

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE
WHITEFISH TRANSITION ISSUES REPORT
FEBRUARY 6, 2015**

A report to the Flathead County Planning Board regarding the Whitefish Planning and Zoning Transition. Documents pertaining to the Whitefish Transition 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.

WHITEFISH TRANSITION

I. INTRODUCTION

A. Background

On January 24, 2005 the Flathead County Board of Commissioners entered into an agreement with the City of Whitefish to establish an extraterritorial area (ETA) around the City's annexed areas and assign planning jurisdiction to the Whitefish City-County Planning Board (Resolution No. 1783 A). After adoption of the Interlocal Agreement the City of Whitefish designated some county zones with Whitefish zoning designations and adopted Whitefish zoning designations within some areas previously unzoned within the ETA of the Interlocal Agreement. On July 15, 2014 the Montana Supreme Court issued a decision on Phillips v City of Whitefish, 2014 MT 186 which affirmed the prior District Court determination that the Interlocal Agreement between Flathead County and the City of Whitefish (2010IA) has been terminated according to the express terms which provide for withdrawal by either party and that therefore there is no valid Interlocal Agreement between the parties.

Recognizing a vacuum of governance and the prompt need to serve the citizenry within the ETA, the Commissioners indicated in their August 6, 2014 letter the County would begin administering immediate control over the ETA. After considering multiple potential scenarios for administering the re-acquired ETA jurisdiction Flathead County decided to adopt an interim zoning district.

After the adoption of the interim zoning district there was outreach conducted by the Planning Board to help inform their thinking about how to proceed. Options were presented and public comments were solicited on the options being considered. The Planning Board held a series of workshops on October 1, 15, 29 and 30, 2014 to discuss options on how to proceed with the planning and zoning. 4,400 postcards were sent to all landowners in the former ETA and 1996 Whitefish City-County Master Plan jurisdiction beyond that boundary asking for their comments and input at workshops that were held at the county fairgrounds October 29 and 30, 2014.

On December 17, 2014 the Planning Board forwarded a recommendation to the Flathead County Commissioners to repeal the 1996 Whitefish City-County Master Plan and possibly amend the Flathead County Growth Policy to add a future land use map limited to the former "Interlocal Agreement" area using the future land use map from the 2007 Whitefish Growth Policy as a starting point. The board's recommendation also included revising text of the Flathead County Growth Policy as needed to ensure consistency with the future land use map. Following amendments to the Growth Policy the Planning Board recommended considering replacement of

the current interim zoning with county Part 2 zoning based on the amended Flathead County Growth Policy.

On January 13, 2015 the commissioners discussed the Planning Board's recommendation. On a 3-0 vote, the Commissioners pass a motion to send the Planning Board's recommendation back to the Planning Board to reconsider the option.

On January 14, 2015 during "Old Business," the Planning Board discussed the Commissioners motion. The Planning Board voted 9-0 to revise the recommendation and recommended that after the expiration of the interim zoning, repeal the 1996 Whitefish City-County Master Plan, rely on Flathead County Growth Policy for land use decisions and consider replacing interim zoning with part 2 zoning.

On February 2, 2015 the County Commissioners accepted the recommendation of the Planning Board made at the regularly scheduled January 14, 2015 Planning Boarding meeting.

B. Purpose of study

The purpose of this study is to identify some areas within the former ETA of the Interlocal Agreement where residents have concerns with the current zoning or current interim zoning. A list was created from verbal comments received at the Planning Board workshops and written comments received via email, letter, and forms submitted at the Planning Board Workshop. This list contains only comments pertaining to geography specific concerns regarding rural Whitefish. While creating this list staff identified three areas that do not appear to be self-explanatory. Therefore staff has performed research on the three issue areas to present to the Planning Board for their consideration.

II. METHODOLOGY

A. Data collection

Staff compiled a list of concerns raised by citizens within the former ETA of the Interlocal Agreement. This was compiled from comments received during the process to determine a course of action for the planning and zoning in rural Whitefish. Many of the written comments were received via email, letter, and forms submitted at the Planning Board Workshops. Staff also included verbal comments recorded from the public at Planning Board workshops. While the list includes 40 separate comments, individual and self-explanatory statements were not included in this report as additional research wouldn't be necessary.

