

**CASCADE COUNTY PLANNING BOARD**

PLANNING STAFF: Report and Recommendation

REGARDING: Public Hearing Scheduled for March 22, 2016

SUBJECT: Cascade County Zoning Regulations updates and revisions

PRESENTED BY: Susan Conell, Planning Director

**GENERAL INFORMATION**

Requested Action:

To consider the request of the Cascade County Planning Division for updating the existing Cascade County Zoning Regulations, specifically Section 1 (Purpose), Section 2 (Definitions), Section 7 (District Regulations), Section 8 (Supplementary Regulations), Section 9 (Permit Requirements), Section 10 (Standards for Special Use Permits), Section 12 (Zoning Board of Adjustment), and for the creation of Section 18 (Standards for Unclassified Use Permits). The purpose of the proposed amendments is as follows: update definition language, remove antiquated language, update section references, update and create language for solar based power plants, create a new section for standards for unclassified use permits, create an application review fee for unclassified use permits, update language for special use permits, update language for the appeal process for the Zoning Board of Adjustment, update language to alter allowed uses in the various zoning districts, and to update the regulations with current standard zoning practices.

Notice of this public hearing was published in the Great Falls Tribune on Sunday, March 6, 2016, Sunday, March 13, 2016, and March 20, 2016.

Posted: Friday March 4, 2016 at the Cascade County Clerk and Records Office, Cascade County Courthouse, Cascade County Courthouse Annex, Cascade County Public Works Department Planning Division, Cascade County Treasurers/Superintendent of Schools Office, and the Great Falls Public Library.

**DISCUSSION**

Since January 2013, the Planning Division have been tracking formatting errors and making correction notes to our copies of the zoning regulations in order to be more

accurate, add clarity and to become more proactive to provide standards to consider that the Planning Board and the Zoning Board of Adjustments will hear in the future.

Staff proposes the following revisions to the Cascade County Zoning Regulations:

- Amend the zoning definition section to match and update State and professional zoning language where applicable.
- Delete the matrix of uses table as it is out-of-date and confusing for most people.
- Add Section 8.17 to reflect standards for solar power plant development.
- Amend fee structure to include Unclassified Use Permit fees (Section 9.3)
- Add Section 18 “Unclassified Use Permit”
- Make corrections that don’t change the substance of the regulations but makes them more accurate (such as formatting errors).

There is a general clean-up of formatting errors and changes of Montana Code Annotated that had been referenced throughout these sections that have been changed or omitted since our last update to the Zoning Regulations.

Section 1 is the “Purpose” section. The only change was to add the words “itself or” at 1.2.2 “Whenever the requirements of these regulations are at a variance with **“itself or”** with the requirements of other lawfully adopted rules, regulations, or resolutions, the most restrictive, or that imposing the higher standards shall govern.”

Section 2 is the “Definition” section. There have been changes to better explain the terminology throughout the regulations as well as correct the newer definitions and add definitions that were missing.

Section 7 is the “District Regulations” section. Some words have been changed to match the definition section. Some areas direct the user to outdated section numbers. Some language was repetitious and it was removed.

Section 8 is the “Supplementary Regulations” section. This section relates to development that may have additional standards attached to them to protect the health, welfare and safety of citizens. These include site requirements such as glare, noise and the like.

Some of the past development projects included oil and gas exploration, firework stands, etc. We have made some word changes to match the definitions as well as adding Section 8.12, for power plant, solar siting projects. Also there has been a change in the placement of projects within the section itself.

Section 9 is the “Permit Requirements” section. The fee for an “Unclassified Use Permit” has been added to this section.

Section 10 is the “Standards for Special Use Permits” section. The section has been updated to reflect current Montana Code Annotated citations, and to be compatible with development standards.

Section 12 is the “Zoning Board of Adjustment” guidelines and appeal sections. They have been updated to clarify when the thirty-day appeal process begins and the office

that the decision is filed in after the Zoning Board of Adjustment make the decision on an application.

Section 18 is a new section we are proposing titled, "Standards for Unclassified Use Permits". "Unclassified Use Permits" would allow a few specific uses to be considered within multiple zone districts individually and are not restricted because of the underlying zone district. An example of this would be a cemetery. Currently this example is allowed in the Heavy Industrial zone district or in the Agriculture zone district with a special use permit. An Unclassified Use permit would allow for the Zoning Board of Adjustment's review of parcel specific uses regardless of the zoning district the proposed development lies. This permit would allow consideration as to whether a project is appropriate in that location.

Another benefit of this would be to allow consideration of a project that has a restriction within a zone district. For instance, a Community Residential Facility is currently limited to a maximum of eight occupants for most facilities. The Unclassified Use permit would allow consideration for allowing more occupants, where currently they are allowed by right up to eight (8) in most residential districts. The Unclassified Use permit would require there be public noticing in the paper, as well as notification to all adjacent property owners. This process recognizes that a particular use may be compatible (i.e. Public safety facility) but is not restricted to a particular zoning district. This is a common tool used in zoning professional practices throughout areas of the nation and would provide added benefit as a tool in our community.

