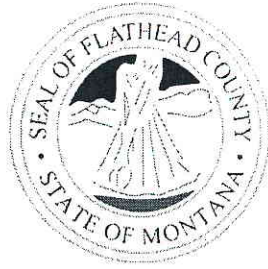


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MEMORANDUM

To: Planning and Zoning Staff

From: Jonathan B. Smith, Deputy

Date: October 6, 2009

Re: Zoning Amendments

The issue as to what criteria should be applied in requested zoning amendments has been raised. In the past Legislative session, the Legislature amended the criteria to be applied by the Board of Commissioners in adopting and amending zoning. The current regulations contain criteria that must be applied which are based upon the statute as it existed before the current amendments.

While it would seem that the new criteria should be used, the Montana Supreme Court faced the same issue involving an amendment by the Legislature of subdivision statutes. The criteria to be applied between the time that the statute was amended and the County subdivision regulations were amended to utilize the statutorily amended criteria was faced in *Burnt Fork Citizens Coalition v. Board of County Commissioners of Ravalli County*, 287 Mont. 43, 951 P.2d 1020 (1997). In that case, a subdivision approval was voided by the courts when the local regulations were ignored in favor of the statutory criteria then recently approved by the Legislature. While that case is not precisely on point, it does require that local regulations not be ignored when the Legislature amends statutes and local governments have not yet amended their regulations to conform to the new statutory requirements.

Thus, we have advised that the current regulations be followed in considering requested zone changes until they are amended to reflect the 2009 Legislative changes.