

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
TEXT AMENDMENTS TO THE FLATHEAD COUNTY ZONING REGULATIONS
DELETION OF SECTION 1.04.020 AND AMENDMENT OF SECTION 4.10.040
STAFF REPORT FZTA 08-01
February 6, 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 delete Section 1.04.020 of the Flathead County Zoning Regulations and to amend Section 4.10 (Extractive Industries), by deleting the second sentence in Section 4.10.040 (Plan for Development of the Site). A public hearing has been scheduled before the Flathead County Planning Board on March 19, 2008. A recommendation from the planning board may be forwarded to the county commission for final action. The commission will set and hold a second public hearing to consider the zoning regulation text amendments prior to any final action.

All file material pertaining to these proposed zoning regulation text amendments 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 03/19/08, the Flathead County Planning Board held a public hearing on the proposed amendments. The Planning Board closed the public hearing without taking action, and continued discussion to a later date. On 06/18/08 the Flathead County Planning Board met to continue discussion and take action on the changes proposed in this report. The Board voted 6-0 to take no action on amendments to Section 1.04.020 and voted unanimously (6-0) to recommend retaining an amended version of the second sentence of Section 4.10.040. See attached addendum for amended language.

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 955 A on September 27, 1993. Although amended from time to time, Section 1.04.020 of the regulations appears to have been untouched since the initial adoption in 1993. Section 1.04 of the regulations pertains to "Scope" of the regulations and Section 1.04.020 addresses the use of the Flathead County Master Plan, now called the Flathead County Growth Policy. The growth policy includes, or will include, the policy framework plan, regional plans, and neighborhood plans. More specifically, Section 1.04.020 of the zoning regulations 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.

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.

General planning principles acknowledge that a growth policy is a non-regulatory document.

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 Court ruled in favor of the Citizens for Quality Growth on numerous issues. One of the issues 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 the zoning regulations).

It is not the intent of the Flathead County to make the growth policy regulatory; this zoning regulation text amendment to delete Section 1.04.020 would clarify the role of the growth policy.

On February 2, 2008 the commission approved a Resolution of Intent to amend Section 4.10 (Extractive Industries). Section 4.10 was amended to remove the “catch 22” situation of the county requiring an approved sand/gravel permit from the Montana Department of Environmental Quality (DEQ) prior to the county issuing a Conditional Use Permit authorizing the land use. However, Section 4.10.040 (Plan for Development of the Site) also requires DEQ approval of the “development plan” prior to the issuance of a Conditional Use Permit. This sub-section was not amended with the other.

Section 4.10.040 (Second Sentence)

When such a plan is also required by the Open Cut Mining Act, the submitted plan shall have been approved by the Department of Environmental Quality.

Since the DEQ can't approve an Open Cut Mine Site unless it has county land use approval, it makes no sense to require a DEQ approved plan of development prior to the issuance of the Conditional Use Permit.

II. EVALUATION BASED ON STATUTORY CRITERIA

Findings of Fact for the zoning text amendment request are 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 regulations text amendments. 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.).”

The proposed administrative text amendment to Section 4.10.040 is generally consistent with the stated desire in the growth policy to coordination land use decision making with state and federal agencies (Chapter 11 – Statement of Coordination).

- **The proposed zoning regulations text amendments comply with the Flathead County Growth Policy text.**

2. Is the requested zoning designed to lessen congestion in the streets?

These zoning regulations text amendments are administrative and will have no physical impact on county roadways.

- **The proposed zoning regulations text amendments are administrative in nature, modifying Chapter 1 (General Provisions) and Section 4.10.040 (Extractive Industries – Plan for Development of the Site) and will have no direct impact to county roadways.**

3. Does the requested zone give reasonable consideration to the character of the district?

These zoning regulations text amendments are administrative and will have no physical impact to the character of the district.

- **The proposed zoning regulations text amendments are administrative in nature, modifying Chapter 1 (General Procedures) and Section 4.10.040 (Extractive Industries – Plan for Development of the Site) and will have no bearing on any district characteristics.**

4. Will the requested zone secure safety from fire, panic and other dangers?

These zoning regulations text amendments are administrative in nature and will have no implication to anything physical, including fire, panic and other dangers.

- **The proposed zoning regulations text amendments are administrative in nature, modifying Chapter 1 (General Provisions) and Section 4.10.040 (Extractive Industries – Plan for Development of the Site) and have no adverse impact on physical safety and dangers.**

5. Will the requested change promote public health and general welfare?

These zoning regulations text amendments are administrative in nature and not affect public health and general welfare.

- **The proposed zoning regulations text amendments are administrative in nature, modifying Chapter 1 (General Provisions) and Section 4.10.040 (Extractive Industries – Plan for Development of the Site) do not affect public health and welfare.**

6. Will the requested zone provide for adequate light and air?

These zoning regulations text amendments are administrative in nature and do not apply to adequate light and air.

- **The proposed zoning regulations text amendments are administrative in nature, modifying Chapter 1 (General Provisions) and Section 4.10.040 (Extractive Industries – Plan for Development of the Site) and do not apply to adequate light and air.**

7. Will the requested zoning prevent the overcrowding of land?

These zoning regulations text amendments are administrative in nature and do not apply to overcrowding of land.

- **The proposed zoning regulations text amendments are administrative in nature, modifying Chapter 1 (General Provisions) and Section 4.10.040 (Extractive Industries – Plan for Development of the Site) and will not contribute to the overcrowding of land.**

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

These zoning regulations text amendments are administrative in nature and will not impact any spatial demographics or concentrations.

- **The zoning regulations text amendments are administrative in nature, modifying Chapter 1 (General Provisions) and Section 4.10.040 (Extractive Industries – Plan for Development of the Site) and will not lead to an undue concentration of people.**

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

These zoning regulations text amendments are administrative in nature and will not affect the facilitation of transportation, water, sewerage, schools, parks, and other public requirements.

- **The proposed zoning regulations text amendments are administrative in nature, modifying Chapter 1 (General Provisions) and Section 4.10.040 (Extractive Industries – Plan for Development of the Site) and 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?

These zoning regulations text amendments are administrative in nature and do not apply to particular uses for specific properties.

- **The proposed zoning regulations text amendments are administrative in nature, modifying Chapter 1 (General Provisions) and Section 4.10.040 (Extractive Industries – Plan for Development of the Site) and do not apply to specific uses.**

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

These zoning regulations text amendments are administrative in nature and have no relationship to conserving the value of buildings.

- **The proposed zoning regulations text amendments are administrative in nature, modifying Chapter 1 (General Provisions) and Section 4.10.040 (Extractive Industries – Plan for Development of the Site) and do not apply to building valuation.**

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

These zoning regulations text amendments are administrative in nature and have no relationship to spatial land use.

- **The proposed zoning regulations text amendments are administrative in nature, modifying Chapter 1 (General Provisions) and Section 4.10.040 (Extractive Industries – Plan for Development of the Site) and are not applicable to spatial land use.**

III. RECOMMENDATION

Staff recommends the Flathead County Planning Board and Board of County Commissioners adopt Report FZTA-08-01 as findings of fact and delete Section 1.04.020(2) from the Flathead County Zoning Regulations.

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.

Staff also recommends that Section 4.10.040 (Extractive Industries – Plan for Development of the Site) be amended to delete the second sentence, which is still in conflict with DEQ procedures.

Section 4.10.040 (Second Sentence)

When such a plan is also required by the Open Cut Mining Act, the submitted plan shall have been approved by the Department of Environmental Quality.