

**FLATHEAD COUNTY PLANNING BOARD  
MINUTES OF THE MEETING  
JUNE 18, 2008**

**CALL TO ORDER**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Marie Hickey-AuClaire, Gene Dziza, Mike Mower, Gordon Cross, Frank DeKort, Rita Hall, Randy Toavs , and Jim Heim. Marc Pitman had an excused absence. Jeff Harris and BJ Grieve represented the Flathead County Planning & Zoning Office.

There were approximately 73 people in the audience.

**APPROVAL OF MINUTES**

Dziza made a motion seconded by DeKort to approve the May 21, 2008 meeting minutes.

The motion was carried by quorum.

**PUBLIC COMMENT**  
*(not related to agenda items)*

Roger Sullivan discussed the gravel mining industry and how the system is broken. He passed out some handouts to the board.

**OLD BUSINESS**

**ZONING TEXT AMENDMENT (FZTA 08-01)**  
*Continued from 3/19/08 meeting*

A request by Flathead County for a Zoning Text Amendment to Chapter 1(General Provisions), Section 1.04.020 and Chapter 4 (Extractive Industries), Section 4.10.040 of the Flathead County Zoning Regulations. Section 1.04.020 would be deleted in its entirety. Section 4.10.040 (Plan for Development of the Site), would be amended to delete the second sentence regarding plans of operation, required by the Open Cut Mining Act, being approved prior to Flathead County Board of Adjustment approval of a Conditional Use Permit.

*Dziza and Hall stepped down for this item.*

**STAFF REPORT**

Jeff Harris reviewed Staff Report FZTA 08-01 for the Board.

**BOARD QUESTIONS**

Mower asked staff to run through the issues with neighborhood plans.

Harris said he would rather wait until the next report.

Dziza said he would prefer to step down as he was not present at the March 19, 2008 meeting.

Hall said she would prefer to step down as well.

Heim asked why section 1.04.020 is being removed.

Cross explained and said it would be discussed in the next staff report.

**MOTION TO  
DEFER ACTION**

Heim made a motion seconded by Toavs to defer action on section 1.04.020 and will be considered as part of the next agenda item.

**ROLL CALL TO  
DEFER ACTION**

On a roll call vote the motion passed unanimously.

**PRIMARY  
MOTION**

Heim made a motion seconded by Hickey-AuClaire to recommend deletion of the second sentence of Section 4.10.040 of the Flathead County Zoning Regulations.

**SUB-MOTION**

Cross made a motion seconded by Mower to amend the original motion to retain the second sentence of Section 4.10.040 and amend it to read: *When such a plan is also required by the open cut mining act, the submitted plan must include all information required by the department of environmental quality (DEQ) for such an application.*

**BOARD  
DISCUSSION**

Cross had a suggestion to the wording of the motion, which was incorporated into the abovementioned sub-motion.

The board and staff discussed process, the Board of Adjustment, and wording to clear up the current “catch-22” situation with the planning office and DEQ.

**ROLL CALL  
SUB-MOTION**

On a roll call vote the motion passed 5-1 with Heim dissenting.

**ROLL CALL  
PRIMARY  
MOTION**  
*(as amended by the  
sub-motion)*

On a roll call vote the motion passed unanimously.

**BOARD  
DISCUSSION**

Cross wanted clarification in regard to public comment at the Commissioner’s hearing.

Harris said there is another public hearing at the Commissioners as well as a 30-day protest period.

**ZONING TEXT  
AMENDMENT  
(FZTA 08-02)**

A request by Flathead County for a Zoning Text Amendment to Chapter 1 (Scope) of the Flathead County Zoning Regulations. Section 1.04.020 would be revised to include language to clarify the role and relationship of the growth policy and neighborhood plans and zoning.

**STAFF REPORT**

Jeff Harris reviewed Staff Report FZTA 08-02 for the Board.

**BOARD  
QUESTIONS**

Toavs asked if the neighborhood plans state they are non-regulatory.

