestern withdrew its application, I continued attending City Council meetings into March of 2022.

12. In my efforts to understand the applicable zoning designations for NorthWestern's land, I have read through the County Commissioner's and Clerk's

websites, Yellowstone County Treasurer's website, City of Laurel's websites, GIS website, and many more times personally requested from the government offices information on searching through their public records, with me doing the search, me paying them to search, and with no results on my request.

13. I also requested more information from a City County Planning official and in response received an email from the City County Planner in Billings on December 29, 2021 stating that Laurel, not the County, had zoning jurisdiction within 3.75 miles of Laurel city limits. *See* Email from Dave Green to Steve Krum (Dec. 29, 2021) (attached as Ex. 1). Still, to this day I cannot get any information from Laurel, Yellowstone County, or Billings offices that clarifies the current zoning designations on NorthWestern's property.

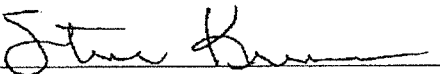
14. It has been very disappointing and depressing to see NorthWestern going forward with building this plant when the exact location where they are building the main structures of the plant is on land that I believe to be agriculturally zoned property. It is disheartening not to know which government agency to turn to in order to file a complaint or even get feedback on these zoning issues. All concerned local governments, whether city or county, are not taking ownership of this issue. Seeing the way things are working now is mentally and physically depressing and at times nauseating.

15. Knowing exactly which jurisdiction to take our complaints to would allow us the rightful time and focus needed to make our arguments as to why this zone change should not be allowed and how it would impact our lives, the lives of

our neighbors and the entire Laurel community area. We are only asking for the opportunity and time to protect our personal and private property rights and not be forced into allowing this plant just because they built it. It is very disheartening seeing them build on land that is so close to my daughter's, and others', homes without any recourse. It depresses and sickens me to feel like I have lost the fight for me and my family and friends to someone who is obviously breaking the law, as every day more of this plant is being built.

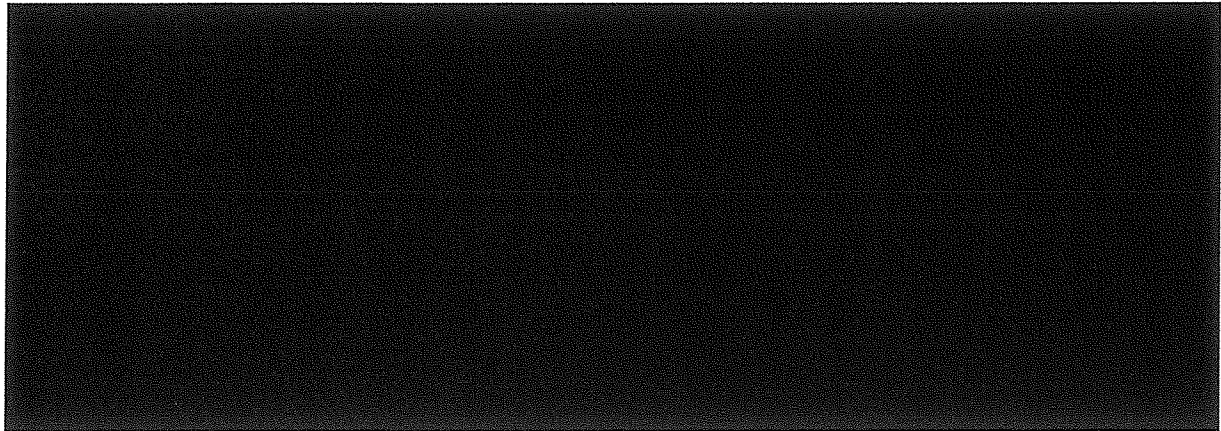
I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of February, 2023, in Laurel, Montana.

A handwritten signature in cursive script, appearing to read "Steve Krum", is written over a horizontal line.