Staff performed a site visit to the three areas addressed in this report on January, 26th, 2015. The three areas discussed in this report were identified after compiling the list as locations where residents had concern over the current Part 2 zoning or current interim zoning. The areas identified were:

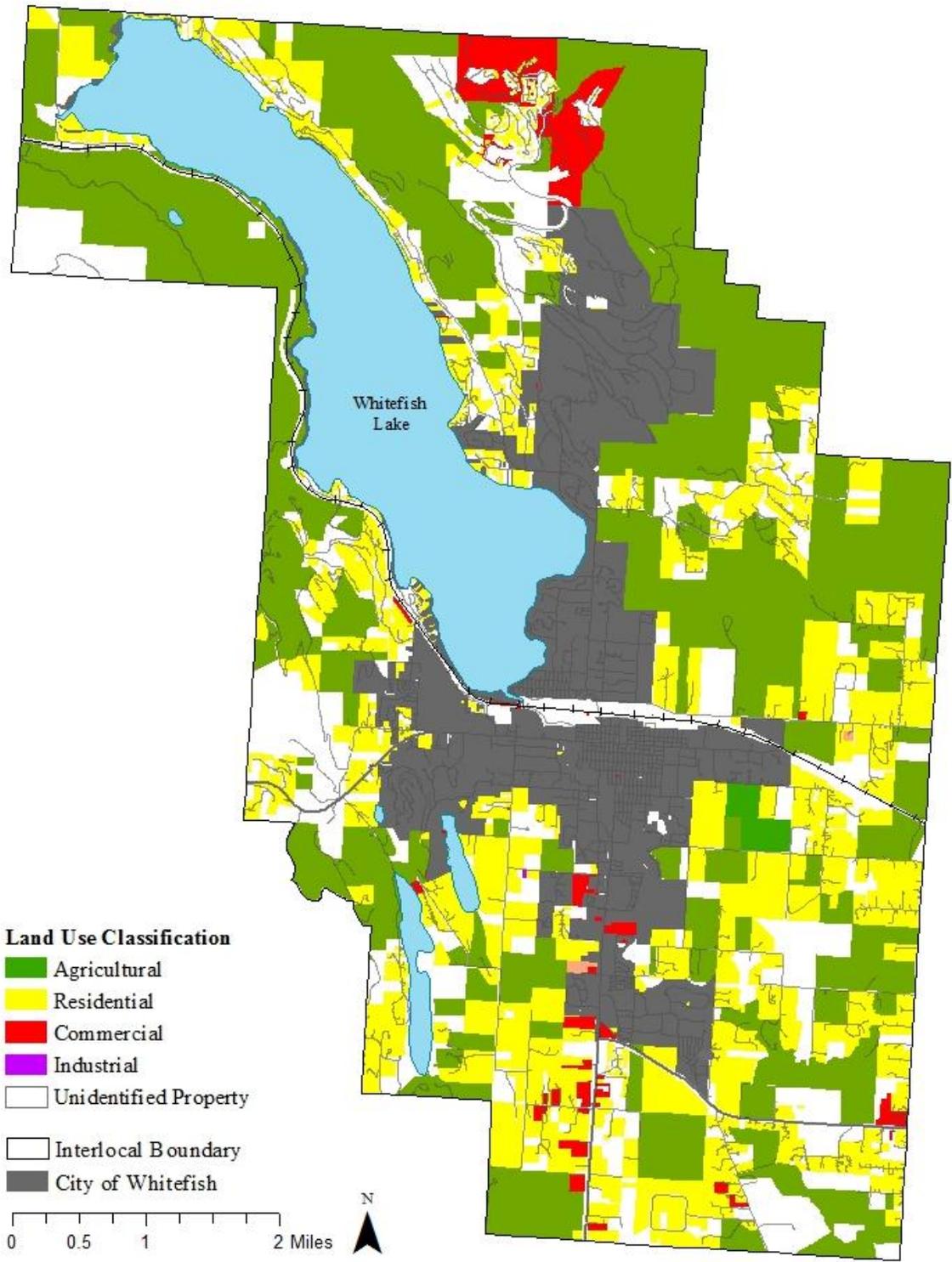
1. Houston Lakeshore Tracts
2. Karrow Avenue south of West 7th Street
3. Highway 93 South

Staff also researched various applicable zoning designations while preparing this report in order to compare interim zones with previous Whitefish zones and the County zones located within the areas identified above.

