

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
DECEMBER 17, 2014**

CALL TO ORDER
6:03 pm

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. in the second floor conference room of the Earl Bennett Building, 1035 1st Ave W, Kalispell, Montana. Board members present were Marie Hickey-AuClaire, Noah Bodman, Ron Schlegel, Gene Shellerud, Jim Heim, Jeff Larsen, Greg Stevens and Tim Calaway. BJ Grieve and Erik Mack represented the Flathead County Planning & Zoning Office.

There were 20 people in the audience.

APPROVAL OF MINUTES

There were no minutes to approve.

PUBLIC COMMENT
(not related to agenda items)
6:04 pm

None

BOARD DISCUSSION
6:04 pm
(Disc #1-03:33)

Continuation from December 10, 2014 of board discussion and consideration of a recommendation to the Flathead County Commissioners regarding lake and lakeshore protection regulations for rural properties on Whitefish and Lost Coon Lakes. A public workshop on this subject was held on September 24, 2014 and a public hearing on this subject was held at the November 12, 2014 Planning Board meeting. Public comment to the Planning Board regarding this item has been closed.

STAFF SUMMARY

Grieve gave a brief summary of the timeline involving the Lake and Lakeshore Protection Regulations with regard to the county getting portions of Whitefish Lake back into the county's jurisdiction and what the board's goal was for the night's meeting. The board was to make a recommendation on a process to get to a process.

BOARD DISCUSSION

Calaway asked Grieve for his opinion as far as which option might be best from an administrative point of view. He wanted some direction and guidance.

Grieve stated when balancing everything, including his responsibility to serve the Planning Board, the rural jurisdiction of Flathead County, the commissioners and manage an office and the budget, from his admittedly limited perspective with those principle concerns he felt option #2, (see attached) seemed to be the best option in his professional opinion.

Stevens gave a brief history of his property ownership in Whitefish and his involvement in the development and implementation of land use regulations in Flathead County. He was confident using the Flathead County Lake and Lakeshore Regulations for Whitefish and Lost Coon Lakes would be sufficient. He felt an amendment to the current county regulations (option #1) was the best option. He had considered option #2 but didn't want to tie the board to a timeline for the next year as there may be other things that become more pressing for the board to work on. He was prepared to make a motion.

Heim felt they should all express their favorite options. He didn't have a strong opinion but liked option #3 if you could take part of option #2. He agreed with Stevens about the timeline. He thought the lakeshore regulations needed updating but there was a lot of work to be done. The status of the Whitefish Lakeshore Protection Committee (WLPC) was of interest to him. It seemed to him, although he didn't know how it would work procedurally or legally, there was a strong feeling from the people around Whitefish Lake that they'd like to have some input about things that happened around the lake. He didn't see why that couldn't be worked out. One approach was to have one set of regulations for all the lakes in the county but he wasn't so sure one size fits all. He thought it would come down to a combination of two or three options.

Stevens said he gave some consideration to that as well but felt having a Lakeshore Regulations Committee would require the planning office to start sending staff and attorneys to those meetings.

Heim asked if the planning office sends other applications to the land use committees, community councils and other neighborhood plan committees.

Calaway said yes they always do for Bigfork, they always had a staff representative at the land use advisory committee meeting, (LUAC) and it spreads staff pretty thin.

Grieve stated the office does not send lakeshore permits to any of the land use advisory committees. They do not review lakeshore permits.

Calaway said there is nothing stopping people from getting together and forming their own committee.

Stevens stated the comments reinforced for him the immense complexity of getting involved in the land use regulations because of the way legislature has set the whole statutory system up. Everything becomes more complex and complicated. He stated his procedure was trying to simplify and get fewer words in the regulations if possible. He said he was always a little nervous if it was getting more complex.