### ZONING ANALYSIS

Pursuant to MCA 76-2-203 and Chapter 1 of the Cascade County Zoning Regulations, all zoning amendment requests are to be considered in light of the following ten criteria and guidelines.

The first criteria:

#### **1. *MADE IN ACCORDANCE WITH THE GROWTH POLICY.***

State statutes specify the following uses and limitations on uses of the Cascade County Growth Policy:

##### **MCA 76-1-605 Use of adopted growth policy.**

(1) Subject to subsection (2), after adoption of a growth policy, the governing body within the area covered by the growth policy pursuant to 76-1-601 must be guided by and give consideration to the general policy and pattern development set out in the growth policy in the:

- (a) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;
- (b) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and
- (c) adoption of zoning ordinances or resolutions.

(2) (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.

(b) A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy adopted pursuant to this chapter.

The 2014 Cascade County Growth Policy contains five goals which the policy defines as a broad, generalized expression of commonly held community values regarding growth, development patterns, and quality of life. They are intended to express the primary theme, or general intent and direction of the growth policy. Each goal also includes a subset of objectives which the growth policy defines as a more narrowly defined and concrete expression of community intent. The five goals and their related objectives are:

**Goal 1: Sustain and strengthen the economic well-being of Cascade County citizens.**

**Objectives:**

These primary goals are the same goals listed in the 2006 Cascade County Comprehensive Plan, as well as new additional goals. The planning board believes that these goals continue to provide the best overall direction for county planning.

- A. Stimulate the retention and expansion of existing businesses, new businesses, value-added businesses, wholesale and retail businesses, and industries including agriculture, mining, manufacturing/processing and forest products.
- B. Stabilize and diversify the county's tax base by encouraging the sustainable use of its natural resources.
- C. Identify and pursue primary business development that complements existing business, which is compatible with communities, and utilizes available assets. Identify and pursue targeted business development opportunities to include, but not limited to, manufacturing/heavy industry, telecommunications, and youth/social services.
- D. Promote the development of cultural resources and tourism to broaden Cascade County's economic base.
- E. Foster and stimulate well-planned entrepreneurship among the county's citizenry.

- F. Promote a strong local business environment. Encourage and strengthen business support mechanisms such as chambers of commerce, development organizations and business roundtable organizations.
- G. Improve local trade capture for Cascade County businesses. Promote local shopping as well as well-planned businesses and new businesses.
- H. Network with and support other economic development efforts in the region and statewide, in recognition of Cascade County's interdependence with other communities and to leverage available local resources.
- I. Encourage the growth of the agricultural economy.
- J. Stimulate the growth of the economy by encouraging the use of alternate methods.

**Goal 2: Protect and maintain Cascade County's rural character and the community's historic relationship with natural resource development.**

**Objectives:**

- A. Foster the continuance of agriculture and forestry in recognition of their economic contribution and the intrinsic natural beauty of grazing areas, farmlands and forests.
- B. Preserve Cascade County's scenic beauty and conserve its forests, rangelands and streams, with their abundant wildlife and good fisheries.
- C. Preserve Cascade County's open space setting by encouraging new development to locate near existing towns and rural settlements and by discouraging poorly designed, land subdivisions and commercial development.
- D. Assure clean air, clean water, a healthful environment and good community appearance.
- E. Support the development of natural resources including but not limited to timber, mining, oil and gas production, and renewable energy production.
- F. Continue to work with federal and state agencies to redevelop properties within Cascade County which are currently undergoing Superfund and Brownfields processes.
- G.

### **Goal 3: Maintain agricultural economy**

#### **Objectives:**

- A. Protect the most productive soil types.
- B. Continue to protect soils against erosion.
- C. Protect the floodplain from non-agricultural development  
Support the development of value-added agricultural industry in Cascade County utilizing the products from the regional area.

### **Goal 4: Retain the presence of the US Military in Cascade County**

#### **Objectives:**

- A. Encourage the federal congressional delegation to actively support maintaining the current mission status at a minimum.
- B. Promote the location of additional military missions in Cascade County.
- C. Encourage the reactivation of the runway at Malmstrom Air Force Base for fixed wing operations
- D. Refer to the Joint Land Use Study for resolving conflicts and promoting mission compatible development.

### **Goal 5: Preserve and enhance the rural, friendly and independent lifestyle currently enjoyed by Cascade County's citizens.**

#### **Objectives:**

- A. Maintain Cascade County's citizen's independent lifestyle and minimize local governmental intervention, to the extent possible, consistent with the requirements of a continually evolving economy and constantly changing population.
- B. Preserve and promote Cascade County's rich cultural heritage, rooted in natural resource development and reflected in its numerous cultural/historic sites and archaeological areas.
- C. Promote fire prevention measures throughout the county, giving special emphasis to the extreme fire hazards present at the wild land/urban interface.
- D. Encourage the continued development of educational programs and facilities, recreational opportunities and spaces and health services for all county residents.