Harris said staff is doing that in the newer plans; most of the old plans don’t establish that relationship.

Cross asked what happens when portions of neighborhood plans are amended to the zoning regulations.

Harris talked about the implementation section of the older plans and how it pertains to zoning.

The board and staff continued to discuss neighborhood plans.

**AGENCY  
COMMENT**

None.

**PUBLIC  
COMMENT**

Cross asked Grieve to help keep a time-limit of 3 minutes per speaker.

Karen Reeves, 230 Missy Lane in Whitefish, said she was very involved in the North Fork neighborhood plan. She said the proposed wording that gives the planning board the power of interpretation makes her nervous. She would like the original sentence to be kept as is.

Roger Sullivan, 745 S. Main in Kalispell, represented Citizens for Quality Growth, and asked for more than 3 minutes time to speak. He passed some letters out to the board. He expressed his appreciation for staff's analysis. He reviewed, at length, the history of neighborhood plans. He thinks the current proposal undermines the integrity of the historical neighborhood planning process. It undermines the reasonable expectations of thousands of Flathead County residents that participated in formulation of the old generation of neighborhood plans when they entered into a contract with Flathead County with the understanding that the more restrictive shall apply. Finally, there's no good reason to delete the wording since the new generation, post 2007, neighborhood plans deal with the concerns of staff. He asked the board to respect the efforts and expectations of thousands of county citizens who have crafted the old neighborhood plans and asked them to recommend denial of the proposed amendments.

Bruce Young, of Lakeside, said he's a member of the Lakeside Community Council and is working on the current neighborhood plan. He finds it difficult to hear staff say they support neighborhood plans but the bottom line is no one has to follow them; they don't mean anything. He recommended the board read a supreme court decision and continued to talk about neighborhood plans. He said his community has done a lot of work and people want to have a say in their community. He asked the board to consider and respect that.

Bruce Tutvedt, 2335 West Valley Drive, said he's the guy who brought forth the Supreme Court case. He mentioned the growth policy and how it's not regulatory. He mentioned neighborhood plans and that you can't make these small plans regulatory. He said he was there when the West Valley plan was written and he knows what his interpretation would be although people that moved in later may not

agree. He talked about his court case. He said the problem they have with the plans is interpretation. He said the way to change the zoning regulations is through the process. He said the West Valley plan states gravel extraction is allowed. He said there are a lot of words that aren't defined in the West Valley plan; that's why you have zoning to clarify. He discussed the terms gravel pit, gravel extraction, and extractive industries and said they're used throughout the plan in different ways.

Ann Fagre, 222 Glacier Vista Drive in West Glacier, was involved in developing the Canyon Plan in the early 90's and is on the canyon advisory board. She submitted a comparison chart to the board between the Canyon Plan and CALURS. She said 76 of 109 policies in the Canyon plan do not currently have implementation regulations attached to them. She thinks the Canyon area would be vulnerable to the proposed text change.

Monica Jungster, 535 Sloan Lane in West Glacier, is a member of the Canyon update committee. She said the committee was working to bring the canyon plan into compliance with the growth policy. She said they had to quit meeting because of planning staff shortage and higher priorities. She wants the text to remain as is. She said the board should pay special attention to the supreme court decision. She talked about the canyon area and the entrance to Glacier Park.

Clara LaChappelle, 3580 Farm to Market Road, lives 2/10 of a mile from Bruce Tutvedt's gravel pit. She said it has totally disrupted her life. A gravel truck put her daughter in a ditch and they are always running stop signs. She thinks there's a "generation syndrome" in West Valley and that if you've been there long enough no one can touch you. She said the West Valley plan was put in place for protection from things like the Tutvedt pit; hopefully it will remain closed down. She asked for the West Valley plan to be left alone.

Linda Johnson, 2615 Helena Flats Rd, talked about the Helena Flats neighborhood plan. She urged the board not to remove the wording.

