

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
PATRICK MACKIN
ZONING MAP AMENDMENT REPORT (#FZC-16-07)
JULY 27, 2016

A report to the Flathead County Planning Board and Board of Commissioners regarding a request by Narda Wilson on behalf of Patrick Mackin amendment, if approved, would change the zoning of the subject property from 'R-2 One Family Limited Residential' to 'R-4 Two Family Residential.'

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on August 10, 2016 at 6:00 P.M. in the 2nd Floor Conference Room of the Earl Bennett Building located at 1035 1st Ave West in Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. In accordance with Montana law, the Commissioners will hold a public hearing on the proposed zoning map amendment.

Documents pertaining to the zoning map amendment are available for public inspection in the Flathead County Planning and Zoning Office located in the Earl Bennett Building at 1035 First Avenue West in Kalispell. Prior to the Commissioner's public hearing, documents will also be available for public inspection in the Flathead County Clerk and Records Office at 800 South Main Street in Kalispell.

I. APPLICATION REVIEW UPDATES

A. Planning Board

This space will contain an update regarding the Flathead County Planning Board review of the proposal.

B. Commission

This space will contain an update regarding the Flathead County Commissioners review of the proposal.

II. GENERAL INFORMATION

A. Application Personnel

i. Owner/Applicant

Patrick Mackin
3020 Heidi Way
Rapid City, SD 57702

ii. Technical Assistance

Narda Wilson
184 Midway Drive
Columbia Falls, MT 59912

B. Subject Property Location and Legal Description

The subject property are located at 507 and 525 E Evergreen Drive and 203 Harmony Road in Evergreen, MT (see Figure 1 below). The property is approximately 6.79 acres in size and can legally be described as follows:

Parcel A : Lot 1A of the Amended Plat of Lot 1 of Mackin Subdivision and Lot 2 of Hoiland Day Acres, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

Parcel B: Lot 2A of the Amended Plat of Lot 1 of Mackin Subdivision and Lot 2 of Hoiland Day Acres, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

Parcel C: Lot 6A of the Amended Plat of Lots 3, 4, 5, 6 & 7 of Hoiland Day Acres, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

Parcel D: Lot 2 of Mackin Subdivision, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

All parcels are located in Section 34, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana.

Figure 1: Subject property outlined in yellow



C. Proposed Zoning Map Amendment

The subject property is located within the Evergreen Zoning District and is currently zoned 'R-2 One Family Limited Residential (see Figure 2 below). As depicted in Figure 3 below, the applicant has requested a zoning map amendment to zone the property 'R-4 Two-Family Residential'

The R-2 designation is defined in Section 3.10 FCZR as, 'A district to provide for large-tract residential development. These areas will typically be found in suburban areas, generally served by either sewer or water lines.'

The proposed R-4 zoning is defined as, 'A district to provide lot areas for urban residential development. Development within the district will require all public utilities and all community facilities. A duplex is allowed in this district.'

Figure 2: Current zoning applicable to subject property (outlined in red)

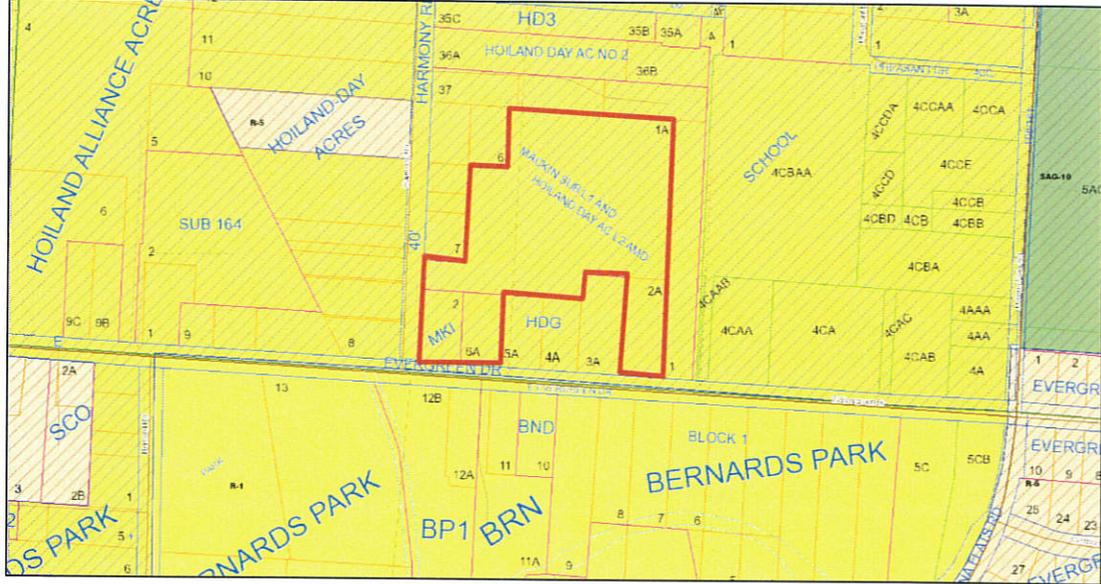
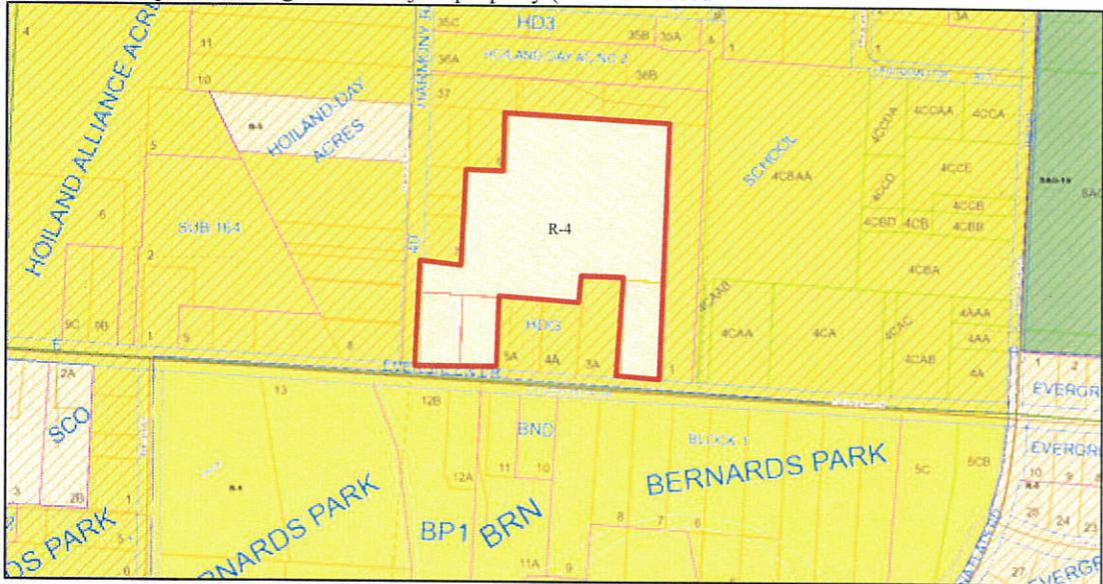