Steve Krum

Exhibit C1



From: [Steve Krum](#)

Sent: Wednesday, December 29, 2021 12:03 PM

To: [Green, Dave](#)

Subject: RE: Any new NWE Applications for Proposed Power Plant in Laurel

Dave,

Thank You for your quick response. Tammy just thought you two would be the first to possibly be contacted for the permitting process by NWE and she did say your focus was on subdivision for residential/commercial and possibly you may be contacted for the commercial aspect. There is a question as to who has the authority to do zoning in the county around Laurel, we were working through the Laurel City/County planning board on this issue and they had scheduled two public meetings to address this but both have been canceled and NWE has pulled their application from the Laurel City/County Planning Board for zone change. We are not sure exactly what is going on but the thought is they would be coming to the County Planning offices for permitting. If you hear anything or are contacted about this project from NWE would you please let me know, it would be greatly appreciated. Thank You...Steve...

Sent from [Mail](#) for Windows

From: [Green, Dave](#)

Sent: Wednesday, December 29, 2021 11:45 AM

To: [Steve Krum](#); [Cromwell, Nicole](#)

Subject: RE: Any new NWE Applications for Proposed Power Plant in Laurel

Steve,

I do not work directly with zoning applications for the city or county. I work with developers in the city and county wishing to create subdivisions for residential or commercial development. I have not heard anything about a new power plant. If they are still proposing to develop something in the Laurel area then the City/County planning department here in Billings would have no jurisdiction over what is happening. Laurel has jurisdiction in the county for approximately 3.75 to 4 miles outside Laurel city limits.

Nicole is not in the office until Monday January 3. I don't know if she is aware of anything concerning

plans by NWE and a new power plant.

Dave Green
City/County Planning

From: Steve Krum <[REDACTED]>
Sent: Wednesday, December 29, 2021 11:22 AM
To: Cromwell, Nicole <[REDACTED]>
Cc: Green, Dave <[REDACTED]>
Subject: [EXTERNAL] Any new NWE Applications for Proposed Power Plant in Laurel

Hi Nichole/Dave;

My name is Steve Krum, resident of Yellowstone County just West of Laurel. I got your name and e-mail address from Tammy Deines. Tammy told me you two would/could be a first contact for NWE for an application to build a new power plant in the Laurel area. NWE just pulled their zoning request from the Laurel City/County planning board and I was wondering if they have made any type of contact or application process with your office concerning the proposed power plant. I, along with many neighbors in the area, am opposed to the power plant being built in the proposed location for multiple reasons. The Noise from this plant cannot be contained within its boundary, the additional air pollution to an area that is already out of compliance with air quality standards and the harm it will do the Yellowstone River Eco-system, all of which affects the Safety, Health and Welfare of the Existing Neighbors and Neighborhoods in close proximity of the proposed location, which includes District 18 where my daughters family lives and the city of Laurel.

Any information or updates about NWE applying for any type of permit to be able to build this plant would be greatly appreciated.

Again;

Steve Krum

[REDACTED]
[REDACTED]
Laurel, Montana 59044

[REDACTED]
[REDACTED]

Thank You...Steve...

Sent from [Mail](#) for Windows

Exhibit D

DECLARATION OF NORTHERN PLAINS RESOURCE COUNCIL

I, Mary E. Fitzpatrick, hereby declare as follows:

1. I am a citizen of the United States and over 18 years of age. I reside in Billings, Montana. I am a member of Northern Plains Resource Council (Northern Plains).

2. For the past thirty years an active member of Northern Plains, and have served on the Board and/or Executive Committee for more than half that time, including 2 years as Board Chair. In my various roles at Northern Plains, I have worked to address the environmental problems associated with natural resource extraction in Montana, with a specific focus on fossil fuel development and climate change.

3. The Northern Plains Resource Council is a grassroots conservation and family agriculture non-profit organization based in Billings, Montana. Northern Plains organizes Montana citizens to protect water quality, family farms and ranches, and Montana's unique quality of life. Northern Plains is dedicated to providing the information and tools necessary to give citizens an effective voice in decisions that affect their lives. Northern Plains formed in 1972 over the issue of coal strip-mining and its impacts on private surface owners who own the land over federal and state mineral reserves as well as the environmental and social impacts of mining and transporting coal. While Northern Plains was founded on coal issues, the group quickly expanded into helping preserve the land, air, and water and

protect communities from similar threats caused by irresponsible oil and gas development.