John Ulrich, 285 Adams Street in Lakeside, is on the Lakeside Community Council and is the vice-chairman of the neighborhood update committee. He supports keeping the wording as is. He wants to have some clout if they're going to spend time working on neighborhood plans.

Steve Quinell, 523 West 4<sup>th</sup> St. in Whitefish, said he's been interested in neighborhood plans for a while. He asked staff if an analysis of the Big Mountain neighborhood plan was done since it may be coming back to the county. He asked the Board to consider whether or not it's appropriate to undue thousands of hours of work by county citizens and work that has been upheld by the Supreme Court. He said many of the neighborhood plans were created under the contract that Roger

Sullivan talked about. He said these plans were created with the idea that they can be more restrictive. He wondered how much weight neighborhood plans carry in the county. He talked about the Supreme Court decision and why they sided with Citizens for Quality Growth. He said by removing the language “more restrictive” it would be significantly eroding the power of neighborhood plans and their future. This is a power that has been clearly handed off by the county to the neighborhoods.

Sharon DeMeester, 415 Chestnut Drive and 123 Glacier Ridge, said 80% of people in Flathead County live on less than 5 acres and 62% live on 1-acre or less. She asked the board not to change the rules and to consider all the hours citizens have put in on neighborhood plans.

Mark Schwagger, West Valley Drive, said the West Valley Neighborhood plan says that implementation of the plan is necessary to address and identify local issues and to achieve community goals. In the next paragraph, no less than 4 times, does it say that the document is regulatory. It says the regulations are necessary to protect the quality of life in West Valley. The general consensus was that the regulations should be simple to understand and offer flexibility in their application and should recognize opportunities for residential development. He reviewed the implementation policies. He said the West Valley Plan is a regulatory document and disagreed with staff and hoped the board would deny the request. He wondered if the county is trying to take power away from the citizens; he doesn't see any good reason for deleting this. He said if the board passes this it would insult thousands of people and hoped the board would see the wisdom in denying this.

Emily Tutvedt, 2335 West Valley Drive, said gravel pits are like airports and landfills; nobody wants them in their backyard but they have to go somewhere. She said the County needs the authority to override neighborhood plans because everyone can say they don't want it in their backyards. The purpose of this change is to reduce the amount of conflict people have to go through and so people know what to expect. She said the zoning regulations are clearer than the neighborhood plans.

Pat Arnone, 595 Lauman Road, talked about neighborhood plans and zone changes. She asked the board to leave the text as is.

Joe Grana, 322 Rhodes Draw, thanked the board for their work. He talked about democracy and the voice of citizens. He said citizen is the highest office held in this country, and second is President of the United States. He said he knows that sounds extreme but is tired of being run over by a few rich people. He just wants to be listened to and is tired of coming to meetings year after year talking about the same thing and getting back-doored another way. He said they went to the

Supreme Court to be heard and now they're back before the board again. He disagreed with the changes and thinks the neighborhood plans need to be left alone. He asked the board to prove that this is America where democracy rules and to do the right thing; not what's in the interest of a few special people. Do what's in the interest of the all the citizens in this county.

Gary Krueger, 805 Church Drive, thanked the planning office for following through. He would like to see the thing thrown out entirely but thinks staff came up with a fairly good compromise. He believes amending the zone has a process guaranteed by State law; interpreting the zone does not. He likes to see things go through a process where not just one person can interpret what a zone says, but where a group, like the planning board, can amend or adopt a zone. He talked about the West Valley Plan and said on page 41 that subdivision and zoning regulations are the primary tools of implementation. 1-53-46

Tom Clark, 3070 Farm to Market Road, said memories are an incredible thing. Back in 1997 when the West Valley plan was written, a steering committee was put together to help write it; Bruce Tutvedt was on it. If you ask each one of them, they will give you a different take on what was put in the plan and why; that's why you can't go on memory. The only thing you can go off is the West Valley Neighborhood Plan document. He asked the board to read through it thoroughly and come to a conclusion whether or not it's a regulatory document; he believes it is. He said if the board comes back now and says it can't be regulatory it's changing the rules of the game and he doesn't think that would be fair.

