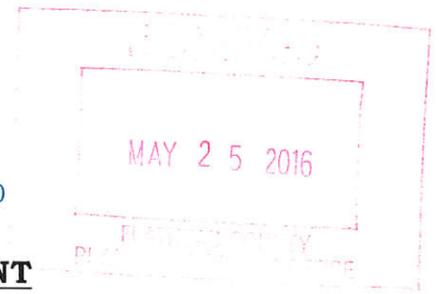


Flathead County

Planning & Zoning

1035 1st Ave W, Kalispell, MT 59901
Telephone 406.751.8200 Fax 406.751.8210



PETITION FOR ZONING AMENDMENT

Submit this application, all required information, and appropriate fee (see current fee schedule) to the Planning & Zoning office at the address listed above.

FEE ATTACHED \$ 1495.00 + 75-.00

APPLICANT/OWNER:

1. Name: Consulting Investing Management, LLC Phone: (406)862-4828
2. Mail Address: P.O. Box 5270
3. City/State/Zip: Whitefish, MT 59937
- 4 Interest in property (if map amendment): Owner

Check which applies: Map Amendment Text Amendment:

TECHNICAL/PROFESSIONAL PARTICIPANTS:

1. Name: Sands Surveying Inc. Phone: (406) 755-6481
2. Mailing Address: 2 Village Loop
3. City, State, Zip: Kalispell, MT 59901
4. Email: eric@sandssurveying.com

IF THE REQUEST PERTAINS TO AN AMENDMENT TO THE TEXT OF THE ZONING REGULATIONS, PLEASE COMPLETE THE FOLLOWING:

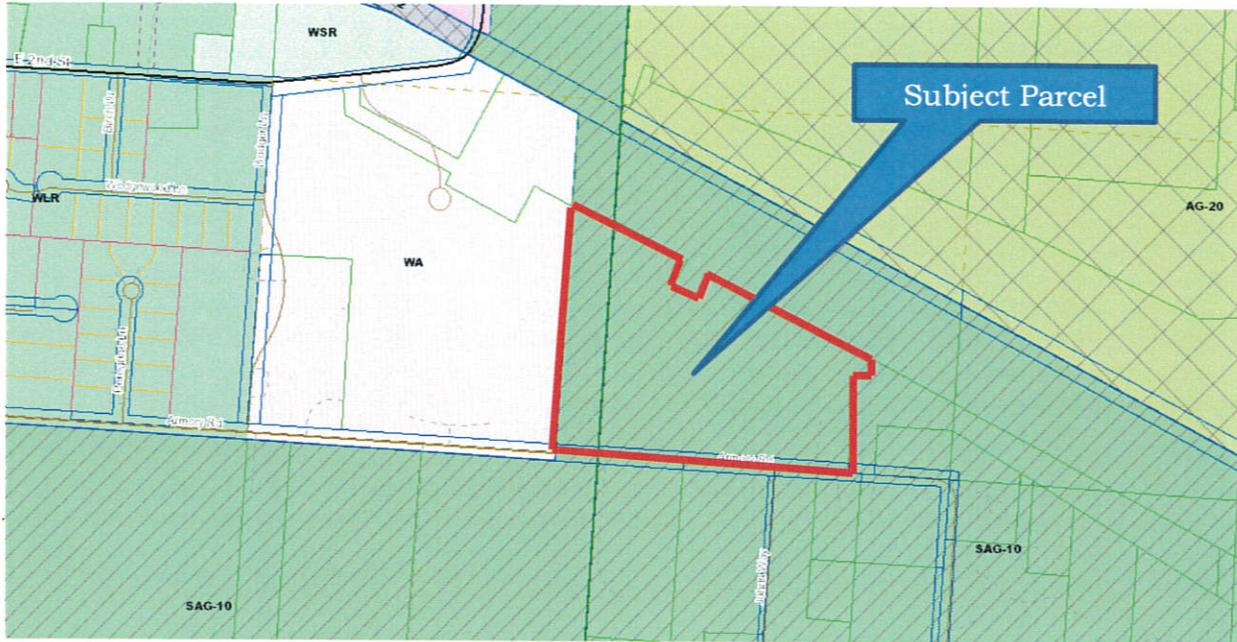
A. What is the proposed zoning text/map amendment? N/A