4. Many of the organization's roughly 3,000 members farm, ranch, and recreate in Eastern Montana, and their livelihoods depend entirely on clean air and water, a healthy climate, native soils and vegetation, and lands that remain intact. Northern Plains members also live, work, and recreate in the City of Laurel area where NorthWestern Energy plans to build its power plant and have participated in advocacy efforts opposing the plant's zoning designation.

5. Northern Plains and its members have intensive, longstanding health, recreational, aesthetic, professional, and economic interests in the responsible production and use of energy, the reduction of greenhouse gas pollution as a means to ameliorate the climate crisis, and the protection of land, air, water, and communities impacted by fossil-fuel energy projects and other industrial development. Some of Northern Plains' members live, work or recreate in areas that will be adversely impacted by NorthWestern Energy's building of a methane gas-powered plant on the banks of the Yellowstone River. Several members of Northern Plains have attempted to participate in the local government process regarding the zoning of the power plant but have been thwarted by local government's abandonment of zoning authority over the site.

6. If NorthWestern Energy builds a methane gas plant in Laurel, the experience of living and recreating near the plant will forever be degraded. Where the power plant and its exhaust stacks would be visible, the natural beauty of the

area would be marred. Furthermore, the Montana Department of Environmental Quality has stated that the plant would emit tens of thousands of tons of greenhouse gases every year, which I fear would contribute significantly to pollution that drives climate change and damage Montana's agricultural industry, and our water, forest, and our recreational industry. If the plant is constructed, I fear that Northern Plains members would be forced to breathe more polluted air.

7. Northern Plains opposes NorthWestern Energy's continued investment in fossil fuel development, including the environmental harm and economic costs it imposes. I believe that this plant would cost Montanans in the form of higher electricity bills, both to pay for NorthWestern's investment in building the plant and the ongoing and uncertain future costs of gas to fuel the plant. It heightens my distress knowing that further investment in fossil fuel generated energy inhibits investment in the development of renewable and more affordable forms of energy production.

8. Northern Plains began our engagement on this issue when we learned of NorthWestern Energy plans to build a methane fired power plant in Laurel, Montana in the spring of 2021. A committee of Northern Plains members in Laurel, throughout Yellowstone County, and across the state was formed to work on this issue and a Northern Plains staff person was assigned to work with them on this effort.

9. In the fall of 2021, Northern Plains members, staff, and Laurel community members began canvassing neighborhoods in Laurel and phone banking

to educate the public about the issue. In further efforts to educate the public about this issue, Northern Plains spent \$21,000 on a media campaign, including newspaper, television, and social media advertisements to educate the public about the health, safety, and economic concerns associated with the construction of the proposed methane fired power plant. Northern Plains spent an additional \$15,600 to purchase and implement software to collect sound quality monitoring data near the site of the Laurel methane fired power plant to ensure that Northern Plains members and nearby residents had the information they would need to ensure NorthWestern Energy adheres to their air quality permits. Additionally, Northern Plains expended member and staff time to organize and hold a People's Hearing in February 2022 to give Laurel and Yellowstone County residents a venue to voice their concerns because of a lack of official public comment opportunities.

10. Northern Plains member's attempts to contact Laurel City Council and Yellowstone County Commission with their questions and concerns about the zoning of this methane fire power plant have gone either unanswered or each body has indicated that they should contact the other. Northern Plains also received a letter from the Laurel City Attorney in August 2022 specifically asking the organization to "ceast and desist" organizing constituents and to stop communicating with city officials about the plant. Letter from M. Braukmann to Northern Plains Resource Council (dated Sep. 8, 2022) (attached as Ex. 1).

11. In the absence of an authority over zoning, Northern Plains members and Laurel residents are left without a clear decision maker to whom they can express their concerns and take part in the decisions that impact their lives.

12. When Northern Plains began engaging on this issue, NorthWestern Energy had applied for a zoning change before the Laurel City Council. That zoning change application was subsequently abandoned and it was Northern Plains understanding that NorthWestern Energy would reapply for this zoning change in one years time. In the absence of a zoning change, construction of the methane fired power plant has persisted causing Northern Plains member and Laurel residents to ask questions about whether proper zoning had been obtained and from which authority. With neither the Laurel City Council nor the Yellowstone Councuy Commission taking responsibility as the zoning authority, concerned citizens have been left without proper recourse to engage on land use isses that impact their communities wellbeing. As a grassroots organization, Northern Plains is committed to providing everyday people with the information and resources they need to have a say in decisions that impact their clean water, land, air, and the health of their communities. We've been unable to direct Northern Plains members and the general public's concerns to the proper elected officials as a result of this regulatory uncertainty.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of February, 2023, in Billings, Montana.