B. Map explanation

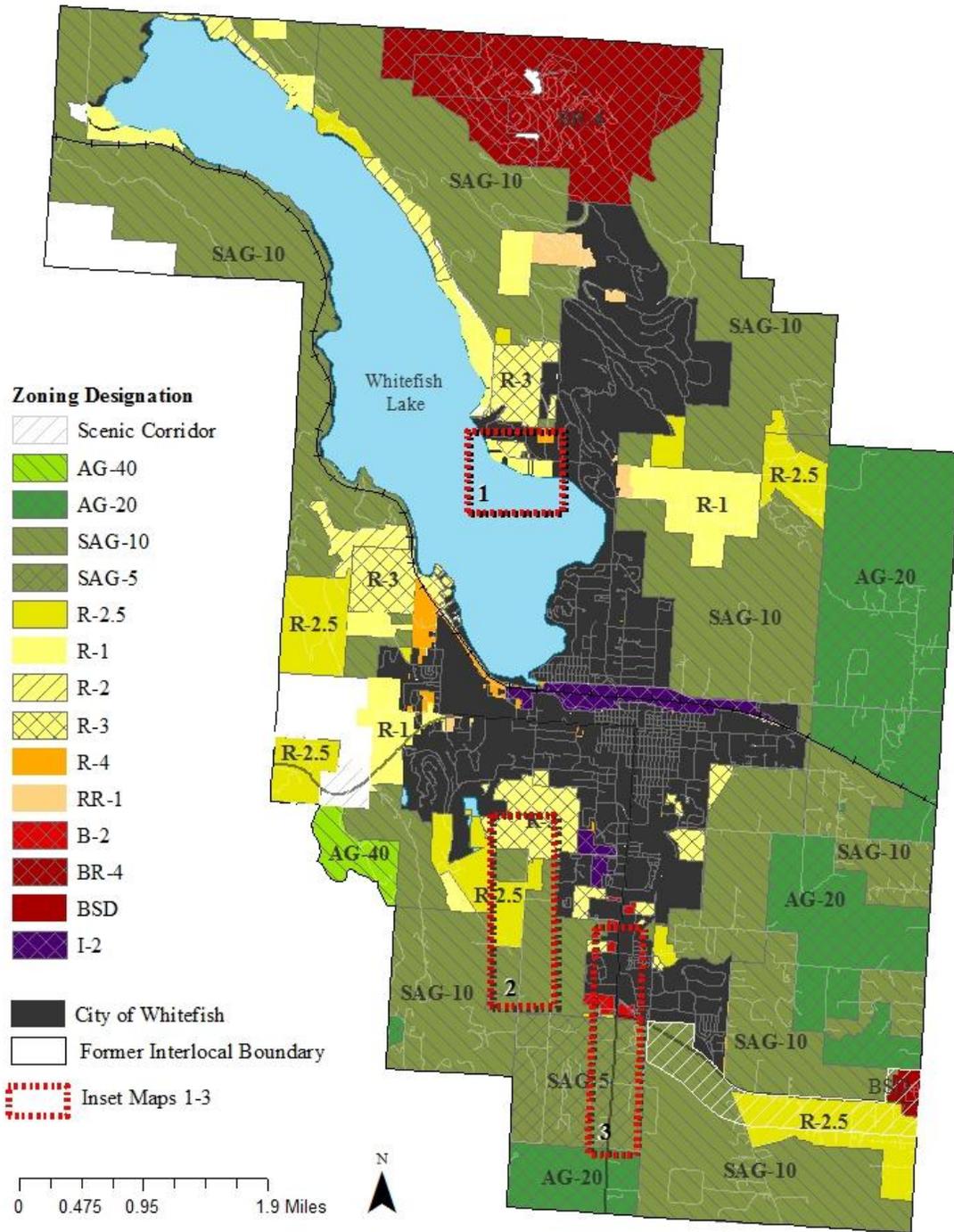
The following maps were created to depict the geographic location of the primary issue areas. A land use classifications map was developed using data from the Montana Department of Revenue property type classifications. The 19 property type classifications (i.e. Rural Residential, Commercial Urban, Townhouse Urban) were combined into 5 general classifications for visual coherence. The “Unidentified Property” classification contains all properties that are tax exempt, non-valued, or vacant properties. A zoning map was also developed illustrating the current Part 2 and interim zoning around Whitefish as of February 5, 2015. Inset maps were created for the three issue areas to illustrate the zoning, parcel size, and adjacent land use.

Land Use Classifications*



* Land use information was obtained from the Montana Department of Revenue's Property Type Data and combined into the five classifications illustrated on this map. Unidentified properties include those parcels identified as those parcels that are tax-exempt, vacant property, and non-valued property.

Current and Interim Zoning Designations



III. ISSUES

A. Area 1 [Houston Lake Shore Tracts]

Residents of the Houston Lakeshore Tracts area would like to have more consistent zoning within their subdivision and the Stocking Development Tracts “B&C” Subdivision. Under the City of Whitefish the Houston Drive area was zoned both WER and WSR with WSR along the lake and WER north and east of Houston Drive. The east end of Houston Drive, (just Houston Drive not the lots accessed from Houston Drive,) was previously zoned WLR under the City. The WSR has a minimum lot size of 1 acre, the minimum lot size of the WER is 20,000 square feet and the minimum lot size of the WLR is 15,000 square feet.

The R-1 zoning replaced the WSR zoning along the lake, the R-2 zoning replaced the WER and the R-3 zoning replaced the WLR zoning under the county’s interim zoning. The minimum lot size of R-1 is 1 acre and the minimum lot size of the R-2 is 20,000 square feet which are consistent with the previous City of Whitefish zoning. The minimum lot size of the R-3 is 10,000 square feet under the minimum lot size of the previous WER zoning.

The residents in the neighborhood would like to see uniform zoning and do not want the City to have control. The Houston Drive area has properties that have been annexed into the City with WER and WSR zoning. According to residents, the area that was WSR is now R-1 and they would like it to be more consistent.

