

**FLATHEAD COUNTY PLANNING AND ZONING
ADDENDUM TO ZONING TEXT AMENDMENT REPORT #FZTA-09-02
GARY KRUEGER - GRAVEL EXTRACTION DEFINITION
NOVEMBER 13, 2009**

On October 14, 2009 the Flathead County Planning Board held a public hearing to consider a proposed text amendment to the Flathead County Zoning Regulations that would provide a definition for 'gravel extraction'. Seven Planning Board members were present for the public hearing: Heim, Larsen, Toavs, Cross, Pitman, DeKort, and Lapp.

- Staff presented the Staff Report and summarized the public comments received subsequent to preparation of the report. Staff entered onto the record an editing related error regarding Finding of Fact #1. The correction has been made on the updated staff report.
- The petitioner's presentation included submission of a 34 page 'rebuttal' of staff report FZTA-09-02, which included his suggested 'alternate' findings of fact for staff report findings 1-12.
- No public agency representatives attended to provide comment.
- Seven (7) comments were voiced from members of the general public. Two of the public comments were in support of a broad definition for 'Gravel Extraction' that would include provisions for asphalt and cement processing. Five of the public comments were opposed to the proposed definition and supportive of the staff report recommendation, expressing concerns about impacts to health, residential property values, and conflict with the intent of the West Valley Neighborhood Plan in relation to non-agricultural industrial uses. For specific details of public comment, please refer to the meeting minutes.

10/14/09 Board Action:

Main Motion - Adoption of Findings of Fact

Pitman motioned and Toavs seconded to adopt the Staff Report FZTA-09-02 as findings of fact.

The following subsidiary motions were made:

1. Toavs 1, Larsen 2 - Attach the petitioner's rebuttal and 'alternate' findings of fact to the staff report.
 - ✓ Motion passed unanimously
2. Cross 1, Pitman 2 - Postpone further action until November 4, 2009 in order to adequately assess the petitioner's rebuttal and 'alternate' findings.
 - ✓ Motion carried on a 6-1

There was no Board action on the main motion to adopt Staff Report FPP-08-21 as findings of fact as amended.

On November 4, 2009 the Flathead County Planning Board resumed its consideration of the proposal with eight Planning Board members being present: Heim, Mower, Larsen, Toavs, Cross, DeKort, Lapp, and Hickey-AuClaire. Board consideration opened with discussion of pertinent issues of concern including a requested staff assessment of the petitioner's written rebuttal from 10/14/09, Planning Board emails subsequent to the 10/14/09 public hearing, a grievance voiced in the 'general comment' period by Steve Vandehey regarding FZTA-05-04, and consideration of holding another Planning Board public hearing on the current file FZTA-09-02.

- On 10/15/09 the Board Chairperson requested a staff assessment of the petitioner's written rebuttal from 10/14/09. An assessment was prepared and sent to all Board members. Some Board members felt this constituted 'new information' and refused to acknowledge the assessment.
- There had been some email communications between Planning Board members since 10/14/09, and some Board members voiced concern the emails may constitute a violation of open meeting laws.
- There was question as to whether or not a grievance voiced in the 'general comment' period by Steve Vandehey regarding FZTA-05-04 warranted the Board's postponement of further action on FZTA-09-02 pending potential Commission action on FZTA-05-04. At question is the Commission's action on FZTA-05-04 to 'take under advisement', which is not identified as a valid course of Commission action pursuant to FCZR 2.08.020(7). Board discussion resulted in a general conclusion that prior Planning Board action on FZTA-05-04 had been completed appropriately regardless of Commission action on that file.
- There was consideration of holding another Planning Board public hearing on the current file FZTA-09-02 in the interest of transparency regarding public access to the staff assessment of the petitioner's rebuttal and the Board members' email communications. The Board asked for the petitioner's preference regarding whether or not to hold another public hearing, and the petitioner indicated he preferred for the review to continue without another Planning Board public hearing.

11/4/09 Board Action: Planning Board recommended additions are shown *italicized*, deletions are shown ~~stricken~~.

A subsidiary motion was made:

3. Heim 1, Hickey-AuClaire 2 - Postpone further Planning Board activity on FZTA-09-02 pending the Commission completing a valid action on FZTA-05-04.
 - ✓ Motion failed on a tie vote

Resumption of Main Motion from 10/14/09 - Adoption of Findings of Fact as amended to include petitioner rebuttal with the Staff Report

The following subsidiary motions were made:

4. Cross 1, Larsen 2 - Amend Finding of Fact #2 by striking the last sentence, as follows:
 2. The West Valley Neighborhood Plan Zoning provides the foundation of the West Valley Zoning District Regulations. 'Gravel Extraction' is not defined in FCZR, while

'Extractive Industries' is defined in FCZR 7.06.040 as "Commercial or industrial operations involving the removal and processing of natural accumulations of sand, rock, soil, gravel, or any mineral". The proposed definition for 'Gravel Extraction' is duplicative because it essentially includes the same provisions as the existing definition of 'Extractive Industries'.