Mary E. Fitzpatrick

Mary E. Fitzpatrick

Exhibit D1

On behalf of the City of Laurel, we are in receipt of your letter regarding this matter.

We will provide you a response within the next few weeks, so that you can fully evaluate the City's legal position regarding this issue. Have you retained Legal Counsel, and if so, please direct me to him/her? The reason that I ask this is because these are complicated legal issues that require a full and comprehensive analysis by lawyers that understand land use, zoning, interlocal agreement, and other issues. While I understand and respect Northern Plain's position in this matter, these are not matters that the general "lay-person" can appropriately articulate and understand. These issues involve complex legal authority within the State of Montana, the review of multiple contractual obligations between the City/County, and existing statutory, Municipal Code, Montana Code, and common law authority. It would be best, in my respectful opinion, for this discourse to occur between seasoned lawyers that can assess the various issues involved. If Northern Plain's does not have Legal Counsel, nor intends to retain such, I will communicate with you in response, but I want to be frank in saying that I don't believe the discussion will be productive, because it will not involve a true understanding of the complex issues at stake here.

I look forward to your response on retention of Legal Counsel, and in the interim, I will prepare a formal response to Northern Plains. I also respectfully ask that these communications, moving forward, come through my office. Inundating Council Members that have "a lot on their plate" in respect to City business is not productive, and it further alienates parties/issues. I am in constant communication with the Laurel City Council Members, and they are fully advised of all matters before the City. In addition, I ask that Northern Plains cease and desist from sending out inflammatory messages to City constituents, which further complicate this issue, and which take up enormous time and effort from City staff that have nothing to do with this issue. I believe that respectful discourse and communication through the appropriate parties (which, in this case, is myself, as City Attorney, and the Mayor) is most appropriate for attempting to find a way to both legally and practically resolve these issues.

Of course, if your Legal Counsel wants to set up a time to talk about these issues with me, I am more than happy to do so.

Best Regards,

Michele L. Braukmann
Civil City Attorney
City of Laurel
115 West 1st Street
Laurel, MT 59044
Cell Phone: 406.671.3963
civilattorney@laurel.mt.gov

Exhibit E

DECLARATION OF ANNE HEDGES

I, Anne Hedges, hereby declare as follows:

1. I am a citizen of the United States and over 18 years of age. I reside in Helena, Montana. I am a member and employee of the Montana Environmental Information Center.

2. For the past 29 years I have been employed by the Montana Environmental Information Center (MEIC). In my various roles at MEIC, I have worked to address the environmental problems associated with natural resource extraction in Montana, with a specific focus on fossil fuel development and climate change.

3. The Montana Environmental Information Center is a non-partisan, non-profit environmental advocacy organization dedicated to ensuring clean air and water for Montana's present and future generations. MEIC was founded in 1973 by Montanans concerned with protecting and restoring Montana's natural environment. Thousands of Montanans support MEIC as members, both financially and with their activism. To protect and restore the land, air, water, and life-sustaining climate of Montana, MEIC advocates, educates, and empowers people in service of a clean and healthful environment for present and future generations.

4. MEIC plays an active role in promoting Montana clean energy projects and policies, including advocating for the expansion of responsible, renewable energy and energy efficiency, while opposing unnecessary reliance on fossil fuel energy that leads to air and water pollution and contributes to climate change.

MEIC is also dedicated to assuring that state and local governments comply with and fully uphold the laws and constitutional provisions that further the organization's goals and mission in protecting the environment for all Montanans to enjoy. MEIC has approximately 10,000 members and supporters, many of whom are in NorthWestern Energy's Montana service territory and seek increased access to affordable renewable energy sources.