## STAFF ANALYSIS:

### **Goal 1: Sustain and strengthen the economic well-being of Cascade County's citizens.**

With respect to Goal 1, staff finds the proposed zoning amendment to be in general compliance with the growth policy's goal to sustain and strengthen the economic well-being of Cascade County's citizens. The rezoning application meets Objectives A, B, C, F, and J of this goal and would allow new businesses to consider our community for growth which could better serve its community members.

### **Goal 2: Protect and maintain Cascade County's rural character and the community's historic relationship with natural resource development.**

Objective C in this goal is met by promoting economic growth and development within existing urban areas, which better preserves Cascade County's rural character. The new proposed section would allow some natural resource development to be considered throughout the County and therefore meeting Objective E.

### **Goal 3: Maintain Agricultural Economy**

There are no changes to the zoning regulations to put the objectives out of harmony.

### **Goal 4: Retain the presence of the US Military in Cascade County**

Staff finds the proposed regulation changes do not affect the US military either negatively or positively.

### **Goal 5: Preserve and enhance the rural, friendly and independent lifestyle currently enjoyed by Cascade County's citizens.**

Objective A seeks to maintain the county's citizen's independent lifestyle while minimizing governmental intervention to the extent possible, consistent with the requirements for a continually evolving economy and constantly changing population. The proposed change to the zoning regulations can lessen governmental regulation with fewer development barriers.

### **Overall Compliance:**

Determining compliance with the growth policy for the proposed zoning regulation changes demonstrates the inherent tensions and contradictions between various goals and objectives. The intentionally broad language used in forming goals naturally leads to statements that are capable of multiple interpretations. Fully meeting one goal may mean that a land use action fully contradicts another. Staff also remains mindful that

recent statutory changes to the Growth Policy Act and related court decisions make it clear that growth policies are not regulatory documents and may not be used to condition or deny a land use action.

With these principles in mind, staff finds the proposed changes generally complies with the 2014 Cascade County Growth Policy and the level of compliance is acceptable. The proposal meets the growth policy's goal to sustain and strengthen the economic well-being of the county's citizens. The proposal does not negatively affect Cascade County's rural character or agricultural economy. The growth policy's goal to retain the presence of the U.S. Military does not directly apply.

2. **Whether the zoning regulations have been designed to secure safety from fire and other dangers.**

There have been no proposed changes that would affect the way to secure additional safety from fire and other dangers. There are no changes to enhance or worsen protection from these types of dangers.

3. **Whether the zoning regulations have been designed to promote public health, public safety, and general welfare.**

The zoning regulation changes are not proposing changes that would affect the public's health, public's safety or their general welfare.

4. **Whether the zoning regulations have been designed to facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements.**

Staff does not feel any proposed regulation changes will have an effect on adequate provision of transportation, water, sewage, schools, parks, or other public requirements.

5. **Whether the zoning regulations have been designed to provide adequate light and air.**

Staff does not feel any proposed regulation changes will have an effect on light and air.

6. **Whether the zoning regulations have been designed to address effects on motorized and non-motorized transportation systems.**

Staff does not feel the proposed regulation changes will have an effect on motorized and non-motorized transportation systems.

7. **Whether the zoning regulations have been designed to be compatible with urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities.**

The proposed zoning regulation changes will remain compatible with urban growth in the vicinity of cities and towns.

8. **Whether the zoning regulations have been made with reasonable consideration to the district's peculiar suitability for particular uses.**

Most of the proposed changes are minimal and do not effect just one zone district. It does allow other possibilities for development if a project can meet the requirements of that development.

9. **Whether the zoning regulations have been made with a view to conserving the value of buildings.**

The existing building operates as a commercial enterprise. The rezone would allow the owner to expand the existing building, improving the value of the property and surrounding neighborhood.

10. **Whether the zoning regulations have been made with a view to encouraging the most appropriate use of land throughout the jurisdictional area.**

Staff feels the proposed changes to the Zoning Regulations are to encourage the most appropriate use of land throughout the jurisdictional area. The opportunities for several uses will have another avenue for prospects to develop. The whole County will be able to potential benefit.

**RECOMMENDATION**

The recommendations before you are for consideration today for the public to have an opportunity to voice their approval or concerns. These are recommended changes to forward to the Commissioners where the public will again be able to address any additional questions or concerns. No changes to the Zoning Map are being proposed.

**MOTIONS:**

Alternative One- The Planning Board, after reviewing the staff report and proposed regulations for compliance with the criteria and guidelines for zoning regulations MCA 76-2-203, recommends to the Board of County Commissioners that the request to amend Sections 1, 2, 7, 8, 9, 10, 12 and to add Section 18 in the Cascade County Zoning Regulations, Resolution #12-71 be **denied**;

OR:

Alternative Two- The Planning Board, after reviewing the staff report and proposed regulations for compliance with the criteria and guidelines for zoning regulations MCA 76-2-203, recommends to the Board of County Commissioners that the request to amend Sections 1, 2, 7, 8, 9, 10, 12 and to add Section 18 in the Cascade County Zoning Regulations, Resolution #12-71 be **approved**.

Attachments: Draft Zoning Regulations