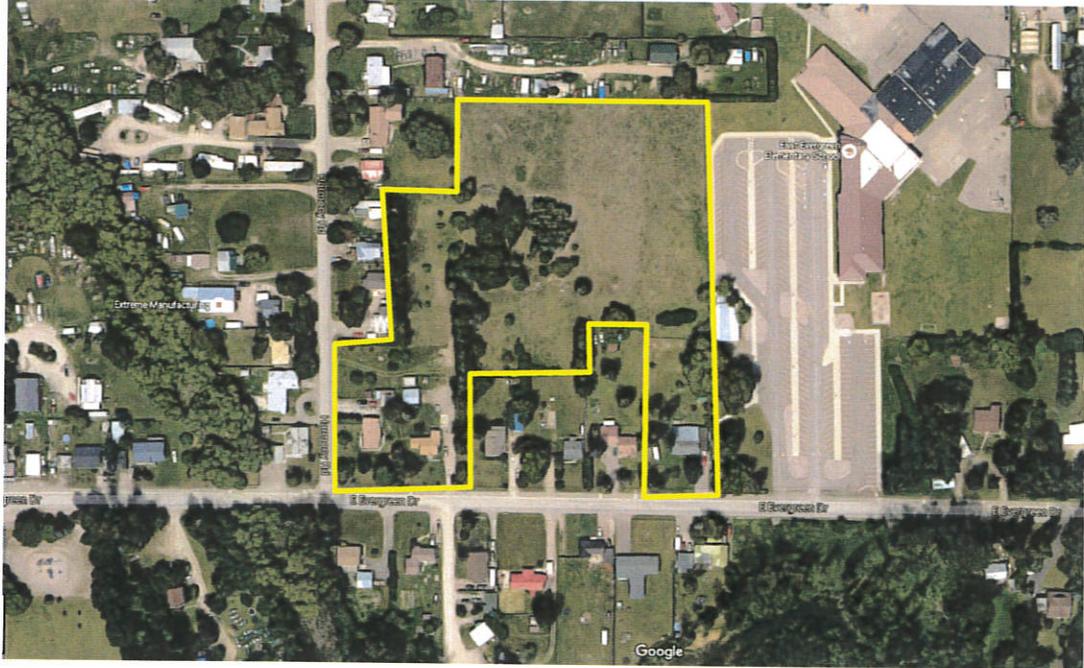
Figure 3: Proposed zoning on the subject property (outlined in red)



D. General Character of and Reason for Amendment

The property consists of four lots, the lot sizes vary as one is 5.3 acres, two lots are 0.46 acres and one is 0.62 acres. The properties are relatively flat, three of the lots contain a dwelling unit and several structures, and all the lots contain trees. According to the application, “The property owner currently has no specific plans for development of the property, but would like the flexibility in housing types that would be permitted under the proposed R-4 zoning designation, such as a two unit townhouse configuration along with single family homes.”

Figure 4: Aerial view of subject property (outlined in yellow)



E. Adjacent Zoning and Character of the Overall Zoning District

Adjacent zoning consists of R-2 to the north, east and west and R-1 to the south. Also in the area of the property is B-2/EEO, SAG-10 and R-5 zoning. Many of the lots in the area are similarly sized residential lots and the property is directly adjacent to a school. Within a quarter mile of the subject property there are approximately 25 lots under 6,000 square feet, 206 lots under one acre in size, 10 lots over 2.5 acres and 35 lots between 1 acre and 2.5 acres. The majority of the lots within a quarter mile of the property are between 10,000 square feet and 1 acre and most of the lots under 1 acre contain single family dwellings.

Many of the properties zoned R-5 within a quarter mile contain manufactured home parks. One of the properties zoned R-5 is 1.7 acres and contains 7 dwelling units or approximately 1 unit per 10,000 square feet. Another is 5.7 acres and has 21 dwelling units (approximately 1 unit per 12,000 square feet).

Public notice of the Board of County Commissioners public hearing regarding the zoning map amendment will be physically posted on the subject property and within the zoning district according to statutory requirements found in Section 76-2-205 [M.C.A.]. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice will include information on the general character of the proposed change, and the date, time, and location of the public hearing before the Flathead County Commissioners on the requested zoning map amendment.

I. Agency Referrals

Referrals were sent to the following agencies on June 13, 2016:

- Flathead County Sheriff
- Flathead County Road and Bridge Department
- Flathead County Solid Waste
- Flathead City-County Health Department; Environmental Health Services
- Flathead County Weeds and Parks Department
- Bonneville Power Administration
- City of Kalispell Planning Department
- Evergreen Water and Sewer District
- Evergreen School District
- Flathead High School District
- Evergreen Fire District

III. COMMENTS RECEIVED

A. Public Comments

As of the date of the completion of this staff report, no public comments have been received regarding the requested zoning map amendment. It is anticipated any member of the public wishing to provide comment on the proposed zoning map amendment may do so at the Planning Board public hearing scheduled for August 10, 2016 and/or the Commissioner's Public Hearing. Any written comments received following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearing(s).

B. Agency Comments

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Flathead City-County Health Department
 - Comment: "This office has reviewed the information provided and submits the following comments: Lots 1A, of the Amended Plat of Lot 1 of Mackin Subdivision and Lot 2 of Hoiland-Day Acres, and Lot 2 of Mackin Subdivision, and Lot 6A of Hoiland Day Acres Amd Lots 3,4,5,6 & 7 have existing Certificates of Subdivision Approval. Further divisions or development may require review under the Sanitation in Subdivisions Act for compliance with potable water supply, wastewater treatment and disposal, storm water drainage, and solid waste disposal.