IF THE REQUEST PERTAINS TO AN AMENDMENT TO THE ZONING MAP PLEASE COMPLETE THE FOLLOWING:

- A. Address of the property: 465 Armory Road, Whitefish
- B. Legal Description: Tract 1 of COS 5446 (See Attached Deed of Conveyance)
(Lot/Block of Subdivision or Tract #)
32 - T31N - R21W
Section Township Range
(Attach sheet for metes and bounds)
- C. Total acreage: 17.428 acres
- D. Zoning District: Split by the South East Rural Whitefish Zoning District and Rural Whitefish Zoning District
- E. The present zoning of the above property is: SAG-10 (Suburban Agricultural)
- F. The proposed zoning of the above property is: SAG-5 (Suburban Agricultural)
- G. State the changed or changing conditions that make the proposed amendment necessary: The property is 17.428 acres in size. The property is located adjacent to the City of Whitefish and the City's Armory Park. The applicant

would like to develop the property in the future to comply with the SAG-5 zoning density. The applicant may eventually come into the City of Whitefish to access sewer and water services but the City of Whitefish does not have a SAG-5 zoning classification they only have R-2.5 or WA which is a 15 acre minimum lot size.

Figure 1



THE FOLLOWING ARE THE CRITERIA BY WHICH ZONING AMENDMENTS ARE REVIEWED. PLEASE PROVIDE A RESPONSE AND *DETAILED* EXPLANATION FOR EACH CRITERION FOR CONSIDERATION BY THE PLANNING STAFF, PLANNING BOARD, AND COMMISSIONERS.

1. Is the proposed amendment in accordance with the Growth Policy/Neighborhood Plan?

The property is located within the Growth Policy Jurisdiction of Flathead County. The Growth Policy Map identifies the property as “Agriculture”. The Flathead County Growth Policy Map is not a future land use designation map that is traditionally used with a Growth Policy but an existing land use map that generally depicts the existing zoning categories as its base. The SAG-5 (Suburban Agriculture) designation is a land use category that is consistent with and generally conforms to the “Agricultural” designation.

The Flathead County Growth Policy identifies a number of Goals and Policies that support the proposed Map Amendment.

G.2 – Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.

P.3.3 – Maintain flexibility of land use option to forest and agriculture land owners by focusing on mitigating the negative impacts of development.

The proposed zoning designation will grant flexibility to possibly create two additional parcels of land which reflect the neighboring land division pattern.

G.4 – Preserve and protect the right to farm and harvest as well as the custom, culture, environmental benefits and character of agriculture and forestry in Flathead County while allowing existing landowners flexibility of land use.

The SAG-5 designation allows for agricultural use which is consistent with the neighboring land uses and zoning classifications but also establishes a transition to the urban densities of the City to the west.

P.4.3.- Identify a desirable gross density for rural residential development that retains land values, preserves the agricultural character of the community and allows for efficient provision of government services (law enforcement, fire protection, transportation, etc.)

The five acre density proposed with the Map Amendment will preserve the open character of the neighborhood while allowing for the efficient provision of government services.

G.8 – Safe, healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowners to develop land, protect the health, safety, and welfare of neighbors and efficiently provide local services.

The proposed SAG-5 will allow a density of 1 unit per five acres. As the property is 17 acres in size the maximum number of lots would be three (two Additional lots). The proposed density more closely reflects the parcels sizes of neighboring lands outside of the City.

