

**CARMODY|HOLLIDAY**  
LEGAL SERVICES, PLLC

690 SW Higgins · Suite D · Missoula · Montana · 59803  
tel 406.830.3327 · katie@carmodyhollidaylaw.com

Katherine Carmody Holliday  
Licensed in Montana

[www.carmodyhollidaylaw.com](http://www.carmodyhollidaylaw.com)

December 15, 2025

Chairman Brad Mitchell  
Commissioner Dennis Zander  
Commissioner Joe Sharbono  
Dawson County Commissioners  
207 W. Bell St.  
Glendive, MT 59330

Brett Irigoin, Esq.  
Dawson County Attorney  
207 W. Bell St.  
Glendive, MT 59330

**RE: Dawson County Development Regulations**

Dear Commissioners and Mr. Irigoin:

This letter is regarding the Dawson County Development Regulations. Our firm is assisting the petitioning landowners ("Petitioners") of the District. This letter is to address concerns that the Petitioners have regarding the County's attempt to adopt a county-wide zoning district and zoning regulations ("Type 2 Zoning").

We have reviewed the County's steps in attempting to adopt Type 2 Zoning and that review shows that the County failed to substantially comply with the requirements of §76-2-205, Mont. Code Ann. The County's attempts to adopt Type 2 Zoning were not successful, and as such there can be no valid Type 2 Zoning regulations in force in Dawson County under the current process.

We understand that you may be attempting to vote the Type 2 Zoning in at your December 16, 2025 meeting via Resolution #2025-29. Any attempt by you to do so would not be effective, since your time to adopt Type 2 zoning as statutorily expired.

Petitioners appreciate your efforts in regard to the Type 2 zoning and have a foremost desire to work with you amicably on these issues. However, given the issues with the Type 2 zoning process as outlined below, they request that you: (1) withdraw from the current illegitimate attempt to adopt Type 2 zoning; (2) begin again with the Type 2 zoning process; and (3) follow the process set forth in applicable statute. Petitioners are not willing to be governed by regulations adopted by illegitimate process, and will seek enforcement of their rights if Dawson County fails to withdraw them.

Below is chronology of the County's various actions or inaction relating to Type 2 Zoning.

### **Chronology**

|                           |   |
|---------------------------|---|
| August 21, 2025           | Dawson County Planning Board recommended draft development regulations to the Dawson County Commissioners (DCC)   |
| September 2, 2025         | DCC scheduled a public hearing on the proposed development regulations  |
| September 10 and 17, 2025 | Notice published regarding September 23, 2025 hearing on proposed zoning regulations  |
| September 23, 2025        | DCC held a public hearing on the proposed development regulations   |
| October 8, 2023           | DCC's Agenda for their October 8, 2023 meeting listed Resolution #2025-23 as New Business Item (Resolution of Intent to Create)   |
| October 8, 2023           | DCC held a meeting and issued Resolution #2025-23 (Resolution of Intent to Create) which gave notice of a public comment period for the 30-days following the first publication of the Resolution of Intent.  |
| October 11 and 18, 2025   | Notice of Resolution of Intent adopted published  |
| November 9, 2025          | DCC represented that they would accept public comment through November 9, 2025  |
| November 18, 2025         | DCC's Agenda for their November 18, 2025 meeting listed Resolution #2025-23 (Resolution of Intent) as New Business.   |
| November 18, 2025         | DCC voted again to approve Resolution #2025-23 (Resolution of Intent). After voting to approve the Resolution of Intent, DCC accepted public comment on the draft regulations at the meeting and voted on a series of amendments to the draft development regulations. It appears there was no additional notice published or second period of public comment after the November 18, 2025 meeting.  |
| December 2, 2025          | DCC's Agenda for their December 2, 2025 meeting incorrectly listed Resolution #2025-29 (Resolution to create Dawson County Development Regulations) as previously approved administrative items. Resolution #2025-23 (Resolution of Intent) was the only previously approved Resolution. Resolution #2025-29 was a new business item. DCC appears to have realized this fact and as set Resolution #2025-29 for a vote on December 16, 2019 |



### **Discussion**

§76-2-205(1)(b), Mont. Code Ann. requires that notice of a public hearing on proposed zoning regulations must be posted not less than 45 days before the public hearing in at least 5 places within the proposed zoning district. Dawson County's planning Board recommended the draft regulations to DCC on August 21, 2025, and DCC at its September 2, 2025 meeting set a public hearing on the proposed regulations for September 23, 2025. The September 23, 2025 hearing date was not timely under the statute. The draft regulations were not available until August 21, 2025 and the September 23 hearing date was within 45 days from the date they became available such that the September 23 hearing did not meet the timing requirements set forth in statute which means that adequate notice was not given to the public as required.

