

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE
TEXT AMENDMENT TO THE FLATHEAD COUNTY ZONING REGULATIONS
REPLACEMENT LANGUAGE FOR SECTION 1.04.020
STAFF REPORT FZTA 08-02
April 15, 2008**

A report to the Flathead County Planning Board and the Flathead County Board of County Commissioners to amend Chapter 1 (General Provisions), Section 1.04 (Scope) to replace the provision in Section 1.04.020 of the Flathead County Zoning Regulations. A public hearing has been scheduled before the Flathead County Planning Board on June 18, 2008. Following the public hearing a recommendation from the planning board may be forwarded to the county commission. The commission will set and hold a second public hearing to consider the zoning regulation text amendments prior to any final action. **This staff report is different and should not be confused with Staff Report FZTA 08-01.**

All file material pertaining to these proposed zoning regulation text amendment is available for public review at the Flathead County Planning and Zoning Office, 1035 First Avenue West, Kalispell, MT 59901 between the hours of 8:00 A.M. to 5:00P.M., Monday through Friday.

UPDATE: On 06/18/08 the Flathead County Planning Board held a public hearing on this proposal. After unanimously voting to approve findings of fact as amended with two additional findings, the Planning Board voted unanimously to recommend approval of amended language to Section 1.04.020 of the Flathead County Zoning Regulations to the Flathead County Commissioners. Please see the attached addendum for the additional findings and amendments to Section 1.04.020 as recommended by the Planning Board.

I. BACKGROUND INFORMATION

A. Petitioner:

Flathead County Planning and Zoning Office
1035 First Avenue West
Kalispell, MT 59901

B. Background of Requested Amendment:

The Flathead County Zoning Regulations were initially adopted by Resolution 955A on September 27, 1993. Section 1.04 of the regulations pertains to “Scope” of the regulations. Section 1.04.020 addresses the use of the Flathead County Master Plan (Flathead County Growth Policy) and, as interpreted by the Supreme Court, allows for provisions of the growth policy to control over the zoning regulations in instances where the growth policy is more restrictive than the zoning regulations. This provision is currently the subject of a different and separate zoning text amendment which recommends the provision to be deleted

Section 1.04.020

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.

On January 3, 2008, the Montana Supreme Court issued an Opinion in the case of Flathead Citizens for Quality Growth (Appellant) v. Flathead County Board of Adjustment (Defendant)/Tutvedt Family Partnership (Plaintiff) v. Flathead County Board of Adjustment (Defendant). The Supreme Court ruled in favor of the Citizens for Quality Growth. One of the issues the Court dealt with the notion of whether the growth policy and related documents were regulatory in nature. The Court ruled that since the zoning regulations contained Section 1.04.020, the growth policy and related documents were regulatory when related to 76-1-605(2), M.C.A.

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.

The Court found that Section 1.04.020 of the zoning regulations provides the type of authority contemplated by 76-1-605(2). It is arguable that this makes the growth policy, which is specifically authorized by law, regulatory and confers authority to regulate and therefore the provisions of the growth policy, including related documents, that are more restrictive must control (according to zoning regulations).

General planning principles acknowledge that a growth policy should be non-regulatory. It is not the intent of the Flathead County to make the growth policy or neighborhood plans regulatory. However, the growth policy/neighborhood plan should provide the foundation for zoning and other regulations and be part of the considerations in land use decision making.

On March 19, 2008 the planning board held a public hearing (FZTA 08-01) to entirely delete Section 1.04.020 of the zoning regulations. Public comment during the hearing raised the issue that deleting the provision would cause unintended consequences to the growth policy, neighborhood plans and other zoning provisions. The board closed the public hearing and continued discussion until June 18, 2008 to allow staff time prepare an analysis of the growth policy and neighborhood plans to determine whether unintended consequences might occur if the provision was deleted (attached as part of this staff report).

Staff has completed the analysis of unintended consequences and generally found that no significant unintended consequences would occur if Section 1.04.020 was deleted from the regulations. However, if deleted, the relationship between growth policy and neighborhood plan and zoning would be totally silent, certainty causing issues, confusion and uncertainty over time when administering zoning.

Section 1.04.020 should be used to explain the distinction between the growth policy/neighborhood plans and zoning. A second conclusion of the analysis identifies the need to amend Section 1.04.020 to explain how the growth policy and neighborhood plans function in conjunction with the zoning regulations.

