Flathead County Zoning Regulations
Section 1.04.020
Growth Policy/Neighborhood Plan Analysis

During the public hearing, held March 19, 2008 regarding a staff proposal to delete Section 1.04.020 of the Flathead County Zoning Regulations (FCZR), public comment and concern raised the need to conduct a review of the growth policy and neighborhood plans to determine whether any unintended consequences would result from the proposed zoning text amendment. The proposed text amendment would remove Section 1.04.020 from FCZR.

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.”

If unintended consequences are identified that effectively undermine the intent and guidance of the growth policy/neighborhood plans with respect to land use decision making, public comment suggested a more comprehensive amendment process and perhaps replacement language to maintain the integrity and purpose of the growth policy and neighborhood plans.

The Planning Board tabled the item until June 18, 2008 and asked staff to analyze the growth policy and existing neighborhood plans to respond to this public concern, focusing on any impacts or unintended consequences that might be triggered if Section 1.04.020 is removed from the zoning regulations. The key to Section 1.04.020 is that only planning document aspects more stringent than zoning are considered regulatory. Any aspect less stringent would not be considered regulatory.

The analysis below includes the growth policy and existing neighborhood plans that are implemented via zoning regulations. The analysis is staff’s interpretation of how removing Section 1.04.020 might impact or cause unintended consequences to other zoning classifications or districts and/or neighborhood plans. The focus of the analysis was to see how plans differed from zoning and whether these differences are more restrictive than zoning.

Unintended Consequences of Removing FCZR Section 1.04.020

Flathead County Growth Policy (Approved 3/19/07)
The Flathead County Growth Policy, created to provide guidance for growth in the county, includes several discussions regarding its’ regulatory status and neighborhood plans. The growth policy states that it has no regulatory authority. It is designed as a conceptual foundation for future land use decisions and is the basis for regulations. This premise is carried on in the Preface and in Chapter 9: Implementation Strategy. The growth policy is created for efficiency, in that it promotes the community’s vision into area decisions associated with growth and development.
Chapter 10 is devoted entirely to neighborhood planning. Goal 44 allows new plans to be developed. Goal 45 honors the integrity and purpose of existing neighborhood plans; respecting the time and effort of the community involvement that has taken place. Neighborhood plans are intended to guide the community from the present to future land use through patterns of development consistent with the vision and the community goals, policies and text. In general the growth policy/neighborhood plans are used in conjunction with the zoning regulations in land use decision making.

The importance of neighborhood plans is clear in the growth policy. If available, the neighborhood plan is to be used with regulations to guide land use decisions. In the absence of a neighborhood plan, land use decisions are guided by the growth policy and existing regulatory documents. The growth policy is fairly explicit about it not being a regulatory instrument; it is also explicit that it should be used in conjunction with regulations to form land use decisions.

One difficulty with using the growth policy (and not neighborhood plans) as guidance is that the growth policy contains 50 goals and more than 200 policies. Not all policies are interconnected and can easily be taken out of context or used independently to argue a position or application. Neighborhood plans offer more site specific guidance on how the plan area should grow and develop. It’s this vision that is needed to provide the clarity to regulations and application.

There may be times when the growth policy and/or neighborhood plans offer guidance on how to interpret zoning provisions, particularly with non-standard or unique zoning districts. The growth policy and/or neighborhood plans should be used in this context; to provide clarity and direction on how to apply zoning to certain areas and applications. It is not the county’s intent that the growth policy/neighborhood plans be regulatory and control over zoning; even partial control in cases where the growth policy/neighborhood plan is more restrictive.

Ashley Lake Neighborhood Plan and Development Code (Approved 10/29/97)

The general purpose of the Ashley Lake Neighborhood Plan is to provide specific direction and guidance to the overall pattern of growth in the neighborhood and to how land use regulations should be crafted and what they should address. It contains the plan section as well as a land development code section. The land development code may be more restrictive than the Ashley Lake Zoning District. Differences between the development code section of the plan and the Ashley Lake Zoning District include:

- The zoning district clarifies and contains a range of permitted and conditional uses not identified in the development code
- Maximum height is more restrictive in land development code (30 feet as opposed to 35 feet in zoning)
- Recreational vehicle provisions are more restrictive in zoning district
- The zoning district contains “Cellular Tower” as a conditional use, not found in the development code.
The development code of the neighborhood plan specifically references Section 1.04.020 and that the plan/code would control if found to be in conflict with zoning.