Mayre Flowers, Citizens for a Better Flathead, passed out comments to the Board. She summarized the key points encouraging the board not to delete this text.

**STAFF  
REBUTTAL**

Harris thanked the audience for their comments. The written comments staff received will be forwarded to the Commissioners as part of the public record. He said if people would like to turn in comments to the Commissioners as well, feel free.

**MOTION TO  
ADOPT F.O.F.**

Dziza made a motion seconded by Hickey-AuClaire to adopt staff report FZTA 08-02 as findings-of-fact as amended.

**SUB-MOTION TO  
ADD F.O.F. #6**

Toavs made a motion seconded by Dziza to add finding-of-fact #6 to state: *"The Growth Policy and majority of neighborhood plans already define themselves as guiding documents only."*

**ROLL CALL TO  
ADD F.O.F. #6**

On a roll call vote the motion passed unanimously.

**SUB-MOTION TO  
ADD F.O.F. #7**

Cross made a motion seconded by Dekort to add finding-of-fact #7 to state: *“Ample public testimony was provided to the effect that neighborhood plans adopted prior to March, 2007 were written with the knowledge that any land use provisions they contained that were more stringent than the zoning regulations would control land use in their area.”*

**BOARD  
DISCUSSION**

Toavs asked Harris about the analysis in regard to neighborhood plans.

Harris said he looked at the plans versus the zoning to see what the differences were. He didn't have the history to include in the analysis.

Toavs asked how many plans specifically say they are written as non-regulatory.

Harris said very few; they are all silent with the exception of the newer ones. The ones that have been done since 2005 have language in them to say they aren't zoning and are not regulatory. He said the Ashley lake plan specifies that if something is stricter in the land use plan, it controls. None of the other plans do that.

Cross said the board heard testimony from the people who did the neighborhood plans, that's why he wanted to add the finding.

**ROLL CALL TO  
ADD F.O.F. #7**

On a roll call vote the motion passed 7-1 with Mower dissenting.

**ROLL CALL  
TO ADOPT F.O.F.**

On a roll call vote the motion passed unanimously.

**BOARD  
DISCUSSION**

Hall thinks it is important spell out that the growth policy is non-regulatory. She commented on the text amendment.

Dekort said he would not vote in favor of the text amendment as proposed. He talked about neighborhood plans, both old and new, and the growth policy section that talks about updating neighborhood plans. He mentioned setting a deadline for updating all of the historic neighborhood plans.

The board discussed the amendments at length.

Cross asked Jon Smith's opinion on Dekort's suggested compromise.

Smith talked about having a deadline. He said his recollection over the many years is that no one ever thought neighborhood plans were regulatory. The Commissioner's certainly never did otherwise they wouldn't have adopted them that way. He said they would have had to look at them closer if they were to adopt them as regulatory.

Grieve said there's a chapter in the growth policy that has details about what should happen with neighborhood plans.

Harris thinks it would be acceptable to make a change to the zoning regulations in regard to the neighborhood plans.

Cross talked about the process for this text amendment.

Heim is in favor of protecting the plans that were written prior to the adoption of the growth policy. He believes the people thought that's all they had.

Harris commented on the Board's discussion in regard to placing a time limit on updating the neighborhood plans. He talked about regulatory and non-regulatory. He said administering unique zoning districts and processes are problematic. He said it would be in everyone's interest to have everything zoned but with more standard classifications. He said neighborhood plans should ultimately fit together like a jigsaw puzzle. Right now they're spread out all over the place like islands. He said there needs to be consistency across those boundaries.

Cross talked about portions of the plans being amended into the zoning regulations. He talked about geographical specific areas. He said there is potential for something in a neighborhood plan, not amended into the zoning regulations, to be more stringent.