✓ Motion passed unanimously

5. Toavs 1, Larsen 2 - Add a new Finding of Fact:

Putting a definition together for 'Gravel Extraction' is a county-wide definition. The wording of such definition needs to accommodate the County's needs, not just West Valley.

✓ Motion passed unanimously

6. Cross 1, Heim 2 - Add a new Finding of Fact:

The Board of Adjustment on August 5, 2008 adopted a Finding of Fact that defines 'Gravel Extraction':

Gravel "extraction" and "extractive industry" are not synonymous. Gravel extraction can include on-site crushing and screening as long as the crushed and screened material is end-product to avoid multiple transport trips. An extractive industry may include extraction, crushing, screening and asphalt and concrete plants, if appropriate for the site and surrounding area, where the sand and gravel material is processed physically and chemically bound to form other products.

✓ Motion failed on a 5-3 vote

7. Toavs 1, Lapp 2 - Add a new Finding of Fact:

The Flathead County Planning Board has found that the Staff Report has focused on the West Valley Neighborhood Plan in establishing its findings of fact because of the term 'Gravel Extraction' being used specifically throughout the plan. It is the Board's feeling this issue should have been reviewed County wide and is basing its recommendation on the definition for 'Gravel Extraction' accordingly.

✓ Motion passed unanimously

8. Cross1, Larsen 2 - Add a new Finding of Fact:

'Gravel Extraction' and 'Extractive Industries' are not the only terms in the planning documents that relate to gravel. Defining 'Gravel Extraction' will not add clarity to the other undefined terms.

✓ Motion passed unanimously

On a roll call vote the main motion to adopt Staff Report FZTA-09-02 as findings of fact as amended passed 6-2.

Recommendation

Lapp motioned and Larsen seconded to forward a recommendation of approval of the text amendment, as proposed, to the Flathead County Commission.

The following subsidiary motion was made:

1. Heim 1, Mower 2 - Amend item #4 of the proposed definition by striking 'asphalt' and 'concrete plants' and adding 'ing' to the word 'wash', as follows :
 4. processing materials within the area that is to be mined through crushing, screening, ~~asphalt, washing, and concrete plants~~, and utilizing other equipment used in processing opencut materials;
- ✓ Motion failed on a 7-1 vote

On a roll call vote the main motion to forward a recommendation of approval of the text amendment, as proposed, to the Flathead County Commission failed 5-3.

Heim motioned and Hickey-AuClaire seconded to forward a recommendation of denial of the text amendment, as proposed, to the Flathead County Commission.

On a roll call vote the main motion to forward a recommendation of denial of the text amendment, as proposed, to the Flathead County Commission passed 5-3.

Summary of Findings of Fact

Changes made by Planning Board are highlighted. New language is shown in *italics*. Removed language is shown with a ~~striketrough~~.

Findings of Fact as amended:

1. 'Gravel Extraction' and 'Extractive Industries' Conditional Uses are not synonymous, as evidenced by language contained in the "The Opencut Mining Act", 76-2-209 MCA.
2. The West Valley Neighborhood Plan Zoning provides the foundation of the West Valley Zoning District regulations. 'Gravel Extraction' is not defined in FCZR, while 'Extractive Industries' is defined in FCZR 7.06.040 as "Commercial or industrial operations involving the removal and processing of natural accumulations of sand, rock, soil, gravel, or any mineral". ~~The proposed definition for 'Gravel Extraction' is duplicative because it essentially includes the same provisions as the existing definition of 'Extractive Industries'.~~
3. The West Valley Neighborhood Plan provides the foundation for the West Valley Zoning District, and the West Valley Zoning District regulations are an implementation of the Plan. 'Gravel Extraction' is an existing Conditional Use within the West Valley Zoning District only. The proposed definition for 'Gravel Extraction' is erroneous because it contains provisions for industrial cement and asphalt processing, which are not accessory to agriculture and normal farm operations, and thus would be an incorrect implementation of the West Valley Neighborhood Plan.
4. 'Gravel Extraction' and 'Extractive Industries' Conditional Uses are not synonymous. 'Gravel Extraction' includes site preparation, physical extraction of gravel and sand, and may include on-site crushing and screening as long as the crushed and screened material is end-product to avoid multiple transport trips. 'Extractive Industries' differs in that it may include extraction, crushing, screening, washing, and asphalt and concrete plants where the sand and gravel material is processed physically and is chemically bound to form other products, if allowable

as a Conditional Use within the applicable District and found upon review to be appropriate for the site and surrounding area.