This text amendment is to amend Section 1.04.020 to read:

Section 1.04.020 Amended Language

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, amending and interpreting zoning regulations.

This text amendment is proposed whether or not the previous text amendment (FZTA 08-01) to delete Section 1.04.020 is approved. This Zoning Text Amendment is not associated with FZTA 08-01 and is required to be processed independently.

II. EVALUATION BASED ON STATUTORY CRITERIA

The proposed zoning text amendment is discussed relative to the itemized criteria described by 76-2-203, M.C.A. and Sections 2.08.040 of the Flathead County Zoning Regulations.

Please note that this evaluation is based on the administrative nature of the zoning text amendment. Site-specific review and analysis of these regulations with respect to individual zoning applications can not be determined at this time and will be evaluated based on the merit of the application at the time of submittal.

1. Does the requested zoning comply with the Master Plan?

The Flathead County Growth Policy, adopted in March 19, 2007, includes several discussions regarding the regulatory status of the document. The Preface (Page xxii) states that the “growth policy has no regulatory authority and is instead designed as a conceptual foundation for future land use decisions and is the basis for future regulations.”

Page xxiii of the Preface discusses maps. “Maps are provided for illustrative and educational purposes. Maps in the Flathead County Growth Policy should not be interpreted as regulatory.”

Chapter 9: Implementation Strategy (Page 133) begins with “A Growth Policy is a non regulatory document created to ensure the promotion of public health, safety, morals, convenience or order or the general welfare by defining a community’s goals and policies to reach those goals (76-1-106, M.C.A.).”

County zoning is authorized pursuant to 76-2-201, MCA in counties that have adopted a growth policy. County zoning regulations are to be consistent with the growth policy as well. Since the growth policy is intended to be non-regulatory clarifying the role of the growth policy and neighborhood plans in the zoning regulations is beneficial in understanding how the zoning regulations and growth policy work together in land use decision making.

Each neighborhood plan is uniquely tied to the character of their respective planning area. Only the Ashley Lake Neighborhood Plan/Development Code directly references Section 1.04.020. The development code was substantially incorporated into the zoning regulations to create a non-standard zoning district. Most other neighborhood plans with development codes have been incorporated into the zoning regulations intact.

- **The proposed zoning text amendment to Section 1.04.020 is generally consistent with the stated intended desire of the growth policy to guide land use decision making. There was found to be no significant differences between the zoning regulations and growth policy/neighborhood plans in the analysis (attached).**

2. Is the requested zoning designed to lessen congestion in the streets?
 The zoning text amendment will have no physical impact on county roadways. Hopefully, transportation related issues and opportunities are taken into account in the growth policy/neighborhood plans and when analyzing the viability for establishing zoning districts.
 - **The proposed zoning text amendment seeks to provide an explanation of how the growth policy and zoning work together in land use decision making. It will have no direct impact to county roadways and/or transportation systems.**
3. Does the requested zone give reasonable consideration to the character of the district?
 This zoning text amendment will have no physical impact to the character of the district. No addition or change to zoning districts is suggested with the zoning text amendment.
 - **The proposed zoning text amendment will promote the character of the district in that the growth policy/neighborhood plan identifies the vision for future growth and development and implemented via zoning and other regulations.**
4. Will the requested zone secure safety from fire, panic and other dangers?
 This zoning text amendment should have no direct implication to anything physical, including fire, panic and other dangers. The growth policy /neighborhood plan should function to provide the basis for zoning with the overall goal of providing for public safety. The proposed text change should be beneficial in land use decision making.
 - **The proposed zoning text amendment will have no adverse impact to physical safety and other dangers.**
5. Will the requested change promote public health and general welfare?
 The zoning text amendment will promote public health and general welfare by tying the growth policy and zoning together when considering land use decisions. Public health and general welfare are staples of sound land use planning. It is the intent that the growth policy and zoning work together in land use decision making.
 - **The proposed zoning text amendment does not affect public health and welfare. In fact the proposed amendment should be beneficial in that it clarifies the role of growth policy and zoning in land use decision making.**
6. Will the requested zone provide for adequate light and air?
 This zoning text amendment does not apply to adequate light and air. These considerations should be part of the growth policy planning process and implemented through zoning and other regulations. The zoning text amendment clarifies the respective roles of the growth policy and zoning.
 - **The proposed zoning text amendment does not apply to adequate light and air. These considerations should be part of the planning process and implemented through zoning and other regulations.**
7. Will the requested zoning prevent the overcrowding of land?