“Lot 2A of the Amended Plat of Lot 1 of Mackin Subdivision and Lot 2 of Hoiland-Day Acres were exempted from sanitation on the plat as a remainder with a connection to a public sewage system approved before January 1, 1997 (Flathead County Water and Sewer). Further division of the property may require review under the Sanitation in Subdivisions Act.

“A Sanitary Restriction was placed on Lot 6A of the Amended Subdivision Plat of Lots 3,4,5,6 & 7 of Hoiland-Day Acres when it was created in 2007. Development of this Lot requires review under the Sanitation in Subdivisions Act.” Letter dated June 30, 2016.

- Bonneville Power Administration (BPA)
 - Comment: “In reviewing the proposed plan, it appears this request will not affect any BPA facilities located within this area. BPA does not have any objections to the approval of this request at this time.” Email dated June 16, 2016.
- Evergreen Water and Sewer District
 - Comment: “There are water and sewer mains adjacent to portions of this property on both E. Evergreen Dr. and Harmony Dr. If they are dividing it, whether or not they will be required to do main extensions would depend on how it was divided. Lots have to be adjacent to mains to receive service from a main. Also he needs to consider that he would be responsible for paying for any repairs to the bike path that would be required after providing service to his property. Another item he should be aware of is that any new connections will have to pay a treatment plant impact fee to the City of Kalispell.” Email sent July 27, 2016.
- Flathead County Road & Bridge Department
 - Comment: “At this point the County Road Department does not have any comments on this request.” Letter dated June 16, 2016.

IV. EVALUATION OF PROPOSED AMENDMENT

A. Build-Out Analysis

Once a specific zoning designation is applied in a certain area there are certain land uses that are permitted or conditionally permitted. A build-out analysis is performed to examine the maximum potential impacts of full build-out of those uses. The build-out analysis is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build-out analyses are objective and are not best or worst case scenarios. Without a build-out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria, such as impact to transportation systems. Build-out analyses are simply establishing the meaning of the zoning map amendment to the future of the community to allow for the best possible review.

i. Current Zoning

The property is currently zoned 'R-2 One Family Limited Residential' zoning. R-2 is defined in Section 3.10.010 FCZR as, 'A district to for large-tract residential development. These areas will typically be found in suburban areas, generally served by either sewer or water lines.' The following is a list of permitted uses in an R-2 zone:

1. *Class A manufactured home.*
2. *Day care home.*
3. *Dwelling, single-family.*
4. *Guest house.*
5. *Home occupation.*
6. *Homeowners park and/or beach.*
7. *Park and publicly owned recreation facility.*
8. *Public transportation shelter station.*
9. *Public utility service installation (a minimum of five feet of landscaped area shall surround such building or structure).*

The following uses are listed as conditional uses in an 'R-2' zone. An asterisk designates conditional uses that may be reviewed administratively:

1. *Bed and breakfast establishment.*
2. *Cellular antenna and monopole.*
3. *Cemetery, mausoleum, columbarium, crematorium.*
4. *Church and other place of worship.*
5. *Community center building operated by a non-profit agency.*
6. *Community residential facility.***
7. *Dwellings, cluster development.**
8. *Dwelling, family hardship.**
9. *Dwelling unit, accessory (ADU).*
10. *Electrical distribution station.*
11. *Golf course.*
12. *Golf driving range.*
13. *Manufactured home park.*
14. *School, primary and secondary.*
15. *Temporary building or structure.**
16. *Water and sewage treatment plant.*
17. *Water storage facility.*

The bulk and dimensional standards for R-2, requires a setback of 20 feet from the front, rear and side-corner and 10 feet from the side on principal structures, 20 feet from the front and side-corner and 5 feet from the rear and side for accessory structures. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or arterials.

The R-2 zone permitted lot coverage is 30% and a maximum height of 35 feet. The minimum lot area for R-2 is 20,000 square feet and the subject property is 6.79 acres. Development standards anticipate approximately 30% of the total

land area being allocated to infrastructure. Thus under the proposed zoning the subject property could potentially be divided in a manner resulting in approximately 10 single family lots. However environmental constraints and subdivision requirements may preclude that number of units from actually being able to be developed.

ii. Proposed Zoning

As previously stated, the applicant is proposing 'R-4 Two-Family Limited Residential' zoning. R-4 is defined in Section 3.12.010 FCZR as, '*A district to provide lot areas for urban residential development. Development within the district will require all public utilities and all community facilities. A duplex is allowed in this district.*' The following is a list of permitted uses in an R-4 zone:

1. *Class A and Class B manufactured homes.*
2. *Day care home.*
3. *Dwelling, single-family.*
4. *Duplex.*
5. *Home occupation.*
6. *Homeowners park and beaches.*
7. *Park and publicly owned recreational facility.*
8. *Public transportation shelter station.*
9. *Public utility service installation.*

The following uses are listed as conditional uses in an 'R-4 Two Family Residential' zone. An asterisk designates conditional uses that may be reviewed administratively:

1. *Beauty Salon and Barbershop.*
2. *Bed and breakfast establishment.*
3. *Cellular antenna & monopole.*
4. *Church and other place of worship.*
5. *Community center building operated by a non-profit agency.*
6. *Community residential facility.**
7. *Day care center.*
8. *Dwellings, cluster development.*
9. *Dwelling unit, accessory.*
10. *Electrical distribution station.*
11. *Golf course.*
12. *Manufactured home park.*
13. *Mini-storage, RV storage.*
14. *School, primary and secondary.*
15. *Temporary building or structure.**
16. *Water storage facility.*

The bulk and dimensional standards under R-4 zoning requires a setback for the principal structure of 20 feet for the front, rear and side-corner, and 5 feet from the side. The minimum setback requirement for accessory structures is 20 feet for the front and side-corner and 5 feet from the rear and side. A 20 foot setback is required from a stream, river and unprotected lake which do not serve as property

boundaries. An additional 20 foot setback is required from county roads classified as collector or major/minor arterials. The maximum allowable building height is 35 feet for all structures and the permitted lot coverage is 40%.

The minimum lot size in an R-4 zone is 6,000 square feet for single family dwellings and 7,500 square feet for duplexes and all other uses. Development standards anticipate approximately 30% of the total land area being allocated to infrastructure. Thus under the proposed zoning the subject property could potentially be divided in a manner resulting in approximately 34 single family lots or 55 duplexes. However environmental constraints and subdivision requirements may preclude that number of units from actually being able to be developed.