Dawson County was required to post notice of the public in 5 places. Dawson County did not do this; it put notice on its website, and at the Dawson County courthouse. §76-2-205 Mont. Code Ann. also mandates that the Notice be published once a week for two weeks. §76-2-205 (a)(i) – (iv) Mont. Code Ann. contains mandatory requirements for the contents of the Notice. Dawson failed to comply with these content requirements, since the Notice in the paper failed to describe the boundaries of the proposed zoning district and the general character of the proposed zoning. The Notice posted on the website does not appear to comply at all with these mandatory requirements. Failure to meet the mandatory notice requirements is legally insufficient. *Fasbender v. Lewis & Clark Cnty. Bd. of Cnty. Comm'rs*, 2009 MT 323, ¶ 25, 352 Mont. 505, 510, 218 P.3d 69, 72-73.

Following the public hearing on September 23, 2025, DCC posted its agenda for their October 8, 2025 meeting which listed Resolution #2025-23 as new business item. DCC adopted Resolution #2025-23 (Resolution of Intent to Create) with the amendment to remove the height limit which gave notice that the County intended to create a zoning district and adopt zoning regulations. Several amendments were then made as to setbacks and DCC voted again on the additional amendments to include Resolution #2025-23, and also gave notice of a public comment period for the 30-days following the first publication of the Resolution of Intent.

DCC accepted public comment until November 9. Under statute, after a Resolution of Intent is adopted a County will receive written comments from landowners whose names appear on the last-completed assessment roll of the County. §76-2-205(5)(d), Mont. Code Ann. DCC received comment from any member of the public. Under §76-2-205,(6) Mont. Code Ann., the County must then adopt or deny the District within 30 days after the expiration of the landowner comment period. It appears the DCC accepted comment from individuals or entities that are not landowners and made amendments accordingly.

DCC set its Agenda for their November 18, 2025 meeting and listed Resolution #2025-23 (Resolution of Intent) as New Business. This is the same Resolution which was apparently voted on at the October 8 meeting. The listing of Resolution #2025-23 on the Agenda was not a Typo. The video recording of the November 18, 2025 meeting at 12:30 clearly shows DCC again reviewing and voting to adopt Resolution #2025-23 which is a Resolution of Intent. There are no provisions under the statute for two



Resolutions of Intent. Even if this were proper, presumably issuance of a second notice of intent would require an additional 30-day comment period if that portion of the statute were followed and likely there would be additional publication requirements. No other resolutions relating to the Type 2 zoning were voted upon at the November 18, 2025 meeting.

DCC's Agenda for their December 2, 2025 meeting incorrectly listed Resolution #2025-29 (Resolution to create Dawson County Development Regulations) as a previously approved administrative item, and represented during the meeting that it was previously approved. Resolution #2025-29 was not previously approved; it in fact had never been introduced in a meeting before. This Resolution was never voted on and adopted. The landowner comment period ran until November 9, 2025, and the 30-day time period to adopt the Type 2 zoning regulations has now expired.

At the December 2, 2025 meeting, DCC continued to amend to draft zoning regulations, at the same time it asserted that it was adopting the regulations. Further, the draft copy of the zoning regulations which were attached to that resolution did not match the amendments referenced in the Resolution. Additional amendments at this stage were improper. §76-2-205(3), Mont. Code Ann. permits amendments to draft zoning regulations after the public hearing and before the Resolution of Intent is adopted.

Here, DCC continued to amend the regulations after adopting the Resolution of Intent. It never voted to adopt the regulations under Resolution #2025-29; however, even if it had, that vote would be invalid, since the amendments voted on were not consistent with proposed draft regulations. Further, the draft regulations do not include all amendments which DCC approved by motion such as night time aviation lighting for structures greater than 250 feet.

Even if the above defects in procedure were surmountable, DCC was required by statute to adopt final regulations no later than December 9 (30 days after the close of the comment period). No final regulations were ever decided upon by DCC such that DCC's time to adopt the draft regulations has expired. If it wishes to pursue Type 2 zoning, it would need to start the process over and correctly follow the procedural requirements to have effective zoning.

All of the above actions deprive County residents with notice and hearing requirements under the statute. A County is required to substantially comply the procedure set forth in *Heart K Land & Cattle Co. v. Park County*, 2011 Mont. Dist. LEXIS 43, \*9. Given the specific procedures required for adopting Type 2 zoning, it is clear that the legislature did not intend to grant the county commissioners discretion to ignore the statutory procedures. *Dover Ranch v. Cnty. of Yellowstone*, 187 Mont. 276, 283, 609 P.2d 711, 714 (1980). Failure to follow those specific procedures renders any zoning action by the County ineffective. *Fasbender v. Lewis & Clark Cnty. Bd. of Cnty. Comm'rs*, 2009 MT 323, ¶ 27, 352 Mont. 505, 511, 218 P.3d 69, 73. Even if the County could show substantial compliance, the time that it had to adopt these regulations under statute has expired.

Because of these procedural defects, the County has no choice but to: (1) withdraw from the current illegitimate attempt to adopt Type 2 zoning; (2) begin again with the Type 2 zoning process; and (3) follow the process set forth in applicable statute.

Sincerely,  
CARMODY HOLLIDAY LEGAL SERVICES, PLLC

*/s/ Katherine C. Holliday*

Katherine C. Holliday, Esq.

CC: Mount Antelope Park Zoning District Petition for Type 1 Zoning