5. MEIC and its members have intensive, longstanding health, recreational, aesthetic, professional, and economic interests in the responsible production and use of energy, the reduction of greenhouse gas pollution as a means to ameliorate the climate crisis, and the protection of land, air, water, and communities impacted by fossil-fuel energy projects and other industrial development. MEIC members live, work, and recreate in areas that are currently being adversely impacted by NorthWestern Energy's building of a gas-powered plant on the banks of the Yellowstone River. MEIC brings this action on its own behalf and on behalf of its adversely affected members, several of whom have attempted to participate in the local government process regarding the zoning of the power plant but have been thwarted by local government's abandonment of zoning authority over the site.

6. If NorthWestern continues to build a methane gas plant in Laurel, the experience of living and recreating near the plant will forever be impaired. Where the power plant and its exhaust stacks would be visible, the natural beauty of the

area would be desecrated. Seeing these impacts would greatly harm the members of MEIC.

7. According to NorthWestern's own projections for its air quality permit, the plant would emit significant amounts of various air pollutants that directly harm public health and hundreds of thousands of tons of greenhouse gases every year, contributing significantly to pollution that drives climate change and its impacts in Montana. If the plant is constructed, MEIC members would breathe this polluted air.

8. Montana Environmental Information Center opposes NorthWestern's continued investment in fossil fuel development, including the environmental harm and economic costs it causes. This plant would cost Montanans in the form of higher electricity bills, both to pay for NorthWestern's investment in building the plant and the ongoing and uncertain future costs of gas to fuel the plant. It heightens my distress knowing that further investment in fossil fuel generated energy inhibits investment in the development of cleaner, more affordable forms of energy production.

9. MEIC must also safeguard its institutional interests in warding off the disastrous effects of climate change and minimizing harmful air and water pollution by scrutinizing proposals for new fossil fuel development and holding responsible entities accountable to the law. Advocacy around land use planning, and the public's ability to participate in that planning, is an important tool in these endeavors because it allows the public, including MEIC and its members, an opportunity to

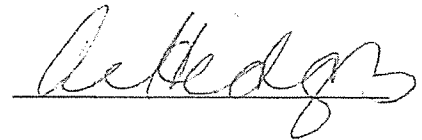
weigh in on land use decisions that impact Montana's environment and public health. As an organization, MEIC is concerned that the type of regulatory uncertainty caused by the City of Laurel's and Yellowstone County's positions on city and county zoning jurisdiction will hamper MEIC's ability to effectively advocate for its organizational goals.

10. In the Fall of 2021, MEIC learned that NorthWestern was requesting a change in zoning for the parcels in question in order to build a 175-megawatt methane gas plant. MEIC staff and its members researched the law and history of the parcels' legal designations, examined the potential impacts of the proposed project on water and air quality, hired a land use consultant to better understand the legal process for changing the zoning of the site, reviewed City and County documents regarding planning, zoning and subdivision regulations and decisionmaking, educated the public and MEIC members regarding the proposed project, its impacts, and the regulatory process, attended public hearings both virtually and in-person before the Laurel City Council and its planning and zoning committees, and worked with area residents and members to persuade government officials to protect the air, land and water from the impacts of the proposed project and the requested zoning change. All of this work with consultants, city and county officials, area residents, MEIC members, the media, and members and the public were disrupted when NorthWestern withdrew its zone change application. MEIC made numerous attempts to request clarity from the city after NorthWestern's withdrawal but were left with complete uncertainty regarding who was responsible

for making land use decisions for the site. This regulatory uncertainty undermines MEIC's ability to meet its organizational goals and advocate for clean air, clean water, and a healthy climate due to the impacts of the proposed power plant.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of February, 2023, in Helena, Montana.

A handwritten signature in cursive script, appearing to read "Anne Hedges", written over a horizontal line.

Anne Hedges

Brittney Moorman

From: Ward 2B
Sent: Tuesday, February 28, 2023 7:21 PM
To: Brittney Moorman
Subject: FW: Hens

From: Stephanie Lavelly <stephanie.andes@gmail.com>
Sent: Sunday, February 26, 2023 10:48 AM
To: Ward 2B <ward2b@laurel.mt.gov>
Subject: Hens

Hello Michelle!

I am a resident of ward 2. I am very interested in keeping hens. We had some for a few years before we found out they were illegal in Laurel. We shared our extra eggs with our neighbors. We really enjoyed watching them chase grass hoppers in the summer. They were our pets. We were heartbroken to have to rehome them. We would really love to own hens again! Please consider changing the law to allow that.