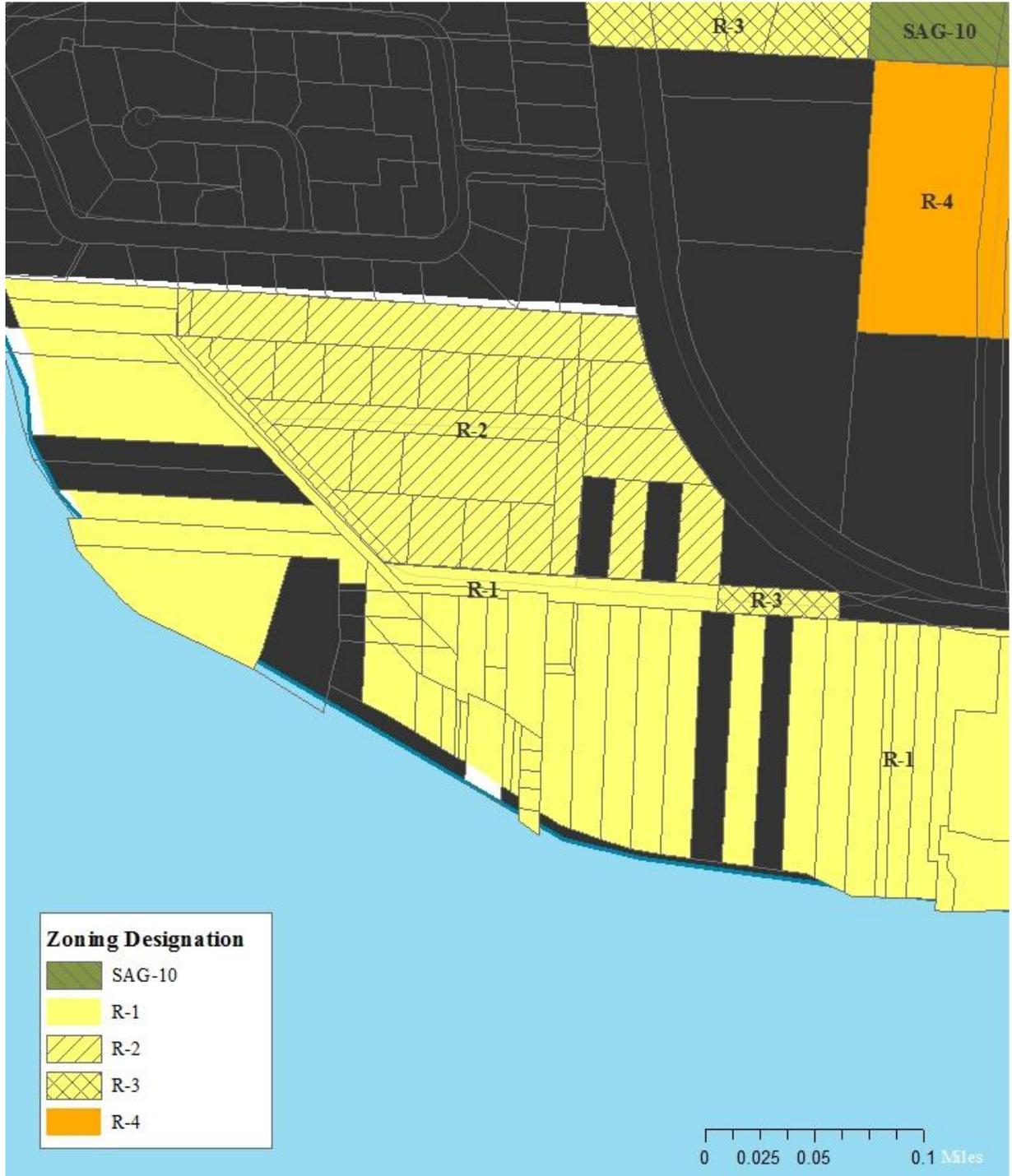
There is one permitted use within the R-1 that requires a conditional use permit within the R-2 zone (*‘ Dwelling unit, accessory’*). The R-1 allows for eleven uses as a permitted or conditional use that is not allowed within the R-2 zone:

1. *Agricultural/horticultural/silvicultural use.*
2. *Livestock.*
3. *Nursery, landscaping material.*
4. *Produce stand.*
5. *Stable, private.*
6. *Airfield.*
7. *Aircraft hangars when in association with properties within or adjoining and airport/land field.*
8. *Camp and retreat center.*
9. *Caretaker’s facility.*
10. *Radio and television broadcast station.*
11. *Stable, public*

The bulk and dimensional standards under the R-1 zoning requires a setback for principal structures of 20 feet from the boundary line or right-of-way for the front, rear, side and side-corner. There are also provisions for reduced setbacks for non-conforming lots when the width of the lot is less than 150 feet or 50 feet. The minimum setback requirement for accessory structures is 20 feet for the front and side-corner and 5 feet for the rear and side. 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 major/minor arterials.