**Ashley Lake Zoning (FCZR Section 3.38)**
The zoning district is non-standard in that it is unique to the area. Conditional Use Permit approvals are by the Ashley Lake Land Use Advisory Committee rather than board of adjustment. Other provisions follow more regular processes. The zoning district is based on the neighborhood plan and development code. The zoning district specifically references Section 1.04.020 in Sub-section 3.38.160. That section states, in part:

“The Ashley Lake Development Code is based on the Ashley Lake Neighborhood Plan, which has been adopted as an addendum of the Flathead County Master Plan. The Neighborhood Plan and Ashley Lake Development Code provide more specific detail and guidance and for the Ashley Lake Neighborhood. They are considered the more restrictive and therefore shall control when areas of conflict with other provisions of the County Master Plan or Zoning Regulations arise as provided for under Section 1.04, Flathead County Zoning Regulations.”

Similar language is found in the land development code.

There are differences between the development code and zoning district; the development code is more restrictive in some cases. Although there are differences between the neighborhood plan and zoning, the differences are not significant enough to cause any impact or unintended consequence if Section 1.04.020 is removed from the zoning regulations. The zoning district is actually more consistent with the regulations than the development code.

**Bigfork Neighborhood Plan (Approved 8/16/93)**
One of the foundations of the Bigfork Neighborhood Plan is that residents strongly support the plan and that future growth be guided by zoning regulations, which help distinguish the plan from zoning. However, proposed land use categories the plan and zoning classifications overlap. Several policies are concise enough to use in conjunction with Section 1.02.040. These include:

- Roadside 100 foot natural buffer for timber harvesting operations
- Screen garbage collection facilities
- Outdoor signage requirements.

There is no mention of Section 1.04.020 and whether the plan or zoning controls where more strict in the existing plan.

It should be noted that the Big Fork Neighborhood Plan is currently in process of being revised. The vision is to maintain the small town/village setting while encouraging growth and development which is in character and would support existing amenities. Minor modification in the future development patterns are proposed in the draft plan over the existing neighborhood plan. The draft plan identifies the distinction between the plan
and zoning and that that general land use categories along with applicable goals and policies should be used in conjunction with zoning to provide guidance for future land use decisions. Some differences between the zoning regulations and the draft plan include:

- Greater detail in draft plan regarding outdoor signage requirements
- Design consideration for State Highway 35 improvements
- Extensive excavating or altering the landscape
- Need for architectural design standards
- Implement Impact Fees as a way of a means of maintaining existing service levels
- Similar policies identified in the original plan.

There is no cross reference to Section 1.04.020 in the draft plan. However, it is the stated intent that the neighborhood plan provide general guidance used in considering future land use decisions.

**Bigfork Zoning (FCZR Standard Zoning Classifications)**

The area within the Bigfork Neighborhood plan area relies on standard zoning classifications for implementation. It is entirely zoned. Requested zone changes are reviewed based on the neighborhood plan guidance and the Designated Land Use Map.

Removing Section 1.04.020 from the zoning regulations may impact certain requirements, such as outdoor signage, assuming the draft plan is approved, and perhaps future architectural standards if adopted as part of the neighborhood plan.

**Canyon Plan (Approved 5/17/94)**

The Canyon Plan includes three geographic areas of the canyon; upper (Pinnacle/Essex, Nyack), middle (Lake Five, West Glacier) and lower canyon (Hungry Horse, Coram, Martin City). The implementation goal is “to use the plan as an effective tool for the wise use, management, and development of the canyon communities and to adopt regulations to implement this plan”. There are several references to “no” zoning in the neighborhood plan, although an acknowledgement that some regulatory structure is needed to implement the plan. A stated policy is to utilize a combination of traditional and innovative zoning techniques to provide flexibility in the application of land use regulations. As a result the upper and middle canyon approved an alternative to standard use-based zoning, called the Canyon Area Land Use Regulatory System (CALURS).