Larsen stated he read through all the comments, sat through all the meetings and had two thoughts. First, he read a lot of comments from people who wanted option #1 and read quite a few other comments of people wanting option #3 or #4. As a Planning Board member he looked at it for all the general welfare of all the people of Flathead County. The people in Whitefish looked at it with a little bit different perspective because they don't have to deal with all the lakes the county does. He spoke about the information they received from the people of Whitefish who worked so hard on the Whitefish regulations update and stated it made him realize the county lakeshore regulations needed to be updated. There are some good things in the Whitefish regulations and gave an example of a section that should be included in the county regulations. If the board takes two sets of regulations then they would have to update two sets of regulations. He commented the board couldn't even keep up with updating the neighborhood plans. For the board to serve the people of Flathead County they needed to update one set of regulations. He felt it was better overall for Flathead County. He understood where the people of Whitefish were coming from, wanting to have their own set of regulations, and it made sense when Whitefish had control of it but he thought the county should have one set and felt it was important to update the county regulations. He agreed with Stevens about not setting a time limit because they had a lot on their plate. He said he would not be opposed to option #1 if it was amended so they could set it on their work agenda and it should be a high priority.

Shellerud thought it would be really hard to understand or realize how important this was to the people of Whitefish. They needed to be careful not to change the life those people have up there. If the board were to go with option #1 or #2 how would the critical areas ordinance (CAO) fit into this, or will it, because it's a local ordinance there. If they don't do anything with the CAO then, from what he understood, that would stay on the south half of lake but go away on the north half of the lake because the north half of the lake is not annexed. He spoke of the dark skies ordinance and asked should the board involve themselves in that. He commented he read peoples comments regarding the CAO being very cumbersome, hard to deal with, very restrictive and very expensive to do. If the board does deal with the CAO as part of the system maybe some of those rules and regulations could be looked at also. Maybe made a little less stringent and a little less expensive. A lot of people spent a lot of time doing a lot of good work and we do not want to waste that as the county is responsible to that area and to those people. Whichever option included some of the things that are already there such as the CAO and dark skies ordinance, that's the option he would like to look at.

Stevens said he was confused about the minutes Shellerud spoke about because those didn't address the lakeshore regulations they addressed the inter-local agreement. The CAO is not embodied in the

Whitefish Lakeshore Regulations like it is in the land use regulations. He asked Grieve if the CAO was embodied in the lakeshore regulations.

Grieve said the CAO and the dark skies ordinance are elements of Whitefish's zoning which does not exist outside of city limits right now. It's a function of Whitefish zoning so unless it gets adopted by Flathead County into zoning it doesn't exist outside the city limits of Whitefish.

Heim said that if the board re-writes or updates the lakeshore protection regulations, anything that sounds like an ordinance would need to be deleted, and they would stick with the things they do like. There are things in Whitefish lakeshore regulations he liked and would like to see adopted in the Flathead County Lake and Lakeshore Regulations. He reiterated if the board was going to re-write the whole document that would be a lot of work and if there were people that want to help with that he would welcome them in whatever capacity the board deemed appropriate.

Schlegel spoke about both the county lakeshore regulations and Whitefish lakeshore regulations and which ones were more stringent. He gave examples. He felt if they put it back to the county, the board could have others involved. The committees around the lakes in Flathead County could get together to offer their help. He agreed with Heim that it was an option for others to help and the board was not taking that away, those people have a voice. He was disappointed in the biologist because he didn't get an answer to the question he had regarding algae growth in Whitefish Lake. He commented he was not being critical or demeaning to them but there were other things they could look at. There were a lot of comments that Whitefish Lake was unique but he stated there were a lot of lakes like Whitefish Lake but they don't have the pollution like Whitefish Lake. He was very concerned about that and would like to know why there was algae growing in the lake. He wanted to find out what the problem was before they started doing a bunch of regulating. He agreed with Stevens and thought option #1 would work. He stated they should let the people reorganize and do their thing and maybe in a year the board could come back and work with them and maybe the board could do something then. Just to throw out the Whitefish lakeshore regulations would mean the board had not accomplishing anything. He thought everybody should re-group and see what they could do to make Whitefish Lake better than what it actually was now.

Calaway said he didn't think they could go wrong if they combined option #1 and #2. He commented the board could not devise a single set of regulations for Whitefish.

Schlegel stated we could not put a timeline on this and asked Grieve if the Whitefish Lakeshore Protection Committee (WLPC) needed to re-group or could they just bring in their format.