Stephanie Lavelly
805 2nd Ave
406-698-9691

Brittney Moorman

From: Ward 1A
Sent: Tuesday, February 28, 2023 6:35 PM
To: Brittney Moorman
Subject: FW: Chickens in the Limits of Laurel

For tonights record

Thank you!

Heidi Sparks- Council Member
City of Laurel- Ward 1
406-671-0911
Ward1a@laurel.mt.gov

From: Missy Ritchie <marzkat92@yahoo.com>
Sent: Tuesday, February 28, 2023 4:46 PM
To: Ward 1A <ward1a@laurel.mt.gov>; Ward 1B <ward1b@laurel.mt.gov>
Subject: Chickens in the Limits of Laurel

Hello,

I live on West Avenue in Laurel, and I am writing to show my support for the allowance of chicken hens within city limits. Not only do they provide fresh eggs, chickens are great at pest control and also create some of the best fertilizer, which many gardeners like myself love. I really hope that the ordinance will be changed to allow them.

Thank you,
Melissa Wilson

Brittney Moorman

From: Ward 1A
Sent: Tuesday, February 28, 2023 6:35 PM
To: Brittney Moorman
Subject: FW: Chicken Ordinance

For tonights record

Thank you!

Heidi Sparks- Council Member
City of Laurel- Ward 1
406-671-0911
Ward1a@laurel.mt.gov

-----Original Message-----

From: Haillie Arensmeyer <h_arensmeyer@icloud.com>
Sent: Sunday, February 26, 2023 3:30 PM
To: Ward 1A <ward1a@laurel.mt.gov>
Subject: Chicken Ordinance

Good afternoon Heidi,

My name is Haillie McComish and I am writing to you in regards to my family's interest in owning hens. I have been a resident of Laurel for 31 years. I was raised here and now my husband and I are raising our kiddos here. I think it would be a great opportunity to provide a source of food for my friends & family in this economy. Not only are prices of food going up but egg shortage is at an all time high. I would also share eggs with my neighbors if there is a want or a need. If there is an increase number of hens owned in the community I believe to would provide business to our local Ace Hardware and Tractor Supply for chicken needs. There is also the possibility to support our 4-H kids and local farmers. I do believe there should be a limit on the number of hens owned and proof of appropriate containment and housing should be provided to achieve a license to own said hens. Thank you for your time reading my opinion.

Haillie McComish

Sent from my iPad

Brittney Moorman

From: Ward 2B
Sent: Tuesday, February 28, 2023 7:20 PM
To: Brittney Moorman
Subject: FW: Laurel ordinance: Hens

From: kristine favero <faverokm@yahoo.com>
Sent: Sunday, February 26, 2023 10:24 AM
To: Ward 2B <ward2b@laurel.mt.gov>
Subject: Laurel ordinance: Hens

Michelle,

My family and I have interest in getting hens for our household. As you may know there are concerns about eggs and meat, everyone is hurting to buy eggs and/or chicken products. Eggs is only one of the reasons our family would like hens. Other reasons on why we would like you to consider hens is for our children. The responsibility of feeding and caring for livestock and the possibility of participating in 4-H/FFA in the future. Having our little ones do chores at a younger age will help them understand everything doesn't grow on "trees".

This also can open the possibilities of our community helping one another. Instead of asking for a 'cup of sugar', maybe we can spare an egg or too for our neighbors.

Thank you for considering this change in the Laurel ordinance.

Thank you,
Kristine Williams

Sent from Yahoo Mail for iPhone

Brittney Moorman

From: Megan Mccann <godsmyvendingmachine@rocketmail.com>
Sent: Friday, February 24, 2023 10:15 PM
To: Brittney Moorman
Subject: Supporting Chickens in the Laurel City Limits

Dear Council Secretary Moorman,

My name is Megan Keys and I live in Ward 2 in the city of Laurel Montana. In the case that I am unable to make it to the council meeting on February 28th at 6:35pm, I am emailing you today so that my views may be read into record.

I have noticed the rising interest from members of the community to keep chickens. I think it is important that our interests as a community are heard and also considered. I would like to have the option of having a few chickens at my home within the city limits of Laurel and I am in support of others who would like to have chickens as an option as well.