**CALURS**

The Canyon Plan provided direction for either traditional or some creative form of land use regulation for the planning area. CALURS is a stand alone regulatory process that is both non-standard and unique to part of the planning area while moving within the county zoning regulations. The process established a major and minor land use reviews, depending on type and intensity of proposed use.

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.
**Helena Flat Neighborhood Plan (Approved 9/13/05)**
The Helena Flats Neighborhood Plan contains general goals and policies relating to area development. Some of the more specific policies focus on the maintaining water quality above the evergreen Aquifer.

The plan area is not zoned and not within the jurisdiction of the zoning regulations (other than the Scenic Corridor which only regulates outdoor signs). There would be no impact or unintended consequence if Section 1.04.020 is removed from the zoning regulations since the plan area is not subject to the zoning regulations.

**Labrant–Lindsey Lane Neighborhood Plan and Development Code (Approved 4/7/98)**
The Labrant–Lindsey Neighborhood Plan contains sections on the neighborhood plan and a development code. The plan provides local land use guidance to the overall pattern of growth in the neighborhood. The plan is to be consulted whenever a public or private land use decision affects the neighborhood. However the plan does not provide sufficient detail to be stricter than zoning and is replicated through zoning. The development code is unique to the plan area. There is no cross reference to Section 1.04.020 in the plan or zoning district.

**Labrant–Lindsey Zoning District (FCZR Section 3.39)**
The Labrant–Lindsey Zoning District is non-standard and unique to the plan area. It is identical to the development code section in the neighborhood plan.

Removing Section 1.04.020 from the zoning regulations would not create any unintended consequence or impact to the plan area since the plan and zoning are identical.

**Lakeside Neighborhood Plan (Adopted 11/22/95)**
The Lakeside Neighborhood Plan offers little specific guidance that could be used in conjunction with Section 1.04.020. The plan calls for preparation of a development code to implement the plan, although no development code is included as part of the neighborhood plan. The Lakeside Zoning District was developed to implement the development code provision of the plan. It should be noted that only a small area within the neighborhood plan boundary is included in the Lakeside Zoning District. The remaining portion is not zoned. There is no reference to Section 1.04.020 in the plan.

**Lakeside Zoning District (FCZR Section 3.42)**
The Lakeside Zoning District is non-standard and unique and only applies to the downtown area within the neighborhood plan area. The zoning provides much greater detail and direction than the plan for land use decision making. The zoning identifies permitted uses within specific localized areas, conditional uses, etc. The rest of the plan area is not zoned and does not fall under the jurisdiction of the zoning regulations, other than the Scenic Corridor which applies only to outdoor signage and cellular towers.
Given the Lakeside Neighborhood Plan contains no detailed provisions that could be applied to Section 1.04.020 and that the Lakeside Zoning District provides detailed guidance and direction there are no unintended consequences or impacts if Section 1.02.040 is removed from the zoning regulations. The remaining area outside of downtown is not zoned and not under the jurisdiction of the zoning regulations.

**Little Bitterroot Lake Neighborhood Plan and Development Code (Approved 2/27/96)**
The Little Bitterroot Lake Neighborhood Plan is intended to promote the quality, character and openness of Little Bitterroot Lake, and provide specific guidance for future development and support zoning regulations for the area. The plan contains two sections; the neighborhood plan and development code. The development code, which has been codified as a specific zoning district, implements the plan. There is no cross reference to Section 1.04.020 in the plan.

**LBL Little Bitterroot Lake Zoning District (FCZR Section 3.33)**
The LBL Little Bitterroot Lake Zoning District is non-standard and unique to the plan area. The zoning is identical to the development code section of the neighborhood plan.

Removing Section 1.04.020 from the zoning regulations would have no impact or unintended consequences for the Little Bitterroot Lake Neighborhood Plan area since the zoning district and plan are identical.

**North Fork Neighborhood Plan (9/26/08 Draft)**
The North Fork Neighborhood Plan, still in draft form, is not substantially different from the existing plan, amended in 1992. The draft plan has been recommended for approval by the planning board and is now being scheduled for commission consideration. The neighborhood plan provides guidance and direction for development in the area. Specific guidance, including density, use, natural resource protection and signage has been implemented via the zoning district. There is no language in the plan more controlling than their zoning district provisions. There is no cross reference to Section 1.04.020 in the plan.