Grieve said the WLPC exists because the Whitefish Lakeshore Regulations created that group. The version of the Whitefish Lakeshore Regulations the county currently used called for that group except that, because there is no longer an agreement between the city and the county, the city is no longer administering that group. Under option #1 or #2, if the board amended the Flathead County Lake and Lakeshore Protection Regulations, there weren't groups like that on any of the other 57 lakes; a specific lakeshore review committee that reviewed all lakeshore permits. As of right now, the way Flathead County Lakeshore Protection Regulations were written, there would be no lakeshore committee to review permits. If members of that committee who have historically taken a leadership role wanted to make comments on major variances they would come before the Planning Board. But general lakeshore permits, administrative or standard, which go to the commissioners, are approved or denied without being reviewed by a group.

Grieve spoke about neighborhood plans having LUAC's and which applications were reviewed by them.

Schelgel asked about setbacks from the lake.

There was general discussion about setbacks.

Bodman spoke to the options being a 'kicking off point' and stated he was not looking at any of the options being set in stone or that they are the only options. He saw no reason, if they wanted to go with option #2, they couldn't do that and disregard the next fiscal year or set a timeline to whatever they wanted. Looking through the regulations and listening to public comment, it was clear the Whitefish regulations were the result of a lot of hard work and there was a lot of thought put into them. Those regulations probably had more attention paid to them than certainly the county regulations had. He thought in large part that attention had paid off. All lakes have their own unique issues but a good set of regulations would be able to address all problems somewhat universally. It would be the implementation of the regulations that would change from lake to lake. The county does not need a new set of regulations for every lake, it's a broad set of ideas used and implemented differently in different situations. For that reason he thought the hard work that went into looking at Whitefish Lake was really important to preserve and could be translated and used and broadened to benefit all the lakes in the county. A lot of what went into those Whitefish regulations would work really well when implemented in a rational fashion on any lake in the county. The give and take of do we want these regulations for every lake or do we want one set of regulations for the whole county for him came down to a question of the administration of the regulations, the efficiency of that administration and consistency for land owners. He felt there was a benefit to having one set of county regulations that applied to all

lakes including Whitefish and Lost Coon. He also felt there was some benefit to having one set of regulations across jurisdictions similar to other jurisdictions that border the county. He was leaning towards option #2 because in the short term the county had a lot on their plate right now with the zoning issue. The simple thing to do in the short term was basically take the county regulations as they exist, as imperfect as they may be, and keep those in place until the board could go through and revise them. He thought there would be some fairly significant revisions and a lot of those could come from looking at the Whitefish regulations. There are probably some revisions worth looking at that aren't in the Whitefish regulations or the county regulations either. These were always going to be evolving documents and our understanding of all of these lakes would always change and the county would want a regulatory framework in place that allows the county to manage these resources as effectively as possible. He was leaning towards option #2; the timeline for getting it done should be high priority. He was not prepared to say what the timeline should be.

Grieve reminded the board of the timeline regarding zoning but said the lakeshore regulations didn't have such a pressing timeline. He spoke about prioritizing the updates and not necessarily setting a date as much as setting a list.

Stevens said option #1 could be amended to review, revise and update the regulations not tied to a timeline. Other opinions expressed interest in option #2. Maybe deleting where it would be tied to the next fiscal year but set as a priority would be an option. The board could, at any time, decide to work on the regulations and if they got a chance, could jump on it. He wondered if Larsen would like to amend either one of those options to fit in so the board was not tied to a timeline.

Larsen said he would probably look at option #2 except changing the last four words with, 'as prioritized by our annual work plan'. It's the highest priority after the zoning. There was a huge advantage for all lakes in Flathead County to have some of the good things the Whitefish regulations had. If they were completely separate there would be two sets of regulations to update and people had to realize how much time and effort it took to update a set of regulations. If the county could get a good set of regulations to protect all the lakes it would be a benefit to all the lakes in Flathead County to have the expertise that was put into the Whitefish regulations. He felt it was important for the county to have those. He commented when they did the update it would take quite a bit of time and the people who worked so hard on the Whitefish regulations would certainly be an integral part of that update. The board could also get some of the expertise from some of the other lakes as well. The Flathead County Lakeshore Protection Regulations definitely need to be updated.