I would like to support the change of ordinance 6.16.010. This ordinance currently prohibits the keeping of chickens in the city limits of Laurel under part A. I would like for the ordinance in part A of 6.16.010 to no longer include chickens (hens) as a prohibited animal under the "keeping certain animals prohibited" section.

Here are some supporting details why I think giving the opportunity to keep chickens could be beneficial to members of the community.

Some of these benefits include the following; Food independence, this would allow residents to have access to fresh eggs without needing to be dependent on the grocery store.

Keeping chickens could create an opportunity to cut back on food waste, which could lead to less waste being thrown into the garbages and more of it being recycled/repurposed. Chickens provide some grasshopper pest control, which is great because Laurel has a lot of grasshoppers during our summer months.

With chicken care comes opportunity to teach our children to raise and care for chickens responsibly.

Opportunity is created to better our community relationships when we have the chance to share extra eggs with our neighbors.

Allowing the equal opportunity to keep chickens and to have access to these opportunities without the need to be wealthy.

In conclusion, My vote it Yes. I support the keeping of chickens within the city limits.

Thank you for your time.

Sincerely,
-Megan Keys

Sent from Yahoo Mail on Android

Brittney Moorman

From: Linda Strawbridge <lindas1925@outlook.com>
Sent: Wednesday, February 22, 2023 12:40 PM
To: Brittney Moorman
Subject: Chickens in Laurel

I am sending this email in support of having chickens in town. I sincerely believe that this will help a lot of us with just a little bit of security for food.

Linda

Brittney Moorman

From: LeeAnn Burley <leeann.burley89@gmail.com>
Sent: Wednesday, February 22, 2023 12:32 PM
To: Brittney Moorman
Subject: Chickens

City Council,

I am writing to express the need and want to have chickens in the city limits of Laurel. Surrounding areas have allowed chickens for years, with such allowance comes rules and expectations. I feel as long as those rules and expectations are followed there is no reason to not allow people to own them. Chickens can be used in a plethora of ways; they provide us with eggs (which as you know could have come in handy these last few months), keep bugs and other pests down during summer months, and can give a sense of purpose. You'll find your challenges and troubles with chickens, as with anything. I feel like most people won't engage with the arduous task of keeping chickens if it is something they are unfamiliar with.

Thank you for hearing us all on this topic.

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Wishing you the best!

-LeeAnn Burley

Brittney Moorman



City Mayor
Tuesday, February 28, 2023 1:10 PM
Brittney Moorman
FW: Chickens in Laurel City Limits

Dave Waggoner
Mayor
City of Laurel, Montana
(406) 628-8456 extension 5501

From: Paige Farmer <paigefarmer1992@gmail.com>
Sent: Tuesday, February 28, 2023 12:57 PM
To: Ward 3A <ward3a@laurel.mt.gov>; Ward 3B <ward3b@laurel.mt.gov>; City Mayor <citymayor@laurel.mt.gov>
Subject: Chickens in Laurel City Limits

To Mayor Dave Waggoner and Ward 3 Council Members Irv Wilke and Casey Wheeler,

I, Paige Farmer, would like to share my "in-favor" public input towards the topic of Chickens within the city limits of Laurel as I am unable to attend tonight's meeting.

As a resident of Ward 3 and the City of Laurel, I have grown to love and appreciate all things that have come from this community. We are ever growing and adapting. With that said, I believe allowing chickens within the city limits could provide yet another chance for us to thrive. A chance to learn, provide for oneself, and teach our younger generation sustenance, perseverance, and a true understanding of a life worth working towards.

As with any new order, I'm sure there will be hiccups, but the chance to separate ourselves from the industrial age and pursue a healthier way to provide for our families is worth every step.

Thank you for your time.

Paige Farmer

Brittney Moorman

From: Braven Warner <sharpshooterbrave@yahoo.com>
Sent: Tuesday, February 28, 2023 1:21 PM
To: Brittney Moorman
Subject: Chickens Ordinance Change

Hello, my name is Braven Warner, and I live within city limits of Laurel. I will not be available tonight to support the ordinance change, however would very much like to show my support in any way I can. I was told that I may email you to do so. So I ask that you please express my support on my behalf if at all possible.

Thank you for your time,
-Braven Warner

Sent from my iPhone