Current and Interim Zoning Designations Map Inset #1



The bulk and dimensional standards under the R-2 zoning requires a minimum setback for principal structures of 20 feet from the boundary line or right-of-way for

the front, rear and side-corner and 10 feet for the side. The minimum setback requirement for accessory structures is 20 feet for the front and side-corner and 5 feet for the rear and side. 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 major/minor arterials.

B. Area 2 [Karrow Ave]

Several residents of Karrow Avenue expressed concerns over the zoning on Karrow Avenue. Karrow Avenue between Lund Lane and West 7th Street is currently zoned R-3 One Family Residential. Zoning is different on opposite sides of the road. South of Lund Lane to Blanchard Lake Drive is a mixture of SAG-10 Suburban Agricultural, R-2.5 Rural Residential and R-3 zoning. The minimum lot size for the SAG-10 zone is 10 acres, the minimum lot size for R-2.5 is 2.5 acres and the minimum lot size for R-3 is 10,000 square feet. Before the County took over jurisdiction the properties zoned SAG-10 had been zoned Whitefish WA which had a minimum lot size of 15 acres.

Residents questioned why one side of the road has a 2.5 acre lot minimum and a 15 acre lot minimum on the other. According to one of the residents the East side of Karrow was under city control and the west side was under county jurisdiction. Some of the residents of Karrow Avenue would like the zoning to be consistent on both sides of the road.

The R-2.5 zone allows for one use that is not allowed within the SAG-10 zone (*'Radio and television broadcast station'*). Three uses are a permitted use within the SAG-10 that requires a conditional use permit within the R-2.5 zone (*'Cellular tower,' 'Cluster housing' and 'Stable, public'*). The SAG-10 allows for eight uses as a permitted or conditional use that is not allowed within the R-2.5 zone:

1. *Dairy products processing, bottling, and distribution.*
2. *Ranch employee housing.*
3. *Riding academy, rodeo arena.*
4. *Animal hospital, veterinary clinic.*
5. *Contractor's storage yard.*
6. *Extractive industry.*
7. *Kennel, commercial.*
8. *Recreational facility, low impact.*

Many of the uses permitted and conditionally permitted within the SAG-10 and R-2.5 are not permitted within the R-3 zone. The uses not allowed within the R-3 but allowed within SAG-10 and R-2.5 include:

1. *Agricultural/horticultural/silvicultural use.*
2. *Class B manufactured home*
3. *Dairy products processing, bottling, and distribution.*
4. *Dwelling, single-family.*
5. *Guest house.*
6. *Livestock*
7. *Nursery, landscaping materials.*

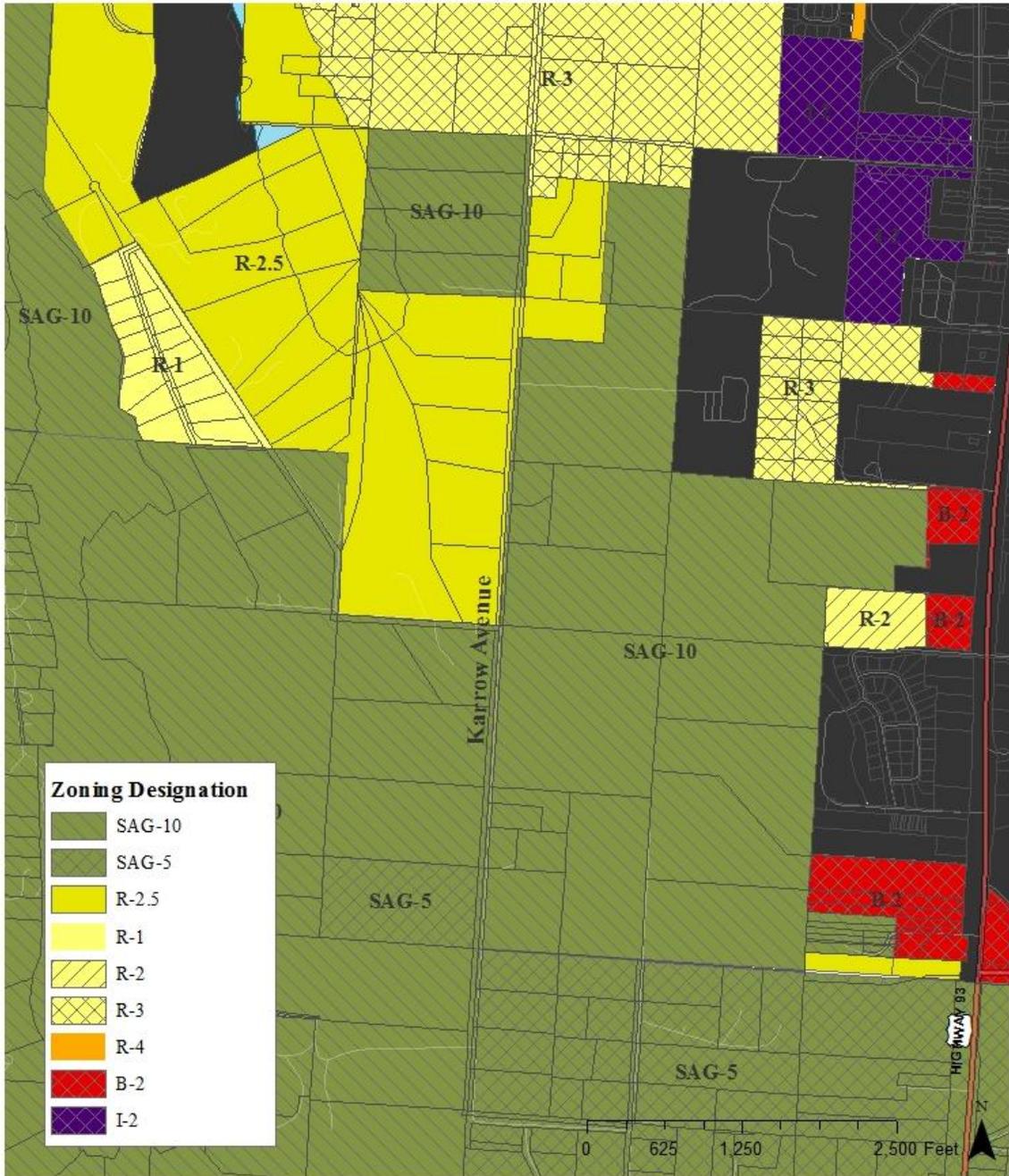
8. *Produce stand.*
9. *Ranch employee housing.*
10. *Riding academy, rodeo arena.*
11. *Airfield.*
12. *Aircraft hangars when in association with properties within or adjoining an airport/landing field.**
13. *Animal hospital, veterinary clinic.*
14. *Camp and retreat center (See Chapter IV – Conditional Use Standards and Chapter VII – Definitions).*
15. *Caretaker’s facility.**
16. *Cemetery, mausoleum, columbarium, crematorium.*
17. *Contractor’s storage yard (See Chapter IV – Conditional Use Standards).**
18. *Extractive industry.*
19. *Kennel, commercial (See Chapter IV – Conditional Use Standards).**
20. *Radio and television broadcast station.*
21. *Recreational facility, low-impact.*
22. *Water and sewage treatment plant.*