Calaway commented the county could hire a consultant because of the timeline. He spoke at length about hiring a consultant and what the advantages might be.

Stevens said once the board finished the zoning they could decide with a little more clarity what the planning staff might be able to handle.

Grieve clarified why the option of hiring a consultant was part of the option analysis.

Heim spoke about the detailed analysis given to the board by the WLPC and how they had already done a lot of work.

Stevens commented he had developed a lot of faith in staff and getting the board the information they needed. Maybe staff had time to do the work instead of a consultant they may not have faith in.

**MAIN MOTION
TO RECOMMEND
OPTION #2 TO
THE COUNTY
COMMISSIONERS**

Stevens made a motion seconded by Calaway to recommend option #2 to the Flathead County Commissioners.

*7:07 pm
(Disc #1/01:06:06)*

**SECONDARY
MOTION TO
AMEND OPTION
#2**

Larsen made a motion seconded by Bodman to amend option #2 changing the last four words to read: *'as prioritized by the planning board annual work plan'*.

*7:09 pm
(Disc #1/01:06:48)*

**ROLL CALL TO
AMEND OPTION
#2**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Heim asked for clarification regarding which regulations coincided with which options.

Grieve clarified for the board.

Bodman wanted to point out for the sake of the public record he felt to some extent the motion on the table was kicking the can down the road. The board was making a recommendation the county was going to adopt one set of regulations but the extent of those revisions could be anywhere from really small to very significant. He said maybe staff should hold off on that a little bit because there was a lot of vagueness.

Grieve said it was a worthwhile point.

Heim spoke about the current Whitefish Lakeshore Regulations which had been administered prior to the county acquiring the jurisdiction. He wondered if going back to regulations that were really old could manage all the issues.

Grieve clarified and pointed out which regulations were used for which lakes and which regulations would be used and/or updated if the commissioners moved forward with the Planning Board recommendation.

**ROLL CALL TO
RECOMMEND
OPTION #2 TO
THE COUNTY
COMMISSIONERS
(7:21 PM)
(Disc #1/01:17:07)**

On a roll call vote the motion passed with Heim dissenting.

Grieve clarified process moving forward.

The board took a break @ 7:22 pm.

**BOARD
DISCUSSION
7:30 pm
(Disc #2/00:15)**

Continuation from December 10, 2014 of board discussion and consideration of a recommendation to the Flathead County Commissioners regarding how to proceed with transitioning planning and zoning in the rural areas outside the City of Whitefish. Public workshops on this subject at which public comment was solicited were held on October 01, 2014, October 15, 2014, October 29, 2014 and October 30, 2014. Public comment to the Planning Board regarding this item has been closed.

STAFF SUMMARY

Mack gave a brief history of the timeline regarding zoning in the 'donut' area around the city of Whitefish prior to and since the jurisdiction was given back to the county through the Supreme Court ruling in July 2014.

**BOARD
DISCUSSION**

Larsen asked staff to explain the difference between option #1a and option #1b. (see attached)

Mack clarified.

Larsen asked if option #1a was adopted, what would happen to the current Whitefish zoning districts that did not exist prior to Whitefish taking over the jurisdiction.

Mack clarified. If the Whitefish City-County Master Plan was repealed and the interim zoning expired those areas would become unzoned.

Heim asked if that were the case could Whitefish step in and zone it.

Mack said no because we have subdivision regulations.

Larsen asked if the county had to zone that area.

Mack said it was up to the board but nothing said it had to be zoned.

Grieve stated there were all kinds of areas in Flathead County that were unzoned. The statutes that grant cities the authority to plan and zone the areas outside city limits stated that if the county had not adopted zoning or subdivision regulations then the city can go outside their jurisdiction. According to what the city of Whitefish had done and according to the letters they had sent to the county, they said the county had adopted subdivision regulations so they did not have any jurisdiction outside city limits.

Larsen stated there were quite a few comments that liked option #3c, referring to the Whitefish bulk and dimensional requirements and asked what work would have to be done to the Flathead County Growth Policy to be able to go with option #3c.