2. Is the proposed amendment designed to:
 - a. Secure safety from fire and other dangers? The subject property is within the Whitefish Fire District. The property is not mapped in the WUI or designated as a high fire hazard area. The property is not located in a 100-year floodplain nor is it adjacent to any waterbody.

b. Promote public health, public safety and the general welfare? The property fronts on Armory Road which is a County road at this location. The property is adjacent to the City of Whitefish and the City's Armory Park. The Flathead County Sheriff's Office provides police protection and the Whitefish Fire District provides fire and ambulance service. The proposed SAG-5 zoning classification provides the same setback and height standards as the existing SAG-10 zone and very similar land use restrictions. The uses permitted and conditionally permitted by the Flathead County Zoning Regulations for the SAG-10 (existing) and SAG-5 (proposed) are almost identical. The exceptions are the SAG-10 allows Cell Towers, Dairy product processing, Ranch Employee Housing and Stables as permitted uses while the SAG-5 does not. The SAG-5 requires a CUP for Cell Towers, Stables and Schools. The proposed change in density will allow, at most, two additional parcels with the zone change. The zone change should maintain the status quo in regards to health safety and welfare.

c. Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements? The property has access to and fronts on Armory Road which is a paved County maintained road. The property currently has one residence which is served by on-site water and sewer facilities. If the property we split, the new parcels would most likely be served by City sewer and water after annexation. The property is adjacent to a City park and the property lies within the Whitefish School District.

3. Does the proposed amendment consider:

a. The reasonable provision of adequate light and air? The proposed SAG-5 zoning designation has a minimum lot size of five acres and identical setbacks to the SAG-10. The neighborhood along Armory Road ranges from Urban densities consisting of third acre lots to Suburban parcels of five to twenty acres in size. The proposed SAG-5 zoning designation does provide adequate light and air.

b. The effect on motorized and non-motorized transportation systems? The subject parcel has direct access to Armory Road. Armory Road at this

location is a County maintained paved road within a sixty foot right-of-way. The road network provides good access for vehicles and with the relatively low traffic volumes (578 vehicle trips per day according to the Flathead County Road Department 2013 counts which were the last numbers available for this road). Although there are no statistics, Armory Road gets a significant amount of pedestrian activity because of its proximity to the City, however there is little or no shoulder on Armory Road which make for cautious pedestrian travel with no bike or pedestrian paths along this route.

- c. Compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities? The subject property is located adjacent to the City of Whitefish. The current Whitefish Growth Policy designated this property/neighborhood as "Rural Residential" with densities of 2.5 to 10 acres per unit and "zoning of WCR to WA-10". The City, however, does not have a WA-10 zoning designation, only a WA which is a 15 acre minimum lot size zoning designation.
- d. The character of the district and its peculiar suitability for particular uses? The subject parcel is an 17 acre tract that is surrounded by a mix of uses and densities. (See Figure 2). The property to the south consists of medium size suburban residential tracts one to twenty acres in size with SAG-10 zoning designation. The property to the north is the Whitefish Airport property and Burlington Northern both of which are zoned SAG-10 and AG-20. The property to the east is SAG-10 with tracts of two to ten acres in size. The property to the west is located in the City with Armory Park and residential subdivisions. The park is zoned WA (15 acre minimums) and the subdivisions are WLR (15,000 square foot minimums). The uses allowed in the SAG 10 are almost identical to those of the proposed SAG-5.

Figure 2



Considering the provisions of Spot Zoning and the “Three Part Test” as provided by legal precedent in Little vs. Board of County Commissioners, Spot Zoning is determined by the Court to be an illegal action if the request is found to meet **all** three of the tests. The three tests are as follows:

- i. *The zoning allows a use that differs significantly from the prevailing use in the area.*

The proposed SAG-5 zoning classification provides the same setback and height standards as the existing SAG-10 zone and very similar land use regulations. The exceptions are the SAG-10 allows , Cell Towers, Dairy product processing, Ranch Employee Housing and Stables as permitted uses while the SAG-5 does not. The SAG-5 requires a CUP for Cell Towers, Stables and Schools. As the land uses in both the existing and proposed zoning districts are almost identical, the proposed action does not meet this test

ii. The zoning applies to a small area or benefits a small number of separate landowners.