In summary, the requested zone change from R-2 to R-4 has the potential to increase density, by approximately 240% to 450%, through subsequent division in the future. The bulk and dimensional requirements similar from R-2 to R-4 and the zoning map amendment would allow uses that are typical of residential zoning districts and similar to uses that are allowed under the existing residential zoning on the property and residential zoning of the surrounding areas.

B. Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)

i. Whether the proposed map amendment is made in accordance with the Growth Policy/Neighborhood Plan.

The proposed zoning map amendment falls within the jurisdiction of the Flathead County Growth Policy, adopted on March 19, 2007 (Resolution #2015 A) and updated October 12, 2012 (Resolution #2015 R). Additionally the property is located within the Kalispell City-County Master Plan 2010, adopted on February 6, 1986 by the Flathead County Commissioners (Resolution #578A) and the City of Kalispell on April 7, 1986 (Resolution #3641).

1. Flathead County Growth Policy

The Flathead County Growth Policy Designated Land Uses Map identifies the subject property as 'Residential.' The Designated Land Use Map portrays only zoning which was established at the time the map was created and is not a future land use map. The proposed R-4 zone would continue to fit with the current designations and the map would not need to be updated to reflect the proposed zoning, if approved.

Following is a consideration of goals and policies which appear to be applicable to the proposed zone change, to determine if the proposal complies with the Growth Policy:

- ❖ **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.*
 - The amendment would allow the owner to subdivide the property and place additional residential on the property.
- ❖ **G.8** – *Safe healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowner to develop*

land, protect the health, safety, and general welfare of neighbors and efficiently provide local services.

- The R-4 designation would allow for densities of 1 dwelling unit per 6,000 square feet or 1 duplex per 7,500 square feet which would be a smaller density than the R-5 zoning nearby and greater than the neighboring R-2 and R-1 zones.
- ❖ **G.15** – *Promote a diverse demographic of residents.*
- ❖ **G.16** – *Safe housing that is available, accessible, and affordable for all sectors of the population.*
 - **P.16.3** – *Promote the development of affordable single and multi-family housing in areas of adequate service networks.*
 - The proposed zone would allow for additional single and multi-family residential, if approved.
- ❖ **G.23** – *Maintain safe and efficient traffic flow and mobility on county roadways.*
 - **P.23.2** – *Limit private driveways from directly accessing arterials and collector roads to safe separation distances.*
 - **P.23.4** – *Recognize areas in proximity to employment and retail centers as more suitable for higher residential densities and mixed use development.*
 - This report contains discussion on the proposal’s potential burden on transportation below.
- ❖ **G.31** – *Growth that does not place unreasonable burden on the school district to provide quality education.*
 - This report contains discussion on the proposal’s potential burden on schools below.
- ❖ **G.32** – *Maintain consistently high level of fire, ambulance and emergency 911 response services in Flathead County as growth occurs.*
- ❖ **G.33** – *Maintain a consistently high level of law enforcement services in Flathead County as growth occurs.*
 - This report contains discussion on the adequacy of emergency service below.
- ❖ **G.38** – *Preserve and protect floodplains to ensure the safety of residents from flood hazards and to prevent the degradation of water quality and critical wildlife habitat.*
 - **P.38.3** – *Discourage development in floodway or floodway fringe that may result in a net increase in the floodplain area.*
- ❖ **G.39** – *Preserve and protect wetlands and riparian areas to prevent degradation of natural resources, including but not limited to water quality and critical wildlife habitat.*
 - This report contains discussion on floodplain and wetland development below.

- ❖ **G.46** – *Honor the integrity and purpose of existing neighborhood plans, respecting the time, effort and community involvement that has taken place.*

- The property is located within the Kalispell City-County Master Plan. This report contains discussion on the proposals compliance with the Master Plan below.

Finding #2: The proposed zoning map amendment generally complies with the Flathead County Growth Policy because applicable goals, policies and text appear to generally support the request and the ‘Residential’ land use designation identified by the Designated Land Use Map portrays only zoning which was established at the time the map was created and is not a future land use map.

2. Kalispell City-County Master Plan

The Kalispell City-County Master Plan (Master Plan) Map was incorporated into the Growth Policy to provide guidance on future development and land use decisions within the plan area at the local level. The Master Plan is composed of three major components, the text, goals and objectives, and the map. According to the Master Plan, “*Relying on only one component will not always give a clear picture of the broad community concepts or the spirit of the Plan. Or worse, it may lead to a twisting or manipulation of the Plan.*” Therefore, this report contains discussion on compliance with the map, the goals and objectives, and the text of the Master Plan.

The Master Plan map designates the subject property as ‘Suburban Residential’ which is defined as, “*A residential district which provides for two or less units per acre. Such areas typically do not have access to a community sewer or water system, have only limited police and fire protection, and may have a limited carrying capacity due to site or soil limitations, floodplain or other natural constraints which preclude higher density.*”

The Master Plan states, “*Suburban residential districts are typically located in two areas: on the periphery of the urbanizing community where they serve as a transitional development pattern between the urban area and the timber and agricultural areas beyond... [...]. Suburban residential areas are found primarily east of Willow Glen Drive, east of Whitefish River encompassing a majority of Evergreen, along Reserve Drive...*” The subject property is located along Reserve Drive and at the edge of an urbanized area, less than a quarter of a mile from agriculture.

- ❖ **Goal 4** – *A housing supply within the planning jurisdiction that meets the needs of present and future residents in terms of supply, choice and location.*

- The proposal has the potential to add to the housing supply within the planning jurisdiction.

- ❖ **Goal 6** – *The orderly development of the planning jurisdiction with ample space for future growth while, at the same time, ensuring compatibility of adjacent lands uses.*

- **Objective 6.g.** – *Maintain the character of the single-family neighborhoods.*
 - The subject property is located adjacent to land currently zoned R-1 and R-2 and nearby R-5 zoning; the proposed R-4 zone would be compatible with the adjacent properties.

Finding #2: The proposed zoning map amendment appears to comply with the Kalispell City-County Master Plan because the proposed R-4 could maintain the character of the single family neighborhood and has the potential to add to the housing supply.

ii. Whether the proposed map amendment is designed to:

1. Secure safety from fire and other dangers;

The subject property is located within the Evergreen Fire District and the nearest fire station is located less than one mile west of the property on U.S. Highway 2. The Evergreen Fire Department would respond in the event of a fire or medical emergency. The subject property is not located within the Wildland Urban Interface (WUI) or within a fire district priority area.