Mack said the county would essentially be adopting the 2007 Whitefish Growth Policy as the neighborhood plan for that area. For zoning, the county would have to do a text amendment to incorporate the zones that were added to the interim zoning for the area.

Larsen asked if the 2007 Whitefish Growth Policy complied with the County Growth Policy.

Grieve stated there were provisions in the 2007 Whitefish Growth Policy that would not pertain to the county and gave examples. He said it was possible, with careful review of that language and comparison to the county goals and policies in the growth policy. If the 1996 Whitefish Master Plan was the basis for revising that neighborhood plan, there was a good chance some of those things would need to be edited out. The Flathead County Growth Policy didn't support or speak to proactively pursuing transfer of development rights in one particular geography or a CAO to protect the managed designated environmentally sensitive land. Those were not listed in the Flathead County Growth Policy as implementation mechanisms. They could be amended into the Growth Policy under the implementation strategy as a method. The board could either amend the growth policy to include more of that language or amend the Whitefish plan to take out some of the things that were not in the Flathead County Growth Policy.

Larsen spoke about the time element it took to amend the county growth policy and stated some of the things the board did not want to include were the transfer of development rights. He reiterated there were things in the Whitefish Growth Policy that were not supported in

the county growth policy. If the board chose to adopt the 2007 Whitefish Growth Policy there would need to be some revisions made. He stated the infill section would not apply.

Grieve spoke to the issue of infill development through zoning and the political will in Flathead County.

Hickey-AuClaire thanked the public for all the information and comments to the board.

Schlegel thanked Rebecca Norton for her comments. He felt her comments were very enlightening and he learned a lot. He asked staff if anybody knew why Whitefish annexed in the bottom of Whitefish Lake.

Grieve said it was through an ordinance. (He proceeded to find the document in the file to read to the board)

Stevens stated option #1ai allowed them to use the future land use map from the 2007 Whitefish Growth Policy as a guide without adopting the entire 2007 Whitefish Growth Policy. He had heard enough public testimony from the 'donut' residents to convince him there was a tremendous amount of heartburn about using the Whitefish Growth Policy for the land use regulations for the people outside of Whitefish. He felt that was kind of the heart of the dilemma for the whole situation. They didn't want to be considered a part of Whitefish. Option #1ai would allow the use of the future land use map and avoid more time consuming plan review processes. It would allow the board to move forward and get to business. This option replaces the interim zoning with county Part 2 zoning classifications based on the growth policy and gave the board some flexibility to allow them to move toward adopting more permanent policy. There were time constraints and this process was very time consuming. This option would work best for this.

Larsen felt after reading the comments the 'donut' residents wanted to be left completely alone by Whitefish and a lot of other comments that were the same word for word, asked for option #3c which would essentially be adopting Whitefish's plan. Typically, the way he saw it, the people in the 'donut' area wanted to be able to move on. They felt they'd been held hostage on their property for 10 years. He read a comment from Gordon Cross and stated it's a long difficult process to update these plans. He saw option #2 and #3 as that long, arduous and difficult process. In his opinion it came down to choosing between option #1a and #1ai. In choosing option #1ai the board basically took on the job of trying to zone the 'donut' area. They had to decide if that was something they should be doing. He stated the planning office sent out 4437 postcards and held two public workshops at the fairgrounds and he only wrote down 20 comments. He did not see a

real clamoring for the board to zone people. The percentage of comments compared to the amount of people living there was really small. He commented the board needed to ask themselves, did they really think they should be zoning that area or should they wait and see if there was a clear majority that wanted to be zoned. He was not for updating any plans. He thought that would take too long and be too difficult a process. He was not in favor of options #2 and #3.

Shellerud asked Larsen if he would be okay with option #1ai, replacing Part 2 zoning with Part 1 zoning.

The board spoke about Part 2 zoning and Part 1 zoning, whether they would have any input and the lack of comments after the planning office had sent out 4437 postcards. The citizens would have to initiate Part 1 zoning.

Grieve wanted to clarify two points. He read MCA 76-2-310 regarding the municipality zoning if the county decided to repeal the 1996 plan and then does not replace it. He reiterated the county has subdivision regulations. He also spoke about the annexation of the lake and read minutes from the August 15, 2005 Whitefish City-County Planning Board meeting when they adopted Resolution 0525, annexing the bottom of Whitefish Lake.