Harris said all the plans will have different policies and goals and say different things in terms of how they want their areas to develop. Staff would try to implement those through one set of regulations and said that would be difficult.

Mower talked about the unique areas and neighborhood plan areas. He said there are a quite a few plans now and if we continue on there will be 50 some plans that are all different.

Harris said it would be impossible to administer 50 different processes and unique zoning districts scattered all over the place. They all call for different things.

Mower said you could be sure about having to go to Eureka to get gravel.

Grieve asked the Board to bear in mind that setting deadlines is tough when the planning office doesn't have the resources. He said it makes staff look like bad guys. He said staff is currently 100% occupied and asked them to keep that in mind as a resource constraint. He said the political will to staff our office is limited.

**MOTION TO APPROVE**

Dekort made a motion seconded by Hall to recommend approval of amending Section 1.04.020 of the Flathead County Zoning Regulations to the following language: *"The Growth Policy and neighborhood plans, new or revised after March, 2007, are not regulatory and do not confer any authority to regulate. Neighborhood plans have until January 1, 2010, to become compliant with the Growth Policy. All neighborhood plans will become non-regulatory after January 1, 2010. In cases where a neighborhood plan that was adopted prior to March 2007, contains aspects related to zoning, and is under the jurisdiction of these regulations, the provisions of the more restrictive shall control until January 1, 2010."*

**BOARD DISCUSSION**

Mower said that's only a year and a half away.

The board discussed having a time limit.

Dziza said the Zoning Regulations is a weird place to put this but he doesn't really have a better solution.

**ROLL CALL TO APPROVE**

The motion passed on a unanimous 8-0 roll call vote.

**WHITETAIL PINES (FPP 08-09)**

A request by Sundance Properties Inc. for Preliminary Plat approval of Whitetail Pines, a 45 lot single-family residential subdivision on 180 acres. The property is located at 2783 Columbia Falls Stage.

**STAFF REPORT**

BJ Grieve presented staff report FPP 08-09 for the board.

**BOARD QUESTIONS**

DeKort asked Grieve to show him the three phases and the roads that would be built for them.

Grieve pointed these out on the plat map as well as test-hole sites that were abandoned due to shallow groundwater.

**APPLICANT PRESENTATION**

Narda Wilson, 184 Midway Drive, represented the applicant. She introduced the project team; Rob Smith of A2Z Engineering, Brian Launius from Enviro-tech, Joe Kauffman of Big Sky Surveying, and Doug Skoczek of Sundance Properties, who is the owner. She talked about parcel sizes adjacent to the subject property. She submitted a map to staff @ 10:09pm. She said the applicant met with the residents of Garden Estates to talk about the road and to hear their concerns. She thinks everyone concluded that there is a legal right to access Garden Drive. She mentioned the written public comments said she would like the opportunity to review them and address any issues.

Rob Smith, of A2Z Engineering, located at 115 Commons Way in Kalispell. He talked about road design, storm water runoff, and the traffic impact study.

Brian Launius, of Enviro-tech, addressed the groundwater issues.

Mower talked about the groundwater in his area and asked when it would peak.

Launius said runoff in this area depends on the mountains. He talked about previous peak times.

Joe Kauffman, Big Sky Surveying, addressed the elevation of the groundwater in relation to the building sites.

Doug Skoczak, 114 Vista View Trail in Columbia Falls, is the developer of the project. He said he started working on this property in September 2005 and continued to talk about its history. He said he's made himself available for questions from the neighbors. He talked about roofing, fencing, and building materials and said they want to maintain a natural look. He talked about groundwater and said he's never seen standing water. He mentioned the park and talked about wildlife in the area.

**AGENCY  
COMMENTS**

None.

**PUBLIC  
COMMENT**

Byron Logue, 66 Garden Drive, said the neighborhood is neither for nor against the subdivision but they have several concerns. He discussed increased traffic, density, wildlife, the trail system, access, and conditions he would like to see added.