The subject property is located at the intersection of East Evergreen Drive and Harmony Road. Both Harmony Road and East Evergreen Drive could be used as access for future development. East Evergreen Drive is a paved two lane county collector within a 60 foot easement and Harmony Road is a paved two lane county local road within a 40 foot easement. Both roads would be adequate to provide access for emergency services. The application states, “Excellent access via County owned and maintained road of Harmony Road on the west and East Evergreen Drive to the south would provide good accessibility in case of fire or other emergency.

According to FEMA FIRM Panels 30029C 1810J, the property is located within a shaded Zone X an area determined to be within the 0.2% annual chance floodplain and Zone AE a special flood hazard area with a Base Flood Elevation determined.

The applicant received a Letter of Map Amendment (LOMA) from FEMA in 2013 (13-08-1318A) removing the property from the floodplain. However, in November 4, 2015 a new FIRM Panel for the area became effective which, according to FEMA, “automatically supersedes previously issued LOMAs that have been issued on that map panel, even if they are still valid and should apply to the new NFIP map as well.” FEMA issued a letter on November 4, 2015 revalidating the determinations for properties and/or structures for LOMR-Fs and LOMAs previously issued by FEMA. Case number 13-08-1318A, for the subject property was not included in the revalidation and has not subsequently applied for a LOMA. The LOMA for the subject property appears to be no longer valid and a portion of the property would remain within Zone AE as of the date of this report.

The applicant could apply for revalidation of the previous LOMA and no further permitting would be needed upon construction of single family dwellings. New development in the floodplain would likely require a

floodplain development permit if the previous LOMA is not revalidated or a new LOMA is not issued. Additionally, the Flathead County Subdivision Regulations require that any new residential lots that contain floodplain have a building site located outside the floodplain.

Finding #3: The proposed map amendment will not impact safety from fire and other danger because the property is not located in the WUI or a fire district priority area, is located approximately one mile from the nearest fire station and even though a portions of the properties are located within the 100 year floodplain, the owner could seek to revalidate the previous LOMA, a floodplain development permit would be required for new development within the floodplain if the LOMA is not revalidated and the Flathead County Subdivision Regulations would require that new residential lots that contain floodplain have a building site located outside the floodplain.

2. Promote public health, public safety, and general welfare;

As previously stated, the subject property is located within the Evergreen Fire District and the nearest fire station is located less than one mile west of the property on U.S. Highway 2. The Evergreen Fire Department would respond in the event of a fire or medical emergency and the Flathead County Sheriff's Department provides police services to the subject property. Both East Evergreen Drive and Harmony Road appear adequate to provide ingress and egress for emergency services.

The zoning on the surrounding properties are R-2 also in the vicinity of the subject property is R-1, R-5 and B-2/EEO zoning. The uses allowed within the R-4 would be similar to that of the existing R-2 and the neighboring R-5. The densities would be much greater in the proposed zoning than the R-2 and would also allow for duplexes. The densities in the R-4 would be less than the densities of the nearby R-5 zones. Because the uses are similar to what exist in the area the proposal is not likely to negatively impact public health, public safety and general welfare.

The application states, "The public welfare would be served by encouraging higher density residential development in an area that is served by full public services which are currently available. This serves the public interest by the efficient delivery of services and individual landowners who benefit from easy access to public services and community amenities."

Finding #4: The proposed amendment does not appear to have a negative impact on public health, safety and general welfare because permitted and conditional uses would be similar to uses already existing in the area and the property is served by the Flathead County Sheriff and the Evergreen Fire Department.

3. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

The subject property is located at the intersection of East Evergreen Drive and Harmony Road. Both Harmony Road and East Evergreen Drive could be used as access for future development. East Evergreen Drive is a paved two

lane county collector within a 60 foot easement and Harmony Road is a paved two lane county local road within a 40 foot easement. Comments from the Flathead County Road and Bridge Department indicate no concerns with the proposed zoning map amendment.

The most recent traffic counts from the Flathead County Road and Bridge Department indicate 990 average daily trips (ADT) for Harmony Road and 1,016 ADT for East Evergreen Drive west of Helena Flats. The proposed R-4 zone would allow for the potential of 34 single family lots or 55 duplexes which could generate approximately 340 to 550 vehicle trips per day. The proposed zone change has the potential to increase traffic on Harmony Drive by 34.3% to 55.5% and East Evergreen Drive by 33.5% to 54.1%.

Most of the traffic generated by the proposal will likely end up on East Evergreen Drive as it is a county collector and connects to Helena Flats Road and U.S. Highway 2. It is unlikely that the proposal would hinder the adequate provision of transportation given that East Evergreen Drive is a county collector, the Road and Bridge Department had no concerns with this proposal and if the applicant develops a subdivision on the property that would increase traffic by more than 400 ADT, a traffic impact analysis would be required.

The application states, "The Evergreen Water and Sewer District serves this area and these properties with public water and sewer. Capacity is available within the Evergreen System that could potentially serve these properties should they be developed at some point in the future. Service and new construction would have to be in accordance with policies and standards of the Evergreen District."

The Evergreen Water and Sewer District provided comment regarding this request stating, "There are water and sewer mains adjacent to portions of this property on both E. Evergreen Dr. and Harmony Dr. If they are dividing it, whether or not they will be required to do main extensions would depend on how it was divided. Lots have to be adjacent to mains to receive service from a main. Also he needs to consider that he would be responsible for paying for any repairs to the bike path that would be required after providing service to his property. Another item he should be aware of is that any new connections will have to pay a treatment plant impact fee to the City of Kalispell."

The applicant will likely require review under the Sanitation and Subdivision Act as comment from the Flathead City-County Health Department states, "This office has reviewed the information provided and submits the following comments: Lots 1A, of the Amended Plat of Lot 1 of Mackin Subdivision and Lot 2 of Hoiland-Day Acres, and Lot 2 of Mackin Subdivision, and Lot 6A of Hoiland Day Acres Amd Lots 3,4,5,6 & 7 have existing Certificates of Subdivision Approval. Further divisions or development may require review under the Sanitation in Subdivisions Act for compliance with potable water supply, wastewater treatment and disposal, storm water drainage, and solid waste disposal.