Schlegel felt it was an unethical move to annex the bottom of Whitefish Lake to expand the 2 mile jurisdictional area.

Bodman spoke about the public comments and stated the people that live in the 'donut' wanted stability. Most of the comments were generally okay with zoning and with their existing zoning. He felt the goal in the process was to rely on that stability and not make it more arduous. In terms of how to get there he felt there was a short term problem and a long term problem. What could the board do efficiently that could realistically get done inside the timeline the board had to work with. What could the board get done in that timeframe that would be realistic and practical and they could get it done with the resources available to them that would get something in place and would create that stability in the short term. Once that's in place, the board could start to look at some of the more complex options Larsen pointed out. Options #2 and #3 were difficult and he would be hesitant to go with them initially because he wasn't sure they could get them done in the short term. He thought option #1a and #1ai were essentially relying on the county growth policy and thought the county growth policy would eventually be inadequate to support the zoning designations in this specific area. They needed the growth policy to support the zoning designations. The county growth policy was broad enough it didn't really provide the specific support they would need for a given area. It's a good short term solution to use the broader policy to support the zoning that's out there and give the landowners some

stability. He wanted to be a little cautious because it was kind of going about it backwards. He was not looking to create a growth policy or neighborhood plan that reported the zoning in place out there. The zoning needed to comply with the growth policy not vice versa. There needed to be a short term plan to support the zoning that's out there and then a longer term plan once the board was not under the two-year clock.

Stevens wanted clarification which option Larsen and Bodman were leaning towards.

Schlegel agreed with Larsen that maybe it should revert back to being unzoned and then the people could come back and ask for zoning if they wanted. They could have their own say, which they hadn't been able to do in quite a while.

Calaway commented he would rather go the unzoned route and let the people make their own decision. He felt it was crazy for the board to try to do it. He would let the people zone it the way they want if it's compatible with the growth policy.

Bodman clarified he was not suggesting the entire 'donut' area would get zoned. He thought there were some areas in there that Whitefish had some zoning and the county doesn't necessarily have an equivalent. There are some areas that are unzoned, some of it was agricultural and if it just went unzoned it probably wouldn't make that much of a difference to the uses in that area. In areas that are R-1, R-2 or R-3, it would seem appropriate to continue some sort of equivalent zoning for the uses in place there. The board couldn't zone any of those areas unless there was a growth policy in place. They need a growth policy in place that encompassed those lands. The question from there would be, was zoning appropriate in those areas and if so, what was the appropriate zoning designation. There would be some areas where zoning wasn't appropriate at all and he would want to look at it fresh. He spoke about the growth policy being very broad and having generalized statements. He saw problems in areas that don't have a specific neighborhood plan in place. He was leaning towards a slightly modified version of option #1ai with the stated intention to then follow that up with a reasonable degree of some priority with either option #2 or #3. He was undecided as to which of those options would be the best way to go.

Stevens read option #1ai which stated 'to repeal the 1996 Whitefish City-County Master Plan' and option #2 said to use it.

Bodman said if the board went with option #2 then basically they would go with option #1ai to repeal the 1996 plan. It would be a useless document other than it would be something in writing that could probably be used as the foundation to put together a new plan.

The same basic plan would apply if the board went with option #3. The question in his mind was which document would be a better jumping off point, the 1996 plan or the 2007 plan.

Stevens asked staff when the five-year review for the Flathead County Growth Policy was adopted.

Grieve said the most recent revision was adopted October 12, 2012 and it took about 2 years to update. He pointed out the areas on the map that planning staff had sent postcard notices to and the zoning the county had in place prior to the inter-local agreement. He also pointed out areas on another map that prior to 2005 were zoned with a county resolution adopting Part 2 zoning. Depending on the scenario being discussed, if the 1996 plan was repealed some areas would remain zoned because they had been zoned with a county designation. He clarified.