**North Fork Zoning District (FCZR 3.40)**
The North Fork Zoning District is non-standard and unique to the plan area. The zoning was created to specifically implement the neighborhood plan. Zoning provisions, including setbacks from the North Fork Road and water bodies and outdoor signage, are substantially the same as identified in the goals and policies of the neighborhood plan.

Since the North Fork Zoning District fully implements the neighborhood plan there would be no impact or unintended consequences caused by removing Section 1.04.020 from the zoning regulations.

**Quarter Circle/LA Ranch Neighborhood Plan (Approved 10/26/05)**
The Quarter Circle/LA ranch Neighborhood Plan is nested in the Bigfork planning area. The intent was to set up a Planned Unit Development (PUD) under single ownership. The
PUD Plan supersedes all other planning in the area and effectively sets up site specific goals, policies and development standards.

Quarter Circle Zoning (FCZR Sections 3.08 and 3.31)
The underlying zoning prior to the neighborhood plan was SAG-5. A hard zoned PUD was approved which effective replaces all requirements in the zoning regulations. The PUD has gone through two amendments or expansions and is essentially the same as the neighborhood plan.

Standards and requirements in the PUD Plan essentially replace all zoning requirements. The PUD Plan became the regulatory mechanism to guide and control development. Since the standards are self contained in the PUD, no impacts or unintended consequences would occur by removing Section 1.04.020 from the zoning regulations.

Riverdale Neighborhood Plan (Approved 2/21/08)
The Riverdale Neighborhood Plan provides a vision of how the planning area should be developed. The majority of the plan area is currently in agricultural production, with other uses along U.S. Highway 93. The plan notes that zoning is the preferred method of implementation and that Planned Unit Development should be attached to any zone change request, particularly along U.S. Highway 93. Further, the timing of any proposed zone change would need to be timed with infrastructure and other improvements. Infrastructure and PUD timing to zone change requests are more restrictive than zoning regulations.

There is no cross reference to Section 1.04.020 and the entire plan area is already zoned. There are stated policies to retain existing zoning without the consent of the property owner and until such time as development is contemplated.

Riverdale Zoning (FCZR Standard Zoning Classifications)
The entire plan area is currently zoned in accordance with the standard zoning regulations classifications within the zoning regulations. Although primarily zoned in Agriculture and Suburban Agriculture, Section 1.04.020 might trigger the plan to be used in conjunction with a requested zone change request to determine appropriateness and timing. The present zoning in the plan area is not consistent with the neighborhood plan.

There could be impacts and unintended consequences related to infrastructure development and timing of zone changes (including tying zone change requests to PUD applications) if Section 1.04.020 is removed from the zoning regulations.

Rogers Lake Neighborhood Plan and Development Code (Approved 4/16/97)
The Rogers Lake Neighborhood Plan is designed to provide guidance to promote the quality, character and openness of Rogers Lake and the surrounding neighborhood. It contains two sections; the plan and development code. This neighborhood plan, much like others generated at that time, focused on providing neighborhood guidance to land use decisions while complementing the less specific more policy driven master plan. The
The Two Rivers Neighborhood Plan is a broad scale land use plan. It contains limited policies, although it does have a future land use map showing use categories. There is no detail on uses, intensities and other relevant information tied to these land use categories. The neighborhood plan does have some useful information on roadway easements along Whitefish Stage Road and Rose Crossing. Also, the plan has identified areas of open space and conservation easements. Performance zoning is mentioned as a means to implement the plan. However, standard county zoning is not based on performance zoning. There is no mention or reference to Section 1.04.020 in the text.

Two Rivers Zoning (FCZR Standard Zoning Classifications)
The Two Rivers Neighborhood Plan area is partially zoned. The southern and western portions of the plan are zoned, ranging from AG-80 to Industrial. The area east of the Whitefish River and north of Rose Crossing is not zoned, other than Scenic Corridor zoning along the U.S. Highway 2.