The bulk and dimensional standards for SAG-10 zoning requires a setback for principal structures of 20 feet from the boundary line or right-of-way for the front, rear, side and side-corner. The minimum setback requirement for accessory structures is 20 feet for the front and side-corner and 5 feet for the rear and side. There are also provisions for reduced setbacks for non-conforming lots when the width of the lot is less than 200 feet, 150 feet or 50 feet. 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 major/minor arterials.

The bulk and dimensional standards under R-2.5 zoning requires a setback for principal structures of 20 feet from the boundary line or right-of-way for the front, rear, side and side-corner. The minimum setback requirement for accessory structures is 20 feet for the front and side-corner and 5 feet for the rear and side. 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 major/minor arterials.

The bulk and dimensional standards under R-3 zoning requires a setback for principal structures of 20 feet from the boundary line or right-of-way for the front, rear and side-corner and a 10 foot setback from the side boundary line. The minimum setback requirement for accessory structures is 20 feet for the front and side-corner and 5 feet for the rear and side. 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 major/minor arterials.

Current and Interim Zoning Designations Map Inset #2



C. Area 3 [Highway 93 Corridor]

Many of the comments received regarding the planning and zoning transition were pertaining to the Highway 93 South Corridor both north and south of Montana Highway. Currently Highway 93 South has lots within the City with City WB-2 and WB-2/WPUD zoning and County lots with County B-2 and R-2.5 zoning with AG-20 and SAG-5 zoning south of Montana Highway 40.

One of the biggest concerns raises certain limited retail usage in WB-2 that prohibits general retail. Comments also indicate that the interim County B-2 zoning is not consistent with the previous City of Whitefish zoning and should be replaced with WB-2 equivalent which would be similar to the existing City zoning within the corridor. Residents expressed interest in keeping the big box stores in Kalispell.

The permitted and conditional uses within the WB-2 and B-2 zones contain many differences. One of the main differences between the WB-2 and B-2 zones is that WB-2 requires, *“All new structures with a building footprint of 15,000 square feet or greater, existing structures where an addition causes the total footprint to be 15,000 square feet or greater, and additions to structures where the footprint already is 15,000 square feet or greater, are subject to a conditional use permit.”* The B-2 zone does not regulate building footprints. The County B-2 zone allows for many uses that are not allowed within the WB-2 zone and the WB-2 zone allows for many uses that are not allowed within the B-2 zone. The following is a list of permitted uses in a B-2 zone (Section 3.17.020 FCZR):