The board and staff discussed at length the zoning in place prior to the inter-local agreement and what would become of those areas not zoned at that time but Whitefish zoned once the inter-local agreement was in place. They also spoke about the various Whitefish plans and which areas would comply with which plan. There was discussion about compatible zones with 'W' zones and county zoning designations.

Larsen asked which areas would need to be zoned if they were to go with option #1ai.

Grieve clarified.

Stevens asked if the boundary of the current growth policy covered the boundaries of the whole county.

Grieve stated the 2012 Flathead County Growth Policy covered up to Kalispell city limits and Whitefish city limits and up to the edge of the inter-local agreement outside Columbia Falls. The jurisdiction of that boundary was amended in 2008 pursuant to a resolution at that time which rescinded the county inter-local agreement with Whitefish. In 2012 those sections were not touched because of the pending litigation regarding Whitefish jurisdiction. Because that litigation had been resolved you go back to the 2008 amendments that were in effect. Statements about an inter-local agreement with Whitefish had been removed, the mapping had been amended to no longer reflect the inter-local agreement but rather reflect conditions up to Whitefish city limits.

Grieve read from the current version of the Flathead County Growth Policy and stated currently the maps did show the inter-local agreement boundary as city jurisdiction. He read from the current version to clarify the amendments made in 2008. In 2012 there were

statements placed in the growth policy regarding the inter-local agreement. He read goal #49 footnote, chapter 12.

Bodman asked Grieve to explain for option #1ai why it was necessary to repeal the 96 plan. Could they do option #1ai and not repeal the 96 plan? He assumed they would have to amend the jurisdiction of the 96 plan so it doesn't overlap with the area inside the 'donut' that would be covered by the future land use map of the 2007 Whitefish plan.

Grieve clarified what Bodman asked. He stated there would be a lot of text in the plan that would be out of date as well. The demographic information, the growth projection, boundaries that were referenced that were not accurate anymore. But the board could go in and update all that. The answer to the question was no, they did not have to necessarily repeal the 96 plan to work in the desirable county portions of the 2007 Whitefish Growth Policy but at that point you would be talking about option #2b.

Bodman and Grieve discussed when the zoning was put in place. Most of the zoning, Bodman pointed out, was put in place prior to the 96 plan. He asked what zoning was put in place after the 96 plan. Grieve said there were two zoning districts that were put in place after the 96 plan; Big Mountain and possibly something along the lake.

Bodman was trying to figure out what the ramifications would be to repealing the 96 plan and would it create a huge mess and a ton of work.

Grieve and the board discussed the differences between options #1a and #1b. Grieve said under either option, zoning adopted outside of Whitefish city limits by the Whitefish City Council that Flathead County never approved cannot be administered. Even if the argument was when interim zoning went away and what's left underneath is the 'W' zones, all of the attorney's opinions he had heard on the issue, were Part 2 zoning had to go through a process for adoption by the governing body. The board also discussed some of the zoning within the one mile area around the city of Whitefish that was adopted as Part 3 zoning, municipal zoning, that the county had never adopted. Under option #1b, if a property was zoned by Whitefish with a 'W' zone and the property owner didn't like it, it would be a pro to the property owner because the property would go back to unzoned. As a con, those property owners that liked the 'W' zoning would not be happy because their property would go back to being unzoned. It went both ways.

Calaway read a portion of Dave Taylor's letter and asked how difficult it would be for the board to create zones in the county that were close and compatible with the 'W' zones.

Grieve said it's doable if the political and public will were there. The challenge was the county did not have comparable zones and there would need to be a text amendment to the zoning regulations taken through the process to create zones that were comparable to those 'W' zones. He gave an example.

Calaway stated he understood a person couldn't create compatible zoning for all of the zones because some of the zones made sense and were simple solutions. But some of the zones didn't have any compatibility and yet they made sense. He commented he was not opposed to letting it all revert to unzoned and let the property owners come back with what they wanted for zoning. That was his preference at that time in keeping it as simple as possible. He stated they were not going to make everybody happy.

Grieve said one of the challenges would be extracting out of the Whitefish Zoning Regulations, which also have their own provisions and cross references to things in individual zones, and determining if they would want to extract those out and take it with it. So the portions taken out of the Whitefish regulations would be challenging and he gave examples.