5. The requested zoning amendment does not comply with the applicable Master Plan (West Valley Neighborhood Plan) because industrial asphalt and concrete processing activities are part of the proposed definition, and are not permitted uses within the West Valley Neighborhood Plan area as they are not accessory to agriculture and normal farm operations.
6. The proposed amendment may contribute to an increase in traffic congestion and impact to area roads because opencut operations permitting industrial asphalt and concrete processing are associated with more additional vehicle trips on area roads than opencut operations permitting only gravel extraction.
7. The West Valley Zoning District regulations are based upon guidance of the West Valley Neighborhood Plan. The requested amendment does not give reasonable consideration to the character of the district because the proposed definition includes industrial asphalt and concrete processing which conflict with the guidance of the Plan because those uses are not accessory to agriculture and normal farm operations, and would contribute to the conversion of agricultural uses on agricultural lands to industrial uses on lands that would no longer be suitable for the range of agricultural uses currently functioning in the area.
8. As proposed, the requested amendment would not promote health and general welfare of the public and residents living within the West Valley Zoning District because the proposed definition includes commercial provisions for industrial processes that would introduce additional heavy equipment traffic on area roads, would contribute to a reduction of land suitable for normal farming operations which are a primary source of livelihood within the West Valley Neighborhood Plan area, and would introduce additional noise, odor, and offsite impacts to area roads and residences which are difficult or impossible to reasonably mitigate through conditions.
9. As requested, the proposed definition for 'Gravel Extraction', which includes industrial asphalt and concrete processing would adversely impact the quality of light and air important to the public and area residents because industrial asphalt and concrete processing result in increased on-site and off-site dust, noise and odor impacts which are difficult or impossible to mitigate through reasonable conditions, and these impacts are not compatible with adjacent or nearby residential uses.
10. Owners of residential properties within the West Valley Zoning derive little or no benefit from area opencut operations, are likely to have considered the agricultural and residential character of the District an 'attractor' when making investment decisions, and may have considered the West Valley Neighborhood Plan and West Valley Zoning District regulations as protecting the value of their investments. The requested amendment may result in an adverse impact to area residential property values because the proposed definition includes industrial activities which are not compatible with residential uses.
11. The West Valley Zoning District is the only zoning District within Flathead County that specifies 'Gravel Extraction' as a Conditional Use. The inclusion of 'Gravel Extraction' in the Flathead County Zoning Regulations, as it applies within the jurisdictional area of the West Valley Zoning District is an intentional implementation of the West Valley Neighborhood Plan. Accordingly, consistent interpretation of the meaning of 'Gravel Extraction' has intentionally been just that - the limited extraction/mining of gravel.
12. The requested zoning amendment would not encourage the most appropriate use of land throughout the jurisdiction because it would not be an accurate implementation of the West

Valley Neighborhood Plan as the Plan specifically emphasizes agricultural and residential priorities and specifies that any new industrial uses should be accessory to agriculture.

13. The request to add a definition for 'Gravel Extraction' to the text of the zoning regulations has little or no bearing on the overcrowding of land, the concentration of people, or the particular suitability of a property for particular uses because it is a text amendment that addresses administrative clarity and the review of specific Conditional Use requests would consider those potential impacts.
14. The request to add a definition for 'Gravel Extraction' to the text of the zoning regulations would not impact the public's safety from fire, panic and other dangers, the adequate provision of public requirements because it is a text amendment that addresses administrative clarity and the review of specific Conditional Use requests would consider those potential impacts.
15. The addition of an accurate definition for the established Conditional Use of 'Gravel Extraction' would improve general welfare of the public by improving the administrative clarity and consistency of the Flathead County Zoning Regulations.
16. *Putting a definition together for 'Gravel Extraction' is a county-wide definition. The wording of such definition needs to accommodate the County's needs, not just West Valley.*
17. *The Flathead County Planning Board has found that the Staff Report has focused on the West Valley Neighborhood Plan in establishing its findings of fact because of the term 'Gravel Extraction' being used specifically throughout the plan. It is the Board's feeling this issue should have been reviewed County wide and is basing its recommendation on the definition for 'Gravel Extraction' accordingly.*
18. *'Gravel Extraction' and 'Extractive Industries' are not the only terms in the planning documents that relate to gravel. Defining 'Gravel Extraction' will not add clarity to the other undefined terms.*