

August 31, 2022
Sent via E-Mail

Flathead County
Planning and Zoning Office
Attn: Erik Mack
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Re: *Zoning Map Amendment Report (#FZC-22-05); Montarise Developments, LLC*

Dear Planning Board and County Commissioners,

This firm, along with David K.W. Wilson, Jr. of Morrison Sherwood Wilson and Deola, PLLP represent Friends for Responsible Rural Growth (“FFRRG”), a Montana non-profit organization, in connection with the above referenced application (the “Application”) submitted by Montarise Developments, LLC (“Montarise”).

FFRRG is opposed to the Application. We have reviewed staff report FZC-22-05 and have identified infirmities with the application and the staff’s findings of fact that require denial of the Application. FFRRG offers the following alternative, proposed findings of fact for your consideration.

Evaluation of Proposed Amendment Based on Statutory Criteria (Mont. Code Ann. § 76-2-203 and Section 2.08.040 Flathead County Zoning Regulations)

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

	Staff’s Findings of Fact	FFRRG’s Proposed Findings of Fact
Finding No. 1	<p>The proposed zoning map amendment generally complies with the Flathead County Growth Policy because the R-1 zoning would continue to allow for agricultural and silvicultural uses, and the R-1 zone would allow for single-family dwellings, manufactured homes, and ADUs at a higher density which has the potential to create affordable housing options¹.</p>	<p>The proposed zoning map amendment does not comply with the Flathead County Growth Policy. The zoning map amendment does not substantially comply with the Growth Policy because the Growth Policy designates this land as SAG-5. The zoning map amendment does not generally comply with the Growth Policy for several reasons. First, the R-1 zoning allows for higher density than contemplated in the Growth Policy. The Growth Policy was deliberate in setting forth the Future Land Use Map in order to achieve the vision through the stated goals and policies. This amendment does not substantially comply with the following goals and policies from the Growth Policy:</p> <ul style="list-style-type: none"> • Vision: Protect the Views; Manage Transportation; Maintain the Identity of Rural Communities • 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.2.1 Create land use regulations that are directly linked to the vision outlined in the Growth Policy. • G.3 Preserve the cultural integrity of private and public agriculture and timber lands in Flathead County by protecting the right to active use and management and allowing a flexibility of private land use that is economically and environmentally

¹ There is no mention of affordable housing in the zoning map amendment, or the subdivision or PUD applications which have not yet been determined sufficient by the County. § 76-3-604, MCA. To assume that housing will be affordable just because it is developed in a denser subdivision is without any basis.

		<p>viable to both the landowner and Flathead County.</p> <ul style="list-style-type: none">• P.3.5 Identify reasonable densities for remote, rural development that do not strain the provision of services or create a public health or safety hazard.• 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.)• P.6.5. Conserve resources and minimize transportation demand by encouraging redevelopment and infill of existing commercial areas in the county.• G.7. Consider existing community character in commercial land development.• 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 general welfare of neighbors and efficiently provide local services.• G.11. Protection of scenic resources available to both residents and visitors.• P.11.1. Identify critical gateway areas that provide lasting impressions of Flathead County to both residents and visitors.• G.14. Solid waste collection facility operation and landfill expansion free
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		<p>from land use conflicts with adjacent property owners.</p> <ul style="list-style-type: none"> • P.14.1. Identify a 1,320 foot buffer surrounding the landfill and designate this area only for those land uses compatible with current and future landfill activities. Compatible use types such as industrial should be encouraged in this buffer.
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2. Whether the proposed map amendment is designed to secure safety from fire and other dangers.

<p>Finding No. 2</p>	<p>The proposed zoning map amendment would secure safety from fire and other dangers because although the property is within the WUI and a “High” County-wide priority area, the property is served by the Whitefish Rural Fire District and is located approximately 3.6 miles from the nearest fire station, access is from a paved, State highway and a paved County road, and the property is not located within a Special Flood Hazard Area.</p>	<p>The proposed zoning map amendment would not secure safety from fire and other dangers because the property is within the WUI and is considered a “High” County wide priority area. It is within the Whitefish Fire Service Area, and the closest fire station (at 3.6 miles) is unmanned. Primary access is from a paved portion of a dirt road which would create a bottleneck if a fire were to occur.</p>
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3. Whether the proposed map amendment is designed to promote public health, public safety, and general welfare:

<p>Finding No. 3</p>	<p>The proposed zoning map amendment would have a minimal impact on public health, safety and general welfare because the property is served by the Whitefish Rural Fire District and Flathead County Sherriff’s Office, and future development would comply with the permitted and conditional uses in the R-1 zone which are similar to the existing surrounding uses.</p>	<p>The proposed zoning map amendment would have a negative impact on public health, safety and general welfare because the property is within the WUI. While it is served by the Whitefish Fire Service Area which contracts with the City of Whitefish for fire services, the closest staffed fire department is over 6 miles away. Public safety using Hwy 93 and KM Ranch Rd would be negatively impacted. The Flathead County Road and Bridge Department expressed “concern” over the high number of daily trips (estimated at 3,066), and did not make fully informed comments due to the Traffic Impact Study’s unavailability at the time of comment. The zone change would create over a 10% increase in traffic to Hwy 93 and 120% increase on KM</p>
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		<p>Ranch Rd, a mostly dirt road and a notoriously unsafe road for school buses in the winter. The zone change would also facilitate the creation of a dense subdivision (with a PUD overlay) which would require septic and wells, potentially affecting groundwater and neighboring water levels. R-1 should typically be reserved for locations where hook ups to municipal water and sewer utilities are available. Further, the County Landfill is adjacent to this property and changing the zone to allow more density could adversely affect any expansion of the Landfill needed in the future. This would be detrimental to public health, safety and the general welfare.</p>
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4-5. Whether the proposed map amendment is designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

<p>Finding No. 4</p>	<p>The proposed zoning map amendment could have a negative impact on the transportation system because access to the property currently exists via Highway 93 and KM Ranch Road, the proposal has the potential to increase traffic on KM Ranch Road by approximately 120%, future development would require approach permits from the Montana Department of Transportation and will require review through MDT’s System Impact Action Process.</p>	<p>The proposed zoning map amendment would have a negative impact on the transportation system because access to the property currently exists via Highway 93 and KM Ranch Road, the proposal has the potential to increase traffic on KM Ranch Road by approximately 120% and Highway 93 by at least 16%. Taking a left hand turn from KM Ranch to Whitefish is extremely dangerous already, but especially with a 120% increase in traffic and 16% increase on Highway 93. The traffic implications would be exacerbated by the fact that KM Ranch Rd. is mostly unpaved road and not well suited for the additional capacity from the higher density allowed under R-1. The Traffic Impact Study submitted for the still incomplete subdivision application for this property contains limitations that do not accurately reflect the true traffic impacts of this project. The trip generation presented in the TIS is not based upon industry standard and significantly underestimates the trips generated by the project. It is also likely that the development will cause intersection failures at US 93 and KM Ranch Road, and US 93 and Bowdish Road. Therefore, since the traffic impacts have not been sufficiently studied, the applicant has failed to prove the map</p>
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<p>Finding No. 5</p>	<p>The proposed zoning map amendment would facilitate the adequate provision of water and sewer services, schools and parks because future development of the property would require review through Flathead City-County Health Department and the Montana Department of Environmental Quality, as applicable, the proposal has the potential to generate 54 school age children, no comment was received from the local school district, and parkland dedication would be considered during subdivision review.</p>	<p>amendment will facilitate the adequate provision of transportation.</p> <p>The proposed zoning map would not facilitate the adequate provision of water and sewer services, schools and parks because development under R-1 zoning could allow for density of at least 154 lots (and even more with a PUD overlay), and said lots would need to rely on wells for water and septic systems for sewer. Development of wells to provide water for that much density could affect neighboring properties and prove insufficient. R-1 zoning is better suited in proximity to municipalities where hook ups are provided. In addition, school aged children would attend the Whitefish School District, which is already at or nearing capacity.² In addition, R-1 zoning could allow at least 54 school aged children. School buses will have to take a left turn on Highway 93 from KM Ranch Rd., which is dangerous, and especially during high traffic hours, when buses are typically on the road. Buses will also likely travel down KM Ranch Rd, which presents additional safety issues considering KM Ranch Rd is mostly unpaved and can be dangerous for buses to navigate, especially in the winter. Thus, allowing R-1 zoning in this area would not facilitate the adequate provision of schools. Further, the applicant has not shown that the proposed zoning map amendment would facilitate the adequate provision of parks.</p>
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6. In evaluating the proposed map amendment, consideration shall be given to the reasonable provision of adequate light and air.

² <https://dailyinterlake.com/news/2021/sep/15/whitefish-high-school-nearing-capacity-study-says/>

<p>Finding No. 6</p>	<p>The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to meet the bulk and dimensional, setbacks and lot coverage requirements within the proposed R-1 designation.</p>	<p>The proposed zoning map amendment would not provide adequate light and air to the subject property because the “proposed PUD overlay of the R-1 district will encroach upon the bulk and dimensions” according to the Staff Report, page 14. The permitted lot coverage under R-1 would increase the maximum coverage from 25% under SAG-5 to 40% under R-1. Not only will there be significantly more subdivision and lots created under R-1, the individual lots may cover almost twice as much of the lots than under the current zoning. This is not reasonable for this area.</p>
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7-8. In evaluating the proposed map amendment, consideration shall be given to the effect on motorized and non-motorized transportation systems:

<p>Finding No. 7</p>	<p>The proposal would have a negative impact on the motorized transportation systems because access to the subject property currently exists via Highway 93 and KM Ranch Road, the proposal has the potential to increase traffic on KM Ranch Road by approximately 120%, future development would require approach permits from the Montana Department of Transportation and will require review through MDT’s System Impact Action Process.</p>	<p>The proposal would have a negative impact on the motorized transportation systems because access to the subject property currently exists via Highway 93 and KM Ranch Road, the proposal has the potential to increase traffic on KM Ranch Road by approximately 120%, future development would require approach permits from the Montana Department of Transportation and will require review through MDT’s System Impact Action Process.</p>
<p>Finding No. 8</p>	<p>Effects on non-motorized transportation systems will be minimal because future subdivision of the property would require an easement for a bicycle and pedestrian trail along Highway 93.</p>	<p>Effects on non-motorized transportation systems would not be minimal because full buildout under R-1 zoning would require additional approaches from Highway 93 and would increase traffic on the Highway by 16%, which would negatively impact cyclists on Highway 93. In addition, cyclists, pedestrians and horseback riders using KM Ranch Rd would be negatively impacted by the 120% increase in traffic caused by the increase in zoning.</p>

9. In evaluating the proposed map amendment, consideration shall be given to the effect of compatible urban growth in the vicinity of cities and towns (that at a minimum must

include the areas around municipalities):

<p>Finding No. 9</p>	<p>The proposed zoning map amendment would not have an impact on urban growth in the vicinity of cities and towns because the closest incorporated city is located approximately 2.25 miles south of the subject property.</p>	<p>The proposed zoning map amendment would negatively impact urban growth in the vicinity of Kalispell, which is 2.25 miles away, and Whitefish, which is 4 miles away. Whitefish and Kalispell are two distinct cities in a rural county, which are distinguishable, in part, because of the separation of the cities by rural areas buffer, including forests and agricultural lands. Allowing R-1 zoning in this area, which is squarely between these two cities, would amount to urban sprawl, degrade the rural buffer lands between these two cities, and lead to the eventual merging of Whitefish and Kalispell into one continuous urban and suburban area.</p>
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10. In evaluating the proposed map amendment, consideration shall be given to the effect of the character of the district(s) and its peculiar suitability of particular uses:

<p>Finding No. 10</p>	<p>The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because the proposed zoning does not allow uses that differ significantly from the prevailing use in the area, the R-1 zone would allow for a lot size larger than the neighboring R-2 but less than the existing SAG-5 and the acreage of the proposed zone change is similar in size to the acreage of the nearby zoning districts.</p>	<p>The proposed zoning map amendment is not suitable for the character of the district and allows particular uses that are not suitable for the area. Not only would the proposed zoning map amendment allow much higher density than identified in the Growth Policy, the development is proposing commercial uses, where virtually none exist around this property. The proposed zoning map amendment constitutes spot zoning. First, the zoning allows a use that is significantly different from the prevailing use in the area. The district (Prairie View Zoning District) and the surrounding area are all low density residential and agricultural. The areas directly abutting the property are either SAG-5, SAG-10 or AG-40. The R-2 zoning is not comparable since it was created in 1964, prior to the Growth Policy adoption in 2007. R-1 on this property would allow high density subdivision of the property, which would not conform to the neighboring area. The developments nearby the property that were developed after 2007 are SAG-5 with a PUD overlay. Second, the zoning applies to a</p>
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		<p>small area or benefits a small number of separate landowners. The zoning map amendment would change three tracts for the benefit of <i>one</i> landowner. Compared to the surrounding area, including the 4,000 acres of adjacent SAG-10 districts, the area is small. Lastly, the zoning is designed to benefit one landowner at the expense of the surrounding landowners and the general public, and thus is in the nature of special legislation. The surrounding landowners and general public are overwhelmingly opposed to this development, citing concerns of increased traffic, unsuitability with the neighborhood, sewer and water concerns, etc. The planning board has received hundreds of comments to this effect. This would be in the nature of special legislation as R-1 allows much higher density and thus much higher profits for the developer.</p>
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11. In evaluating the proposed map amendment, consideration shall be given to the effect of conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area:

<p>Finding No. 11</p>	<p>This zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this particular location because the R-1 designation allows for similar uses to the surrounding zones and would be less dense than existing neighboring zones.</p>	<p>The zoning map amendment does not conserve the value of buildings and does not encourage the most appropriate use of land in this particular location because the R-1 designation allows for 5x the density (or more with a PUD overlay) compared to SAG-5, and would be much denser than any area west of Highway 93 or abutting KM Ranch Rd. The most appropriate use of land would not be urban sprawl here, as high density subdivisions should be reserved for areas that can hook up to municipalities or areas identified as such in the Growth Policy. The value of buildings in the area would decrease due to the traffic and safety implications of allowing R-1 zoning on this property.</p>
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12. Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.

Finding No. 12	The proposed zoning map amendment would not have an impact on the compatibility of zoning ordinances of nearby municipalities because the closest incorporated city is located approximately 2.25 miles south of the subject property.	The proposed zoning map amendment is incompatible with zoning ordinances of nearby municipalities because both Whitefish and Kalispell encourage and plan for infill development to limit urban sprawl and preserve open spaces, forest land and agricultural land. Whitefish will need to account for this growth when making land use decisions considering the property would utilize Whitefish schools and Whitefish fire and EMS services.
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