“Lot 2A of the Amended Plat of Lot 1 of Mackin Subdivision and Lot 2 of Hoiland-Day Acres were exempted from sanitation on the plat as a remainder with a connection to a public sewage system approved before January 1, 1997 (Flathead County Water and Sewer). Further division of the property may require review under the Sanitation in Subdivisions Act.

“A Sanitary Restriction was placed on Lot 6A of the Amended Subdivision Plat of Lots 3,4,5,6 & 7 of Hoiland-Day Acres when it was created in 2007. Development of this Lot requires review under the Sanitation in Subdivisions Act.”

The subject property is located within the Evergreen and Flathead School Districts. Evergreen Elementary School is a short distance away, with some walking trails available for student use to access the school on East Evergreen Drive. Evergreen Elementary School has seen a decrease in student enrollment over the last ten years of 4% and decrease between 2014 and 2015 of 1%. Flathead High School District has seen an increase in student enrollment over the last ten years of 11% but no change between 2014 and 2015. No comments have been received from either the elementary or high school districts. It is anticipated that the schools would have capacity should any residential growth occur as a result of the proposed zoning map amendment.

The development of lots less than 5 acres in size has the potential to trigger parkland requirements during subdivision review; additionally there are many parks, natural areas, and recreational opportunities within a short drive. And according to the application, “A nicely maintained County Park, Bernard Park, lies in close proximity and easy walking distance to this property to the southwest at the southeast corner of Bernard Road and East Evergreen Drive.”

Finding #5: The proposed amendment appears to facilitate the adequate provision of transportation because comments from the Flathead County Road and Bridge Department, East Evergreen Drive is a county collector and if the applicant develops a subdivision on the property that would increase traffic by more than 400 ADT, a traffic impact analysis would be required.

Finding #6: The proposed amendment appears to facilitate the adequate provision of water, sewerage, schools and parks because the property would undergo review through the Flathead County Environmental Health, sewer and water could likely be obtained through the Evergreen water and Sewer District, and subdivision review could require parkland dedication and no comments were received from either school district.

iii. In evaluating the proposed map amendment, consideration shall be given to:

1. The reasonable provision of adequate light and air;

The application states, “Development standards of the proposed zoning district would have to be met that would include minimum lot sizes, set backs (sic), height limitations as well as density imitations, and with those providing adequate light and air to the residents and the neighborhood.”

As the application stated, the bulk and dimensional requirements, which includes setbacks, have been established to provide for a reasonable provision of light and air. The minimum lot area for the existing R-2 zone is 20,000 square feet and the minimum lot area for the proposed R-4 zone is 6,000 square foot minimum lot size for single family dwelling and 7,500 square feet for duplexes. The maximum building height within both the R-2 and R-4 zones is 35 feet for a principal structure and 18 feet for accessory structures. The permitted lot coverage is 30% in the R-2 zone and is 40% in the proposed R-4 zone.

The bulk and dimensional requirements in the R-4, requires a setback of 20 feet from the front, rear and side-corner and 5 feet from the side on principal structures, 20 feet from the front and side-corner and 5 feet from the rear and side for accessory structures. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or arterials.

Finding #7: The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to adhere to the bulk and dimensional, setbacks and lot coverage requirements within the R-4 designation.

2. The effect on motorized and non-motorized transportation systems;

As previously stated, the subject property is located on at the intersection of East Evergreen Drive and Harmony Road. Both Harmony Road and East Evergreen Drive could be used as access for future development. East Evergreen Drive is a paved two lane county collector within a 60 foot easement and Harmony Road is a paved two lane county local road within a 40 foot easement. Comments from the Flathead County Road and Bridge Department indicate no concerns with the proposed zoning map amendment.

Recent traffic counts from the Flathead County Road and Bridge Department indicate 990 average daily trips (ADT) for Harmony Road and 1,016 ADT for East Evergreen Drive west of Helena Flats. The proposed R-4 zone would allow for the to generate approximately 340 to 550 vehicle trips per day. The proposed zone change has the potential to increase traffic on Harmony Drive by 34.3% to 55.5% and East Evergreen Drive by 33.5% to 54.1%.

Most of the traffic generated by the proposal will likely end up on East Evergreen Drive as it is a county collector and connects to Helena Flats Road and U.S. Highway 2. It is unlikely that the proposal would hinder the adequate provision of transportation given that East Evergreen Drive is a county collector, the Road and Bridge Department had no concerns with this proposal and if the applicant develops a subdivision on the property that would increase traffic by more than 400 average daily trips, a traffic impact analysis would be required.

The application states, "Additionally there is pedestrian trails to the west along east Evergreen Drive. These systems may be insignificantly affected at

some point in the future with development of this property.” There is currently a bike/pedestrian path along East Evergreen Drive adjacent to the subject property. The path connects residential in the area to the adjacent Evergreen School.

Finding #8: Effects on motorized and non-motorized transportation systems will be minimal because comments from the Flathead County Road and Bridge Department, East Evergreen Drive is a county collector, if the applicant develops a subdivision on the property that would increase traffic by more than 400 ADT, a traffic impact analysis would be required and there is an existing pedestrian path along East Evergreen that provides access from residential in the vicinity to the school.

