March 11, 2014

Board of Johnson County Commissioners
76 N. Main Street
Buffalo, WY 82834

Re: Certification of Johnson County Zoning Regulations

Dear Commissioners:

This letter is to officially inform the Board of Johnson County Commissioners (Board) that the Johnson County Planning and Zoning Commission (Commission) has completed the Johnson County Zoning Regulations and all legal requirements regarding public notices and public hearings of the Commission in accordance with W.S. 18-5-201 through 207.

The Commission has taken many years to develop these regulations to ensure they have been tailored specifically for Johnson County. As much as possible, care has been taken to balance private property rights with the needs of the entire county population. Many public workshops were held over the past several years in both Buffalo and Kaycee to solicit comments on the content and adoption of these regulations. All comments were reviewed by staff and the Commission, and many resulted in changes to the document.

It is recommended that the Board of County Commissioners adopt these Zoning Regulations when the Board determines such regulations are necessary for Johnson County. It is not recommended that the Board wait until there is a development or other crisis before adopting zoning regulations. A survey of county residents to determine the level of public support for adopting zoning regulations has been previously discussed, and the Commission urges the Board to conduct such a survey. However, the Commission feels it is important that the board evaluate not only public opinion, but also the following factors when considering adoption or non adoption of Johnson County Zoning Regulations:

1. Compliance with Requirements of the National Flood Insurance Program (NFIP). The Board of County Commissioners previously signed an ordinance provided by the Federal Emergency Management Agency (FEMA) to certify that Johnson County had instituted appropriate development, inspection and permits in order to qualify Johnson County for subsidized flood insurance under the National Flood Insurance Program (NFIP). The Board also passed Resolution 190 on February 17, 1998 which stated “NOW, THEREFORE, IT BE RESOLVED, that the Board of County Commissioners of Johnson County, Wyoming, hereby: (1) Assures the Federal Emergency Management Agency that it will enact, as necessary, and maintain in force in those areas having flood, mudslide (i.e., mudflow), or flood-related erosion hazards, adequate land use and control measures with effective enforcement provisions consistent with the criteria set forth in Section 60.3 of the National Flood Insurance Program Regulations;...”

The Code of Federal Regulations 44 CFR 59.2 (b) states “To qualify for the sale of federally-subsidized flood insurance a community must adopt and submit to the Administrator as part of its application, flood plain management regulations, satisfying at a minimum the criteria set forth at
part 60 of this subchapter, designed to reduce or avoid future flood, mudslide (i.e., mudflow) or flood-related erosion damages. These regulations must include enforcement provisions.” Since counties in Wyoming are prohibited by state law from adopting ordinances, and the county has not legally adopted requirements through zoning regulations as authorized by Wyoming State statute, the Commission believes that the county may not be in compliance with the requirements of the NFIP.

In addition, FEMA has not mapped flood plain areas in Johnson County. 44 CFR 60.3 states: “When the Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review and reasonably utilize data available from other Federal, State or other sources pending receipt of data from the Administrator.” The Johnson County Zoning Regulations includes language on the identification and evaluation of flood plain areas.

44 CFR 59.24 covers “Suspension of community eligibility” where a community is subject to the suspension from the program for failing to submit copies of “adequate” flood plain management regulations meeting the minimum requirements of paragraphs…”

2. Federal and State Airport Funding. The Johnson County Zoning Regulations include an Airport Overlay District which includes development requirements as well as the protection of certain areas designated by the Johnson County Airport Master Plan dated March 22, 2007. It has been indicated in the past at Airport Board Meetings with WYDOT Aviation and the Federal Aviation Administration, that future airport funding could be jeopardized if these regulations and protections are not in place.

3. Adverse Effects of a Development Boom. If the county experiences a significant development boom, whether from the result of oil, gas or mineral development, or other cause of significant in-migration of new residents, zoning regulations may become more of a necessity to minimize adverse effects of development. If there is a proliferation of rural subdivisions, eventually the number of county residents who reside in such subdivisions may outnumber the number of residents who do not. At that point, subdivision residents have a majority to demand the expansion of expensive rural services such as the county government assuming maintenance of all subdivision streets.

4. Cost of Community Services. Numerous studies in the United States and in the State of Wyoming have concluded that rural residential development does not, as a whole, pay in taxes what it uses in government services (i.e., police, fire and other emergency services; need for additional county road maintenance; school pupil transportation needs; etc.). Therefore, other county residents subsidize the provision of such services, which eventually can lead to a need for increased tax revenue and higher taxes. The county is already aware of the effects of natural gas development on county roads.

5. Removal of prime agricultural land from production. According the American Farmland Trust (AFT), “Between 1982 and 2007, 41,324, 800 acres of rural land (i.e., crop, pasture, range, land formerly enrolled in the Conservation Reserve Program, forest and other rural land) were converted to developed uses” in the country. The AFT also points out 2,619,520 acres of strategic ranchland are at risk in the State of Wyoming between the years 2000-2020. Agricultural not only provides agricultural products, but it also provides amenities such as scenic views; tourism industry assets, hunting and fishing assets; wildlife habitat; and open space. The Commission believes that a significant conversion of agricultural land to other uses could result in adverse factors such as a higher cost of providing community services and higher taxes, loss of
natural amenities mentioned above, and a significant change in the culture and character of Johnson County.