The neighborhood plan offers little detailed guidance which could be considered more controlling than existing zoning. Road improvements and easements are a function of proposed development and are contained in the Road Department’s Minimum Roadway Design Standards. Given the general lack of detail in the plan and that zoning pre-existed on the majority of the planning area there shouldn’t be any impacts or unintended consequences caused by removing Section 1.04.020 from the zoning regulations.
West Valley Neighborhood Plan (Approved 4/9/97)
The West Valley Neighborhood Plan includes both a plan section and development standards. The plan also includes the West Valley Overlay District Standards. The text consists of issue identification, some discussion and goads/policies. Within the text there are statements which might be considered more stringent than zoning. These include:

- Discouraging conversion of prime agricultural lands
- Strip commercial development restrictions
- Prohibit commercial uses
- Limit industrial uses to those accessory to farm operations
- Allow gravel extraction opportunities
- Restrict development on slopes greater than 25 percent
- Protect key winter wildlife habitats and riparian areas
- Prohibit free standing commercial signage.

The plan acknowledges that subdivision and zoning regulations are primary tools, with zoning as the most efficient means for plan implementation. The development standards and overlay standards are excerpts’ from the zoning regulations. There is no cross reference to Section 1.04.020 of the zoning regulations.

West Valley Zoning and Overlay Districts (FCZR Section 3.34 and 3.35)
The West Valley Zoning District is unique to the planning area and identical to the development standards contained in the plan, as is the overlay district. The distinction with West Valley is the Supreme Court ruling and that it is the only zoning district to use the term “gravel extraction” as opposed to “extractive industries”. Since there are several differences between the plan text and zoning district provisions (including the need to use the plan to determine intent) there might be impacts and/or unintended consequences if Section 1.04.020 is removed from the zoning regulations.

Discussion

It must be noted that the interpretation and use of Section 1.04.020 arose in connection to gravel operation law-suits in West Valley and how “gravel extraction” and “Extractive Industries” might differ. There is no zoning definition for “gravel extraction” although West Valley Zoning identifies the activity as a conditional use. The West Valley Plan is fairly specific about not allowing certain commercial and general industrial uses, however should also allow opportunities for gravel extraction. Does “gravel extraction” include processing facilities that are more closely aligned with industrial uses; uses that would be in conflict with the neighborhood plan? Zoning interpretations, particularly in cases where definitions are clouded or absent, are difficult at best to administer. The neighborhood plan should provide sufficient guidance to make an informed determination in these cases. I would suspect the need to use the growth policy/ neighborhood plan to provide direction and clarity will occur more frequently in the future as development trends evolve. However, the neighborhood plans do not need to be regulatory to provide guidance and direction.
Reviewing the existing neighborhood plans to attempt to understand whether unintended consequences might be associated with removing FCZR Section 1.04.020 showed that there might be consequences. One neighborhood plan (Ashley Lake) directly references the Section. Other neighborhood plans have minor difference (e.g. 30 feet height restrictions as contrasted to 35 feet in zoning). Several development codes from the plans were lifted and adopted as zoning. As general rule the areas where the neighborhood plans differ from zoning are not substantial enough to deny the zoning text amendment.

There will be times when the growth policy and/or neighborhood plans offer guidance on how to interpret zoning provisions, particularly with non-standard or unique zoning districts. This is the relationship that the growth policy/neighborhood plans share with zoning. The growth policy should be used in this context; to provide clarity and direction on how to apply zoning to certain areas and applications. Again, it is not intended that the growth policy/neighborhood plans be regulatory and control over zoning; even in cases where a portion of the growth policy/neighborhood plan is more restrictive.

It might be advantageous to make the relationship between the growth policy and zoning crystal clear in the zoning regulations. If Section 1.04.020 is deleted from the regulations there will be no clear understanding of how they relate. Replacing the existing provision of Section 1.04.020 to define the relationship might address future issues as well as better implement the growth policy. Staff would suggest the following language as replacement language for 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 zoning and other land use regulations.”

In order for the above text amendment to be considered, a public hearing must be scheduled and noticed (not the same public hearing as the text amendment under consideration). Staff intends to bring this to the planning board for a public hearing at the same time the initial text amendment is discussed and considered.