Julie Helbach, 150 River Estates Drive, lives at the south end of the proposed subdivision. She doesn't feel it conforms to the existing neighborhood. She discussed the roads, the rural character of the area, and the oversupply of homes and parcels for sale. She presented statistics in regard to parcels for sale.

Chris Saucier, 529 Trap Road, said he built a bridge because of water issues in the area. He talked about water conditions, elk, and lot size.

Tim Gilk, 699 Trap Road, said there are issues with the roads in the area. He talked about the Columbia Falls Stage Road access.

Keigh Miley, 2950 Columbia Falls Stage, concurred with the groundwater concerns. He said we've been in a drought period for a while. He discussed the traffic on Columbia Falls Stage, access, and the proposed lots.

Kate Kendall, 2730 Columbia Falls Stage, concurred with previous comments about the small lot sizes, groundwater, and traffic.

Steve Quinell, 523 West 4<sup>th</sup> Street in Whitefish, doesn't live in the area

but has interest in planning issues. He asked the board to consider a few things in regard to long-term impact. He mentioned the traffic impact study, parkland, the trail system, and water issues.

Jack Gordon, 430 Trapline Trail, is concerned with the acreage and density. He talked about road maintenance. He said if the developers really want to make this development nice, they should do 5 acres.

Mayre Flowers, of Citizens for a Better Flathead, has looked at this subdivision briefly but would like to see the public comments. She encouraged the board to remember it's not their job to redesign these subdivisions. She thinks the environmental assessment (*EA*) is inadequate and is a basis for denial. She talked about groundwater, septic systems, and traffic.

John Zimmerman, 125 Blue Crest in Kalispell, has worked with the applicant, as his realtor, for about 2-½ years. He thinks the project would be good.

Fran Purdy, 120 River Estates Drive, owns about 18 acres along the river. She talked about the springs and the water issues. She is concerned about the wells and septic systems.

Carry Franklin, Lot 4 of Garden Estates, thanked Byron for his statements and said she and her husband concur.

Matt Lee, 25 Garden Drive, talked about having a potential cul-de-sac, and dust concerns on their road.

Noel Gorton, 578 Creston Road, talked about dust.

Charlene, 185 Badrock Drive, talked about the traffic and said a lot of the roads south of this subdivision are gravel.

Sharyn Paulson, 44 Garden Drive, read her letter to the board.

Heidi Sobczak, 707 Trap Road, expressed concerns about access, groundwater, the "cookie-cutter" approach to subdivision, and wildlife.

Amanda Smiley, 2950 Columbia Falls Stage, said groundwater, lot size, and access are the three main issues.

Tim O. talked about groundwater, access, traffic, and parcel size.

Joe Bryant said he wrote a letter about the groundwater issues. He said the developer has been lucky to not have to witness the groundwater that's there. He talked about the phases of the subdivision, the small park area, and access.

Laura Miller, River Estates Drive, talked about lot sizes in the area. She talked about a few parts of the growth policy and said their area is still considered rural. She mentioned a previously denied subdivision in the same area because of potential impact on wildlife, inadequate open space, and because it didn't fit with the rural character of the area. She talked about groundwater, traffic, lot size, and the feel of the area. She said developers have been required to go along with the character of the area.

Scott Smiley, 2<sup>nd</sup> Avenue West, concurred with the neighbors about the issues at hand.

Mark Burnham, agreed with a lot of the concerns. He said there were some water issues on the property in the 1990's.

**ADJOURNMENT**

Cross called the meeting to an end at approximately 12:02 a.m. The agenda item will be continued at the next available meeting date.

The next regular meeting will be held at 6:00 p.m. on July 9, 2008.

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Gordon Cross, President

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Jill Goodnough, Recording Secretary

*APPROVED AS SUBMITTED/CORRECTED: \_\_\_\_\_/\_\_\_\_\_/08*