

This is Todd Devlin and the chair of the Prairie County Commissioners. I'm writing this editorial to explain my position when voting on the Big Sheep Mountain Park District zoning area. This is purely my position, not any of the other Commissioner's position and the reasoning for my vote and only my vote.

In 2024 I sponsored a resolution to support nuclear power to protect our public lands from solar and wind generation because of the massive footprint of the latter. This resolution is on the books at the National Association of Counties. I am not a fan of wind power, but support private property rights. Then again in 2024, I wrote a proposed draft zoning plan for the entire county. In December 2024 that was sent via email to both my fellow Commissioners, my County Attorney, and my Planning Board chair. I proposed a plan to follow the uses allowed in the Federal Land Policy Management Act of 1976 (FLPMA) and any land use not listed in that document would have to apply for a variance with the county. A variance would be allowed if that proposed use did not dramatically affect the major uses allowed in FLPMA. The major uses are: domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production. The idea behind my proposal was to allow public participation prior to implementation of any new use that would protect the major uses listed all done prior to any action by the developer and owner of property. Nobody seemed interested in my proposal. So in 2025 legislature I spent 70 days in Helena, Montana at no cost to Prairie County lobbying again and again for increased taxable value, larger setbacks and stricter decommissioning guidelines for wind farms.

Now the subject at hand. Some owners of property within the proposed Big Sheep Mountain Park District signed contracts with a wind farm company to allow wind farm towers to be built on their property and in trade got monetary compensation. This all happened years prior to Prairie County even knowing about the wind farm contracts. After months of debate and comment in 2024, the commissioners get a completed petition to zone. However, public participation within the zone was not given to every property owner. In other words, not all property owners were approached to sign the petition, but only those they thought would sign the zoning petition. There was property (thousands of acres) that were put into the zone without the landowner even knowing! On top of that, because of LLCs, corporations, trusts and private ownership; persons within the proposed zoning area got multiple signatures on the zoning petition. And then, boundaries of the proposed zoning area changed repeatedly because of expansion of property that the property owners wanted to be in the zone. In other words, those that signed the petition at the start were not signing for the same zoning area as those signing the petition at the end. Statute is very clear in Montana that a pre-existing non-conforming use cannot be zoned to restrict that

use if that use is legal. In the case of Prairie County and the proposed zoning area, when did they start? The wind company has done some biological surveys, they have done Lidar with drones, they have signed contracts and probably much more. Multiple attorneys not associated with Prairie County in anyway have said that if the ink is dry on the contract, then the project has started. There is a new amended statute and it is MCA 76 – 2–105; and it states and I quote “the zoning regulations must allow for the nonconforming use of land or buildings legal at the time or prior to the time that a zoning regulation or amendment to the regulation was adopted, but the board of county commissioners may provide grounds for discontinuing non-conforming uses based on changes to or abandonment of the use of the land or buildings after the adoption of a zoning, regulation or amendment. Any ambiguity or uncertainty in the zoning regulations as to whether a non-conforming use is allowed or whether the use was allowed when it was commenced must be interpreted in favor of the non-conforming use.” End quote. I can only conclude that the petitioners, whether they know it or not, are asking the county and all its taxpayers to take full liability by accepting the zoning regulations in question.

The growth policy of the county says that protection of private property rights should be paramount when decisions are made with regards to land use. When zoning, are we not taking private property rights away? And if so, are we compensating them for taking those property rights away from those that want the wind farm revenue? The answer is no we are not compensating them for the loss of their private property right which can be monetary.

Which takes us to view shed. Pristine view is not guaranteed on private property title and “pristine view” is a subjective statement. I personally do not like wind farms and what they do to the view shed, but I can find no place in law that guarantees me my definition of “pristine view”.

Prairie County has no jurisdiction over Federal and State lands. Prairie County is checkerboard ownership of private, federal, state. The only thing that we can zone is private property. If we zone private property and the feds and the state decide they want to put wind farms up, we will look at them out our back window and our picture window and not be allowed to generate any revenue off our private ground with wind farms because we’re zoned and we still have to look at them.

A petition is not a vote. Comments are not a vote. If the petition or comments were a vote, the commissioners would not be voting on this issue. If the Bureau of Land Management (BLM) looked at comments and petitions as votes when developing their Resource Management Plan, there would be no cattle or sheep, running on federal ground in Prairie County. The Western Watershed and Sierra Clubs of the world would easily out vote those in Prairie County. BLM receives tens of thousands of comments and petitions to get livestock off of Federal ground.

The job of the Prairie County Commission is to make sure that your tax dollars are budgeted and spent wisely and to the intent that the taxpayer expect. There is no zoning insurance and therefore if the county is accused by the court of inappropriately zoning and that just compensation has to be given to private property owners that can show future monetary loss, it could be levied on all taxpayers in the county by the judge. And by the way, you cannot get zoning insurance even if you wanted to. Who is going to explain to the retired individual that is on fixed SSI why their taxes went up?

There are a total of approximately 170 wind towers planned to be constructed in Prairie County. Let's assume that the 25% of the land owners in the zoning area that did not sign have 25% of the contracted wind towers, which would be slightly more than 40 wind towers. We will use 40 for simplification. If there are 40 wind farm towers that are proposed on property in which the owner wanted the wind farms and did not sign the petition to zone, would they have a right of just compensation? I say yes they would. That would be a minimum revenue of \$10,000 a tower per year that totals to \$400,000 (about the same amount of money levied for our entire road department!). If the owner of that property can show the District Court that loss of revenue, someone's going to have to pay it. Since it is the jurisdiction of Prairie County, I believe we would be responsible. My estimates conclude that if the 40 wind towers only last 15 years (very conservative time estimate), the county very well might be responsible for \$6 million in payments to those property owners, and could be as high as \$22 million over a 56 year time frame. Is that tax dollars wisely spent? I think not.

I don't believe this is zoning, but rather using eminent domain powers without compensation. In the real world, eminent domain can be used to take individual rights away for the benefit of the public at large, but just compensation has to be received, which did not happen here. The ultimate goal of many enemies of the state is to eliminate private

property rights without compensation and have it controlled by the government. We have fought wars opposing this ideology. We should all keep that in mind.

The Montana Republicans prioritize the ability of land owners to use their property with minimal external restrictions, viewing this as a fundamental constitutional right.

Our form of government has three parts. Executive, legislative, and judicial. The legislature has made the laws and we are to interpret and follow those laws as the executive branch of government. If one finds an error or thinks that the executive branch is in error in their action, they can go to judicial to get a judgment. That's the way a Democratic Republic works.

I didn't take this job to form a legacy and have been forewarned that if I didn't support the zoning area, with my vote, that my legacy would be destroyed. So be it, but at least I can live with myself.

Signed, Todd Devlin X