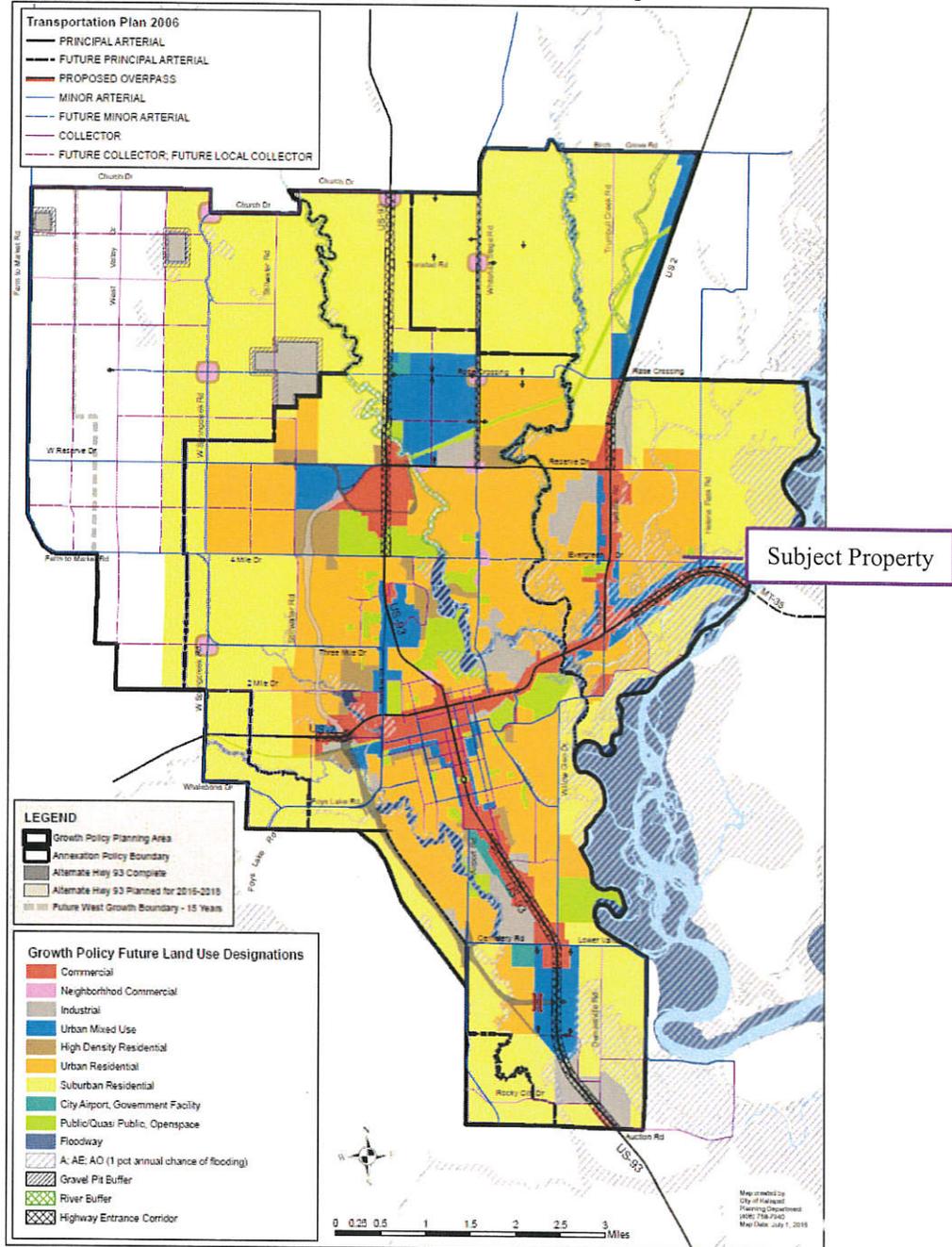
3. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);

Kalispell is the nearest municipality to the subject property and is located approximately one and a half miles west of the subject property. The property is located approximately one and a half miles outside of the Kalispell Growth Policy Annexation Policy Boundary and no comments from the City of Kalispell.

The applicant discusses the Evergreen area and how it is not incorporated but does not go into detail as to how the proposal would be compatible with the growth of the City of Kalispell.

The subject property is included within the City of Kalispell Growth Policy Future Land Use Map and is designated as ‘*Urban Residential*.’ According to the Kalispell Growth Policy the ‘*Urban Residential*’ states, ‘*a. Urban residential areas shown on the plan map should be encouraged to be developed when adequate services and facilities are available. b. Typical densities are four to twelve dwellings per gross acre. c. Single-family houses are the primary housing type, but duplexes, guest houses, accessory apartments, and small dispersed areas of multi-family housing are also anticipated.*’ The proposed R-4 zoning would allow for 6,000 square foot minimum lot size for single family dwelling and 7,500 square feet for duplexes and would be between the four to eight dwellings per acre with roughly 30% of the acreage going towards infrastructure. It appears that the proposed zoning designation would generally be compatible with urban growth in the vicinity of Kalispell.

Figure 6: City of Kalispell Growth Policy Future Land Use Map



Finding #9: The property is located within the extent of the City of Kalispell Growth Policy Future Land Use Map and the proposal appears to be compatible with urban growth in the vicinity of Kalispell because no comment were received from the City of Kalispell, the property is located outside the Kalispell annexation policy boundary, and the proposed zone is similar to the density of the City of Kalispell Growth Policy designation of 'Urban Residential.'

4. The character of the district(s) and its peculiar suitability for particular uses;

The character of the district and its peculiar suitability for particular uses can best be addressed using the “three part test” established for spot zoning by legal precedent in the case of *Little v. Board of County Commissioners*. Spot zoning is described as a provision of a general plan (i.e. Growth Policy, Neighborhood Plan or Zoning District) creating a zone which benefits one or more parcels that is different from the uses allowed on surrounding properties in the area. Below is a review of the three-part test in relation to this application and the character of the district and its peculiar suitability for particular uses.

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

The applicant is proposing to rezone the subject property to R-4. To the north, east and west of the subject property the zoning is R-2 and to the south R-1. Also within the vicinity is R-5 zoning and B-2/EEO zoning. Most of the properties surrounding the subject property are residential. The minimum lot size within the R-1 and R-2 is 1 acre and 20,000 square feet respectively. The minimum lot size for the R-5 zone is 5,400 square feet. The proposed zone would allow for residential at a lesser density to the R-5, but a greater density than the R-1 and R-2.

Within a quarter mile of the subject property there are approximately 25 lots under 6,000 square feet, 206 lots under one acre in size, 10 lots over 2.5 acres and 35 lots between 1 acre and 2.5 acres. The majority of the lots within a quarter mile of the property are between 10,000 square feet and 1 acre. Most of the lots under 1 acre contain single family dwellings.

Many of the properties zoned R-5 within a quarter mile contain manufactured home parks. One of the properties zoned R-5 is 1.7 acres and contains 7 dwelling units or approximately 1 unit per 10,000 square feet. Another is 5.7 acres and has 21 dwelling units (approximately 1 unit per 12,000 square feet).

The proposed zoning would allow for a smaller lot size than what generally exists in the area but allow for the same uses that currently exist.

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

Using standard GIS software, staff was able to estimate the acreage of R-2 zoning district and surrounding zoning districts in an effort to determine if the proposed zone change is a relatively small area. The subject property is located in R-2 district approximately 310.4 acres. Directly to the south of the subject property is an R-1 zoning that is approximately 34.3 acres. Also within a quarter mile of the proposal are four R-5 districts of 12.1, 1.7, 5.7, and 3.5 acres. Also the B-2/EEO zoning along Highway 2 and Highway 35 is approximately 523.54 acres. The proposed R-4 district would be similar in size to several of the pockets of R-5 zoning within a

quarter mile but would be significantly smaller than the existing R-2 and neighboring R-1 and B-2/EEO.