6. **Groundwater Issues.** High levels of development in rural areas also result in a proliferation of private wells and septic systems. Subdivision lots must be kept at a larger size for safety of these systems to prevent contamination of wells by septic systems and to provide an adequate area of replacement for septic systems, should they fail. Subdivision development encouraged closer to Buffalo and Kaycee is more likely to be connected to public water and sewer systems.

7. **Rural Sprawl.** A proliferation of subdivisions in a given rural area, may eventually lead to a significant population in that area. Once population reaches a certain level, it becomes more of a valid argument to establish bases for critical services in those areas. Such services can include fire, police, ambulance, public schools, etc. Distribution of these services around the county would be extremely expensive to taxpayers.

8. **Urban Sprawl.** The inability of the county to manage development around the City of Buffalo and Town of Kaycee can result in sprawling development that makes inefficient use of land, pushing development further and further from the city and town, rather than keeping development into more compact, high-density scenarios where it can be cost effectively served with public water and sewer. Large lot subdivisions adjacent to incorporated municipalities can also inhibit the municipalities’ ability to efficiently expand public water and sewer services to support future growth of the municipalities.

9. **Loss or Obstruction of Scenic Resources.** Without zoning regulations, Johnson County may lack legal ability to restrict operations such as commercial wind energy facilities from scenic areas, including the view shed in front of the Big Horn Mountains. Such view sheds are critical to the county’s tourism industry and contribute to the quality of life of county residents. Prime wind energy facility locations have been identified near and atop the Big Horn Mountains. The Johnson County Planning Department was recently contacted by a firm that requested GIS data to assist in wind energy facility evaluation for Johnson County.

10. **Damages to property, reduction of property values –** During the development of the draft zoning regulations, the Commission was visited by a group of ranchers who had experienced damages to hay crops and safety issues due to traffic and dust from gravel operation haulers. The draft zoning regulations include requirements for sand and gravel operations to help minimize these problems.

    The irresponsible or incompatible use of property can reduce the property values of other nearby properties, since much of a property’s value is often derived from where it is located and what it is located adjacent to. Reductions in property values can also negatively impact the county’s tax base.

11. **Consideration of County Zoning for Major Facilities –** The Wyoming Industrial Siting Council requires consideration of local county zoning for major facilities projects in the state. Likewise, applicants for facilities such as communications towers and gravel mining permits must demonstrate compliance with county zoning on permit applications through the Wyoming Department of Environmental Quality and other government agencies. The Planning Department receives many requests each year for letters stating the status of zoning and building requirements in the county, and whether proposed facilities would be in compliance with any adopted regulations. Without zoning, the county has little input into the placement and operation of these facilities.
The Johnson County Planning Department and Planning and Zoning Commission estimated the cost of implementing Johnson County zoning administration. The position of Zoning Administrator should be assumed by the existing most senior planner. An Administrative Assistant position should be added to ensure there is full-time office coverage and so that zoning certificates can be issued when the other two planner/GIS positions are away at meetings, appointments or for other reasons. A cost estimate breakdown has been included as an attachment.

There are several options available to the Board of County Commissioners regarding zoning regulations:

1. **Adopt County-Wide Zoning.** This option may or may not be supported by a majority of the county population at this time.

2. **Adopt Partial County Zoning.** Several counties in Wyoming have adopted partial county zoning. However, there are several issues related to partial county zoning:
   - A portion of the county is treated differently than another portion.
   - Having zoning regulations in one portion of the county provides rationale for development to occur in the unzoned portion.
   - Zoning should be supported by the adopted Comprehensive Land Use Plan. Is zoning a smaller portion of the county consistent with the term “comprehensive”? If partial zoning is desired, the Comprehensive Land Use Plan should contain justification

3. **Delay Adoption of Zoning.** Since the draft zoning regulations have been tailored to Johnson County by the Planning and Zoning Commission, it should be a relatively quick process for the Board to adopt the zoning regulations at such point in time it determines the regulations are necessary.

If the Board desires the Commission to perform any additional work on zoning regulations, please let us know.

Sincerely,

Scott Mills, Chairman

Dave Spencer, Vice Chairman

Randy Cleveland, Commission Member

**ATTACHMENTS:**

1. Johnson County Zoning Regulations, Final
2. Public Comments from Public Hearings held on December 4-5, 2013 and other comments received on Zoning Regulations
3. Documents related to Johnson County’s participation in the National Flood Insurance Program.
4. Copy of 44 CFR Parts 59, 60, 65 and 70 regarding requirements for participation in the National Flood Insurance Program.
5. Estimated Cost of Zoning Administration Implementation for Johnson County