The zoning text amendment does not apply to overcrowding of land. Spatial population densities, infrastructure and other aspects of planning should be a central component of developing the growth policy and neighborhood plans.

- **The proposed zoning text amendment will not contribute to the overcrowding of land. This consideration should be part of the planning process associated with the growth policy/neighborhood plans.**

8. Will the requested zoning avoid undue concentration of people?

This zoning text amendment will not impact any spatial demographics or concentrations. No addition or change to any of the zoning districts is proposed by this zoning text amendment. Considerations for population are part of the planning process and implemented through zoning and other regulations. This zoning text amendment would clarify the role of the growth policy.

- **The zoning text amendment will not lead to an undue concentration of people. Spatial growth and development are components of the growth policy/neighborhood plan planning process**

9. Will the requested zoning facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements?

The zoning text amendment will not affect the facilitation of transportation, water, sewerage, schools, parks, and other public requirements. It will clarify the role and relationship of the growth policy/neighborhood plans and zoning in the zoning regulations. No amendments or changes are proposed for zoning districts.

- **The zoning text amendments will not adversely impact public services or infrastructure.**

10. Does the requested zoning give consideration to the particular suitability of the property for particular uses?

The zoning text does not apply to particular uses for specific properties. The zone text amendment is not site specific; rather it applies to anywhere there is a growth policy/neighborhood plan that is under the jurisdiction of the zoning regulations.

- **The zoning text amendment does not apply to specific uses. The zoning text amendment applies to any site where the growth policy/neighborhood plan and zoning co-exist.**

11. Will the proposed zoning conserve the value of buildings?

This zoning text amendment has no relationship to conserving the value of buildings. The zoning text amendment provides an explanation of using the growth policy/neighborhood plans in conjunction with zoning to make better and more informed land use decisions.

- **The zoning text amendment does not apply to building valuation.**

12. Will the requested zoning encourage the most appropriate use of land throughout the jurisdiction?

The zoning text amendment has no relationship to spatial land use. The zoning text amendment is located in the “Chapter 1, General Provisions” of the zoning regulations. There is specific site or area covered by the proposed text amendment. Rather, it explains and clarifies the role and relationship of the growth policy/neighborhood plans and zoning in making better and more informed land use decisions.

- **The proposed zoning regulations text amendment is not applicable to spatial land use.**

III. RECOMMENDATION

Staff recommends the Flathead County Planning Board and Board of County Commissioners adopt Report FZTA-08-02, statutory criteria analysis and the attached Growth Policy/Neighborhood Plan Analysis as Findings of Fact and approve the suggested amended language to Section 1.04.020, Flathead County Zoning Regulations. The suggested amended language is:

Section 1.04.020

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, amending and interpreting zoning regulations.

Specific Findings of Fact:

1. County zoning is authorized pursuant to 76-2-201, MCA in counties that have adopted a growth policy. County zoning regulations are to be consistent with the growth policy as well. Since the growth policy is intended to be non-regulatory clarifying the role of the growth policy and neighborhood plans in the zoning regulations is beneficial in understanding how the zoning regulations and growth policy work together in land use decision making.
2. The proposed zoning text amendment (Section 1.04.020) is proposed in “Chapter 1, General Provisions” of the zoning regulations. It is not site or area specific. Rather, it explains and clarifies the role and relationship of the growth policy/neighborhood plans and zoning in making better and more informed land use decisions.
3. The proposed zoning text amendment will promote public health, safety and general welfare by tying the growth policy and zoning together when considering land use decisions. Public health and general welfare are staples of sound land use planning. It is the intent that the growth policy and zoning work together in land use decision making.
4. The proposed zoning text amendment will promote the character of the district in that the growth policy/neighborhood plan identifies the vision for future growth and development and implemented via zoning and other regulations.
5. The proposed zoning text amendment meets all of the criteria contained in Section 2.08.040 and 76-2-203, M.C.A (Criteria and guidelines for zoning regulations).