1. *Accessory apartments.*
2. *Art foundry.*
3. *Automobile (new and used) and accessory sales.*
4. *Automobile service station.*
5. *Boat sales, new and used.*
6. *Bus station.*
7. *Car wash.*
8. *Cellular tower.*
9. *Church and other place of worship.*
10. *Day care center.*
11. *Farm equipment sales.*
12. *Financial institution.*
13. *Food store, supermarket, and delicatessen.*
14. *Health club.*
15. *Hotel, motel.*
16. *Lodge and fraternal and social organization, provided that any such establishment shall not be conducted primarily for gain.*
17. *Lumber yard, building materials; storage and sales.*
18. *Manufactured home sales and storage.*
19. *Nursery, landscaping materials.*
20. *Offices.*
21. *Park and publicly owned recreational facility.*
22. *Public transportation shelter station.*
23. *Public utility service installation. (A minimum of five feet of landscaped area shall surround such building or structure.)*
24. *Quasi-public building. (fire station, government office, etc.)*
25. *Radio and television broadcast station.*
26. *Recreational facility, high-impact.*
27. *Recreational facility, low-impact.*
28. *Recreational vehicle park.*

29. *Recycling drop-off station.*
30. *Rental yard.*
31. *Retail sales and service.*
32. *Restaurant.*
33. *Theater, housed in permanent indoor structure.*
34. *Repair of equipment and consumer items such as appliances, clocks and watches, lawn and garden equipment, computers, televisions, shoes, and furniture in an enclosed facility.*

The following is a list of conditional uses in a B-2 zone:

1. *Animal hospital, veterinary clinic.*
2. *Automobile repair shop.*
3. *College, business school, trade school, music conservatory, dance school.*
4. *Commercial caretaker's facility in a detached accessory building in conjunction with a business.**
5. *Commercial recreation area.*
6. *Convention hall facility.*
7. *Electrical distribution station.*
8. *Golf driving range and putting course.*
9. *Mini-storage, RV storage.*
10. *Mortuary.*
11. *Tavern.*
12. *Temporary building or structure.**
13. *Water storage facility.*

The following is a list of permitted uses in a WB-2 zone:

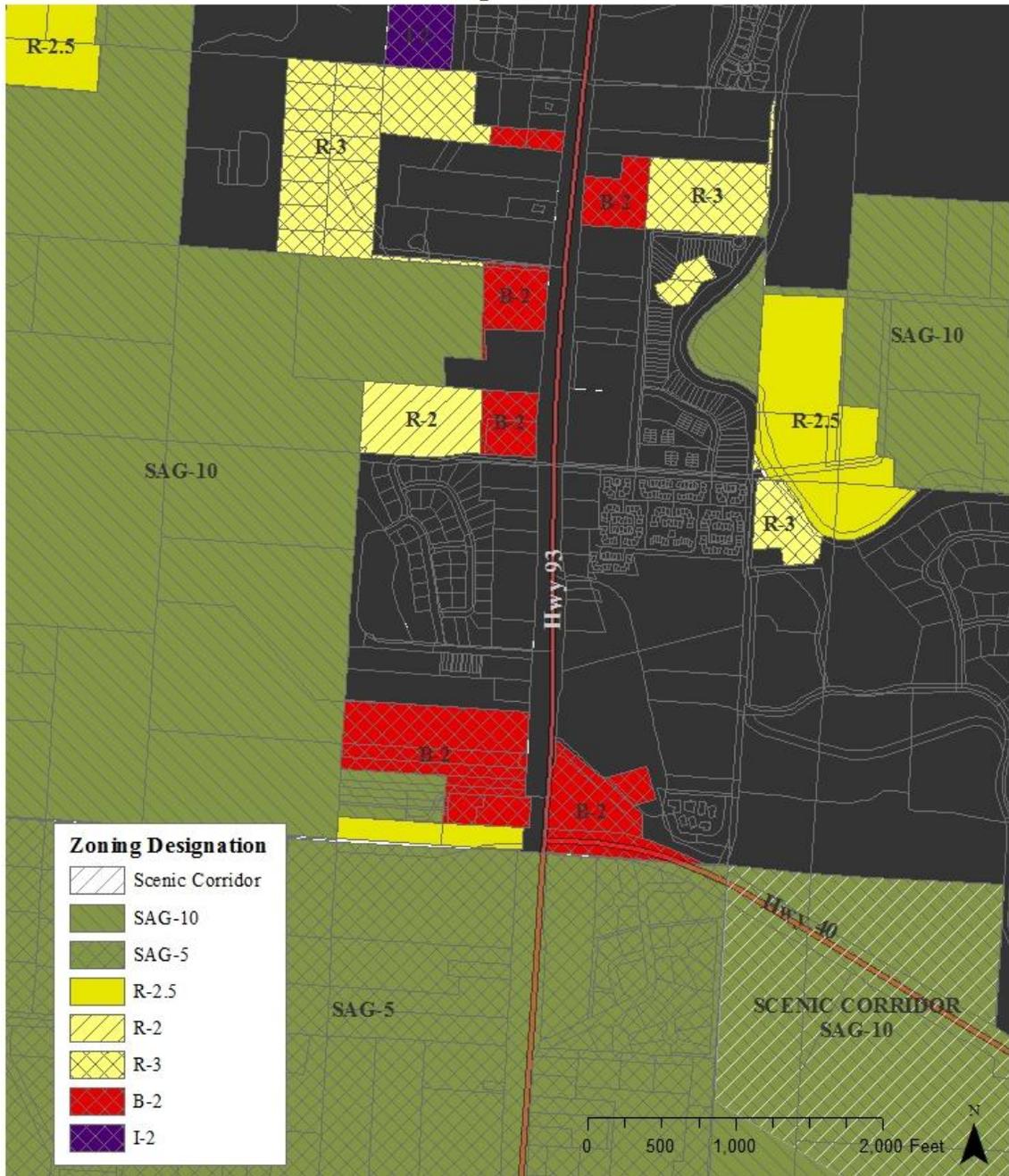
1. *Antique stores and auction barns.*
2. *Automobile, boat, and recreational vehicle sales, rentals, parts, repair and service.*
3. *Automotive service stations and convenience stores within.*
4. *Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).*
5. *Bowling establishments.*
6. *Building supplies outlets.*
7. *Bus depot.*
8. *Churches or similar places of worship.*
9. *Daycare centers (13 or more individuals).*
10. *Financial institutions and professional services.*
11. *Frozen food lockers, not including slaughtering.*
12. *Furniture and floor coverings stores.*
13. *Grocery stores.*
14. *Hair salons.*
15. *Hospitals, and associated related nursing homes, retirement homes, congregate housing and personal care facilities in a campus setting.*
16. *Hotels, motels, and other hospitality and entertainment uses.*
17. *Household appliance and electronics stores.*
18. *Laundry and dry cleaning.*