- 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, thus, is in the nature of special legislation.*

The proposed zone change would allow for residential lots with a minimum lot size of 6,000 square feet. A majority of the lots in the vicinity are residentially zoned lots with similar uses to what would be allowed if the R-4 zone is approved. As previously stated, to the north, east and west of the subject property is a large R-2 zoning district and also within the vicinity is R-5 and R-1 zoning. The minimum lot size within the R-1 and R-2 is 1 acre and 20,000 square feet respectively and the minimum lot size for the R-5 zone is 5,400 square feet. The proposed zone would allow for residential at a greater density than the R-1 and R-2 but lower density than that of the R-5.

The proposal would benefit a single landowner, however given the nature of the neighborhood and immediate vicinity would likely not be special legislation at the expense of the surrounding landowners or the general public.

In summary, all three criteria must be met for the application to potentially be considered spot zoning. The proposed zoning map amendment does not appear to be at risk of spot zoning, as it does not appear to meet all three of the criteria.

Finding #10: The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because the proposed zone change would allow for the same uses existing within R-1, R-2 and R-5 zoning neighboring the property and the size of the R-4 zoning district would be comparable to the size of nearby R-5 zones.

5. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

The subject property is located within the Evergreen Zoning District and surrounded by residential zones (see Figure 2). The application states, “The area where the zone change is proposed is a well-established residential area that has experienced slow but steady growth as public services and facilities have been made available and growth pressures continue. This is an evolving area that is strongly influenced by urban growth in the Flathead Valley and particularly Kalispell to the west.”

Neighboring properties are zoned R-2 and R-1, additionally in the area are several pockets of R-5 zoning similar in size to the proposed zoning. The uses allowed within the proposed zoning would be similar to the uses allowed and existing within the neighboring residential areas.

Finding #11: This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this

particular location because the uses allowed for within the proposed zone would be similar to those allowed in the R-2 and neighboring R-1 and R-5 zones.

iv. **Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.**

Kalispell is the nearest municipality to the subject property which is located approximately one and a half miles west of the property. No comments were received from the City of Kalispell.

The closest City zoning to the subject property is a City R-4. The City's R-4 has a 6,000 square foot minimum lots size which would be the same density that is allowed in the proposed R-4. The conditional and permitted uses within the City's R-4 are similar to the conditional and permitted uses within the proposed zone. The application states, "Nearby Kalispell has similar zoning designations to Flathead County zoning regulations particularly in regard to residential zoning such as that which is under consideration. The zoning, development standards and density limitations for both the R-2 and R-4 zoning districts are generally consistent between the City and the County and there would be no impact on those standards as a result of this change."

Finding #12: The proposed map amendment appears to be, as nearly as possible, compatible with the zoning ordinance of Kalispell because the R-4 zone would be, as nearly as possible, compatible with the City's R-4 zone and no comments were received from the City of Kalispell.

V. **SUMMARY OF FINDINGS**

- 1) The proposed zoning map amendment generally complies with the Flathead County Growth Policy because applicable goals, policies and text appear to generally support the request and the 'Residential' land use designation identified by the Designated Land Use Map portrays only zoning which was established at the time the map was created and is not a future land use map.
- 2) The proposed zoning map amendment appears to comply with the Kalispell City-County Master Plan because the proposed R-4 could maintain the character of the single family neighborhood and has the potential to add to the housing supply.
- 3) The proposed map amendment will not impact safety from fire and other danger because the property is not located in the WUI or a fire district priority area, is located approximately one mile from the nearest fire station and even though a portions of the properties are located within the 100 year floodplain, the owner could seek to revalidate the previous LOMA, a floodplain development permit would be required for new development within the floodplain if the LOMA is not revalidated and the Flathead County Subdivision Regulations would require that new residential lots that contain floodplain have a building site located outside the floodplain.
- 4) The proposed amendment does not appear to have a negative impact on public health, safety and general welfare because permitted and conditional uses would be similar to

uses already existing in the area and the property is served by the Flathead County Sheriff and the Evergreen Fire Department.

- 5) The proposed amendment appears to facilitate the adequate provision of transportation because comments from the Flathead County Road and Bridge Department, East Evergreen Drive is a county collector and if the applicant develops a subdivision on the property that would increase traffic by more than 400 ADT, a traffic impact analysis would be required.
- 6) The proposed amendment appears to facilitate the adequate provision of water, sewerage, schools and parks because the property would undergo review through the Flathead County Environmental Health, sewer and water could likely be obtained through the Evergreen water and Sewer District, and subdivision review could require parkland dedication and no comments were received from either school district.
- 7) The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to adhere to the bulk and dimensional, setbacks and lot coverage requirements within the R-4 designation.
- 8) Effects on motorized and non-motorized transportation systems will be minimal because comments from the Flathead County Road and Bridge Department, East Evergreen Drive is a county collector, if the applicant develops a subdivision on the property that would increase traffic by more than 400 ADT, a traffic impact analysis would be required and there is an existing pedestrian path along East Evergreen that provides access from residential in the vicinity to the school.
- 9) The property is located within the extent of the City of Kalispell Growth Policy Future Land Use Map and the proposal appears to be compatible with urban growth in the vicinity of Kalispell because no comment were received from the City of Kalispell, the property is located outside the Kalispell annexation policy boundary, and the proposed zone is similar to the density of the City of Kalispell Growth Policy designation of *'Urban Residential.'*
- 10) The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because the proposed zone change would allow for the same uses existing within R-1, R-2 and R-5 zoning neighboring the property and the size of the R-4 zoning district would be comparable to the size of nearby R-5 zones.
- 11) This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this particular location because the uses allowed for within the proposed zone would be similar to those allowed in the R-2 and neighboring R-1 and R-5 zones.
- 12) The proposed map amendment appears to be, as nearly as possible, compatible with the zoning ordinance of Kalispell because the R-4 zone would be, as nearly as possible, compatible with the City's R-4 zone and no comments were received from the City of Kalispell.

VI. CONCLUSION

Per Section 2.08.020(4) of the Flathead County Zoning Regulations (FCZR), a review and evaluation by the staff of the Planning Board comparing the proposed zoning map

amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal to generally comply with the review criteria, based upon the draft Findings of Fact presented above. Section 2.08.040 does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.

Planner: EKM