The proposed zone change encompasses 17 acres in a single ownership. Although this is not a large property it is bigger than many of the adjacent properties. With a single ownership, this most likely meets this test by benefiting a small number of landowners.

iii. The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and this is in the nature of special legislation.

The property proposed for the zone change is under a single ownership; however, the property abuts the City with urban densities and uses on the west boundary. In addition the airport and BNSF uses to the north are not the traditional Suburban Agricultural uses. With a significant number of “non-conforming” lots (Lots less than 10 acres in size) in the neighborhood, the proposed SAG-5 would not grant special privilege not already present in the neighborhood

As presented the proposed zone change application does not meet **all** three tests for “spot zoning” and therefore should be considered a legal request.

e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area? The permitted and conditionally permitted uses of the proposed Zoning designation of SAG-5 are almost identical to that of the existing SAG-10 zoning classification. The primary difference between the two zoning designations is the density where the proposed zoning designation has a minimum lot size of 5 acres per lot and the existing zoning designation has a minimum lot size of 10 acres per lot.

4. Is the proposed amendment, as nearly as possible, compatible with the zoning ordinances of nearby municipalities?

The City of Whitefish is located just west of the subject property as can be seen in Figure 2 with the ball fields in Armory Park. Parks and publicly owned buildings are permitted uses in the WA zoned to the west so this zoning is an anomaly. Most of the city zoning to the west is an urban WLR (Residential) with a 15,000 square foot minimum lot size. The proposed request for SAG-5 with a density of 1 dwelling per five acres is much less dense than that of the City. However, urban densities cannot be obtained on this property without the City's sewer and water infrastructure which also comes with annexation. The applicants could request annexation into the City, but the City cannot grant this property urban density without running afoul of the City's Growth Policy which does not allow urban expansion of the City until they reach 50% build out of all available lands in the City. The growth policy limit is tough to meet because not all of the land owners within the City that have large or vacant tracts want to develop or sell their land.

Other zoning designations on the north, east, and south are County SAG-10 zoning classifications. The City of Whitefish Growth Policy, which sets the foundation for zoning designations, shows the subject property and neighboring properties as "Rural Residential" which supports a 2.5 to 10 acre density in this area. In the case of this applicant, he prefers the five acre density and complying with the existing Growth Policy Designation. What he does not like is the ten acre densities as this does not allow for any division of his property.

The signing of this application signifies approval for the Flathead County Planning & Zoning staff to be present on the property for routine monitoring and inspection during approval process.

EA
Owner/Applicant Signature(s)

5/25/16
Date

APPLICATION PROCESS

APPLICABLE TO ALL ZONING APPLICATIONS:

A. Pre-Application Meeting:

A pre-application meeting is highly recommended. This can be scheduled at no cost by contacting the Planning & Zoning office. Among topics to be discussed are: Master Plan compatibility with the application, compatibility of proposed zone change with surrounding zoning classifications, and the application procedure.

B. Completed application.

C. Application fee.

D. The application must be accepted as complete by the Flathead County Planning & Zoning staff prior to the date of the planning board meeting at which it will be heard in order that requirements of state statutes and the zoning regulations may be fulfilled.

APPLICABLE TO APPLICATIONS FOR ZONE CHANGE:

A. Application Contents:

1. Completed Zone Change application, including signatures of all property owners applying for zoning map amendment.

IF this is a **MAP** amendment the following are also required:

- i) A map showing the location and boundaries of the property (*vicinity map*).
- ii) A Title Report of the subject property
- iii) **Certified** Adjoining Property Owners List must be submitted with the application (*see forms below*). The list will be sent directly to the Planning & Zoning office, unless you request otherwise. This list is valid for a period of 6 months from date generated. You may also get a certified adjoining landowners list from a title company if you choose.