19. *Machinery and equipment sales, rental and repair.*
20. *Medical clinics and associated therapeutic health services.*
21. *Military surplus stores.*
22. *Mortuaries and crematories.*
23. *Private postal services and shipping services.*
24. *Professional offices.*
25. *Public buildings.*
26. *Recreational facilities, private and commercial.*
27. *Residential:*
28. *Caretaker's units (see special provisions in section 11-3-6 of this title).*
29. *Restaurants.*
30. *Seed and grain sales.*
31. *Theaters.*
32. *Vendors (see special provisions in section 11-3-23 of this title).*
33. *Veterinary office, small animal.*
34. *Wholesale and warehousing. (Ord. 11-05, 5-2-2011; amd. Ord. 14-03, 4-21-2014)*

The following is a list of conditional uses in a WB-2 zone:

1. *Accessory apartments.*
2. *Bars/lounges.*
3. *Boat and recreational vehicle storage (see special provisions in section 11-3-32 of this title).*
4. *Casinos within a casino overlay zone.*
5. *Colleges, business and trade schools.*
6. *Light assembly and light manufacturing.*
7. *Manufactured home subdivisions.*
8. *Microbreweries.*
9. *Ministorage.*
10. *Personal care facilities when not in association with a hospital in a campus setting.*
11. *Recreational vehicle parks, campgrounds and amusement parks (2 acres minimum size).*
12. *Truck stops.*
13. *Veterinary hospital. (Ord. 11-05, 5-2-2011)*

Current and Interim Zoning Designations Map Inset #3



Residents also believe the AG-20 should be commercial and they are concerned that there is no "transitional zoning" within the area south of the Highway 93 and Highway 40 intersection. Residents think that keeping the AG-20 zoning would be a problem between retail and residential and there needs to be a buffer and that the County should work with the City on planning for Highway 93 South.

Another citizen expressed interest in no new billboards being constructed on Highway 93 South, and the zoning should require a 75 plus foot setback with

vegetative screening. Currently the Flathead County Zoning Regulations prohibit the construction of new billboards. Per Section 5.11.030 FCZR, *“A billboard not completely constructed on the effective date of these regulations shall not thereafter be constructed or completed nor may any billboard structure be moved to a different location. No billboard structure may be increased in size or height, notwithstanding any provision to the contrary in Section 2.07 of these regulations.”* Neither the City WB-2 zone nor the County B-2 zone currently requires a setback from the highway of 75 feet. The WB-2 and B-2 zones require a front setback of 20 feet.

IV. SUMMARY

This report discusses the three issues identified while compiling the list of concerns that were not self-explanatory and required additional research. Comments received regarding all three of the areas discussed in this report would like zoning to be consistent. Houston Tracts and Karrow Avenue residents would like to have the same zoning on both sides of the street. And the comments regarding the Highway 93 South corridor would like a County zoning similar to the City’s WB-2 zoning and also a transition area between the commercial and residential areas. This report is for the Planning Board’s consideration while moving forward with the planning and zoning in the former ETA of the Interlocal Agreement.