



Draft Memo

Regarding proposed changes to Section 1.04.020 of the Flathead County Zoning Regulations and the potential impacts to neighborhood plans.

6/16/08

From Mayre Flowers

Notes for issues to be raised at June 18th hearing in addition to earlier comments made at the March 19th hearing. See March 19th comments attached.

Issue #1: Section 1.04.020 not only applies to zoning but also to “other adopted documents containing aspects related to zoning.” Thus, removal of this section will affect these “other adopted documents.”

Section 1.04.020 states: *“In cases where a neighborhood plan, addendum to the Master Plan, or other adopted document contains aspects related to zoning and is under the jurisdiction of these regulations, the provisions of the more restrictive shall control.”*

The staff report and analysis considering and recommending the deletion of Section 1.04.020 focuses its analysis of the text change on the zoning in existing neighborhood plans and not, what are considered, other adopted documents containing aspects related to zoning. Both the CALURS document that covers the West Glacier area and the Ashley Lake neighborhood Plan, for example, contain development standards that relate to zoning, but are unique. The Lake Shore Regulations and Flood Plain regulations also contain regulations that may be more restrictive than other land use provisions. Each of these documents is reviewed below.

Canyon Plan and CALURS

As the staff analysis points out regarding CALURS (see page 4), “There is no cross reference between Section 1.04.020 in the neighborhood plan or in CALURS. There would be no impact or unintended consequence if Section 1.04.020 was removed from the zoning regulations since CALURS is a unique regulatory instrument.” Yet within the language of Section 1.04.020, CALURS falls under “other adopted documents containing aspects related to zoning” and thus is impacted by removing Section 1.04.020.

The CALURS document begins with a General Provision Section that points out that it was adopted consistent with zoning statutes found at MCA 76-2-201 through 76-2-228 and that it “supplements existing land use regulations of Flathead County.” Section

1.04.020, thus, provides a further legal basis for CALURS and its ability to “supplement existing land use regulations of Flathead County.”

The attached analysis/comparison of the Canyon Plan and CALURS also shows that there are numerous policy directions in the neighborhood plan section that are not clearly implemented in the development standards or CALURS/zoning portion of the document. Removing the wording in Section 1.04.020 that states that the “*the provisions of the more restrictive shall control*” removes the necessary connection between the Canyon Plan / neighborhood plan and CALURS / zoning for the Canyon Plan and undermines the consistency of these two documents.

Ashley Lake Neighborhood Plan (and perhaps other neighborhood plans)

Ashley Lake Neighborhood Plan has a development code that is not identical to the Ashley Lake zoning regulations as is pointed out in the staff analysis on pages 2-3. Its development code could be considered one of the “other documents” related to zoning. Given the inconsistencies between the Ashley Lake Neighborhood Plan and the Ashley Lake zoning regulations, under Section 1.04.020 the more restrictive wording of the neighborhood plan would prevail. The Ashley Lake Neighborhood Plan calls for this by specifically citing Section 1.04.020 for any conflicts that arise. Removing Section 1.04.020 creates unnecessary confusion and weakens this Neighborhood Plan and others.

Lake Shore and Flood Plain regulations

Finally, in looking at the scope of “other documents containing aspects related to zoning” the impact of the deletion of Section 1.04.02 should be reviewed as it applies to Lake Shore and Flood Plain regulations. Both of these documents contain zoning related regulations that rely on provisions that call for these regulations to prevail if they are stronger or more restrictive than other regulations. Retention of Section 1.04.02 should be considered to provide a legal basis for these regulations as well.

“Flathead County Lake and Lakeshore Protection Regulations:

1.6 INTERPRETATION

These regulations supplement all other regulations, and the permit issued hereunder does not supersede or negate the necessity for obtaining other permits as may be required by other governmental units having jurisdictional responsibilities over a lake or its lakeshore. Where any provision of these regulations imposes more stringent regulations, requirements or limitations than imposed or required by any other regulation, resolution, ordinance or statute, the provisions of these regulations shall govern.

Flathead County Floodway and Floodplain Management Regs:

3.06 Abrogation and Greater Responsibility

It is not intended by these regulations to repeal, abrogate or impair any existing easements, covenants, deed restrictions or underlying zoning. However, where these regulations impose greater restrictions, the provisions of these regulations shall prevail.

3.07 Regulation Interpretation

The interpretation and application of the provisions of these regulations shall be considered minimum requirements and liberally construed in favor of the governing body and not deemed a limitation or repeal of any other powers granted by State statute.

Issue #2: Some Neighborhood Plan elements rely of exiting zoning regulations for implementation. A change to a specific aspect of county zoning may result in a change that no longer implements the neighborhood plan. Removing section Section 1.04.020 creates unnecessary confusion as to how the neighborhood plan should be implemented when other aspects of county zoning are changed.

An example of this is the Ashley Lake Neighborhood plan regarding guesthouses. According to those involved in the drafting of the Ashley Lake Neighborhood Plan, the original draft submitted for approval included a provision limiting the use of guesthouses. Shortly after final adoption, it was discovered that for reasons unknown that this limit on the use of guesthouses had not been included in the final adopted plan. The county at that time assured the Ashley Lake Neighborhood Plan residents the county already had a provision forbidding guesthouses and that this county zoning provision would meet this concern. A few years later, however, the county removed the restriction on guesthouses and Ashley Lake saw a glut of guesthouses in its plan area.

Section 1.04.02 should be retained so that general changes to county zoning are not in conflict with the more restrictive policies of neighborhood plans that relied on county zoning. This can become problematic for even changes to definitions in zoning regulations.

While most neighborhood plans rely on “unique” zoning for their plan area, the Bigfork Neighborhood Plan relies primarily on existing county zoning. Here again future changes to county zoning may no longer be consistent with the more restrictive goal and policies of a neighborhood plan like Bigfork’s. In 2001, for example, the county adopted four zone text changes in addition to the change to guesthouse provisions. Future changes to county zoning are another reason why Section 1.04.02 should be retained to ensure consistency as required by law between neighborhood plans and their zoning tools.

According to MCA 76-1-103. Definitions. (8) "Neighborhood plan" means a plan for a geographic area within the boundaries of the jurisdictional area that addresses one or more of the elements of the growth policy in more detail." As such neighborhood plans can be more restrictive by virtue of providing and addressing issues in more detail.

Issue #3: The new wording proposed by the staff to replace Section 1.04.020 does not address issues #1&2 raised above. This could be remedied by adding the following change below.

Proposed new wording by County:

“The growth policy and neighborhood plans are not regulatory and do not confer any authority to regulate. The growth policy and neighborhood plans are intended to provide direction and guidance when consideration is given to adopting zoning and other land use regulations.”

Change to:

*“The growth policy and neighborhood plans are not regulatory and do not confer any authority to regulate. The growth policy and neighborhood plans **and other adopted documents containing aspects related to zoning** are intended to provide direction and guidance when consideration is given to adopting or applying zoning and other land use regulations.”*

Issue #4 : 76-1-605(2), M.C.A. A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law. However, MCA 76-2-201 and 76-2-203 both require that zoning be made “in accordance with” or “consistent” with a growth policy or master plan.

Proposed changes to Section 1.04.020 should recognize this requirement. When it is identified that policies in a neighborhood plan have not been clearly carried over and implement in the existing zoning for the neighborhood plan area, as was an issue in the recent West Valley case before the Montana Supreme Court, which clarified what scale of gravel extraction was allowable under that plan, then the zoning for the plan area should first be brought in accordance or consistent with the governing neighborhood plan.

Change to:

*“The growth policy and neighborhood plans are not regulatory and do not confer any authority to regulate. The growth policy and neighborhood plans **and other adopted documents containing aspects related to zoning** are intended to provide direction and guidance when consideration is given to adopting or applying zoning and other land use regulations.” **The adoption or application of zoning for a neighborhood plan is required by MCA 76-1-605¹, 76-2-201² and 76-2-203³ to be made “in accordance***

¹ **76-1-605. Use of adopted growth policy.** (1) Subject to subsection (2), after adoption of a growth policy, the governing body within the area covered by the growth policy pursuant to [76-1-601](#) must be guided by

with” or “consistent” with a neighborhood plan. When inconsistencies are identified, the zoning should be made and applied consistent with the neighborhood plan.

The simplest solution, however, is simply to retain Section 1.04.020.

and give consideration to the general policy and pattern of development set out in the growth policy in the:

- (a) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;
- (b) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;
- and
- (c) adoption of zoning ordinances or resolutions.

(2) (a) A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law.

(b) A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy adopted pursuant to this chapter.

History: En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part); amd. Sec. 12, Ch. 582, L. 1999; amd. Sec. 1, Ch. 527, L. 2001; amd. Sec. 7, Ch. 599, L. 2003.

² **76-2-201. County zoning authorized.** (1) For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that has adopted a growth policy pursuant to chapter 1 is authorized to adopt zoning regulations for all or parts of the jurisdictional area in accordance with the provisions of this part.

(2) For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that adopted a master plan pursuant to Title 76, chapter 1, before October 1, 1999, may, until October 1, 2006, adopt or revise zoning regulations that are consistent with the master plan.

History: En. Sec. 1, Ch. 246, L. 1963; R.C.M. 1947, 16-4701; amd. Sec. 14, Ch. 582, L. 1999; amd. Sec. 2, Ch. 87, L. 2003; amd. Sec. 8, Ch. 599, L. 2003.

³ **76-2-203. Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

- (a) made in accordance with the growth policy or a master plan, as provided for in [76-2-201\(2\)](#); and
- (b) designed to:
 - (i) lessen congestion in the streets;
 - (ii) secure safety from fire, panic, and other dangers;
 - (iii) promote public health and general welfare;
 - (iv) provide adequate light and air;
 - (v) prevent the overcrowding of land;
 - (vi) avoid undue concentration of population; and
 - (vii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) Zoning regulations must be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area.

History: En. Sec. 4, Ch. 246, L. 1963; R.C.M. 1947, 16-4704; amd. Sec. 15, Ch. 582, L. 1999; amd. Sec. 3, Ch. 87, L. 2003.