Stevens stated when the county established or changed zoning there were a list of statutory criteria that need to be addressed.

Grieve said absolutely. Anytime you do a text amendment or map amendment there were criteria that were both listed in the county zoning regulations as well as listed in statute that zoning would have to comply with a plan and be compliant with adjacent municipalities.

Stevens stated when you were talking about zoning it had to comply with a plan.

Grieve said the county had a growth policy. He spoke about the growth policy and stated it would be really tough to use a countywide plan to go in and justify street by street zoning. That's the point of a more localized neighborhood plan. He gave examples of different concepts and how they would apply.

The board spoke about compatibility and what the people in the 'donut' and/or hotspots were asking for.

Heim asked what would be the determination whether a piece of property would remain zoned or become unzoned under option #1b.

Grieve clarified and pointed out the areas on the map.

Larsen asked Grieve if the board were to take option #1ai and do Part 2 zoning would they be doing a zone change or brand new zoning.

Grieve said in his best estimation, it would be new zoning because the county had never adopted zoning in the areas that had only been zoned Part 3 zoning by the city of Whitefish; the county had not adopted zoning there. You would be adopting Part 2 zoning in those areas based on option #1ai. He reminded the board they were making a recommendation on the process and the process that would come next would be they would be using a future land use map as a base but they were also identifying some hotspots in those areas that need some attention. The process they would be doing was giving those areas attention and they may make modifications they saw as appropriate. They would be zoning that area.

Larsen asked what the difference was between a zone change and brand new zoning as far as process.

Grieve said the criteria for review were the same whether you were amending existing zoning or amending text, adopting new zoning maps or adopting new zoning text. All of those were reviewed under the same criteria found in statute and included by reference in the Flathead County Zoning Regulations.

Bodman stated under that same process Grieve was talking about, the county would have to adopt zoning in accordance with the 2007 future land use map. It would be amended into the growth policy and be the foundation for zoning and then the county could decide from there.

Grieve said first they would work on the plan amendment by taking the future land use map and working it into the growth policy to give some slightly more specific guidance.

Bodman asked Grieve if he saw any problems amending the growth policy to include the 2007 future land use map. As of right now the county had this one broad all-encompassing document and now we were talking about slipping in this one map that's incredibly specific to this one area.

Grieve said there was no reason why you couldn't, for a particular portion of the county jurisdiction, choose to adopt a more specific future land use map as long as they didn't adopt something that made the document internally inconsistent. He gave an example and reiterated by choosing option #1ai they would want to review the growth policy to insure the proposed amendments would retain internal consistency of the document. If the board chose that option there was some work that would need to be done.

Bodman stated by looking at the county as a whole and the overall guiding document, he wondered if it would be problematic to have this one map, that is very specific, weaken the rest of the growth policy because we didn't have these sort of maps for other areas of the

county.

Grieve said he was not aware of anything under 76-1-601 that would clearly indicate the board could not adopt a future land use map for a particular need they had within the county planning jurisdiction.

Hickey-AuClaire said if they adopted the future land use map it would become an element of the growth policy.

Bodman said to some extent it felt like they were adopting a neighborhood plan without all the fuss and bother of actually drafting a neighborhood plan.

Grieve said it was a good point but he would need to do a little more research.

Bodman said the growth policy had a procedure for adopting neighborhood plans.

Grieve said there were two separate procedures. There was a process for adopting a new plan or amending an existing plan.

Bodman asked Grieve if the board was going to adopt the 2007 future land use map which process would the board follow.

Stevens said the option they were talking about didn't require the adoption of that map. It said 'possibly amend the Flathead County Growth Policy to add future land use map' and possibly was a long way from shall. They could use the map in a guidance sense to look at this without having to adopt any of the maps. They might want to use that as background reference material to decide what zones they thought would be appropriate based on the current growth policy.

Grieve said there were two processes outlined in the growth policy, adopting new neighborhood plans or updating existing plans. He commented the board was really starting to talk about option #2b. They were concerned about just adding a future land use map that wasn't part of the '96 plan, they were not doing a '96 plan update, and they were putting something new in there. Whether or not that constituted a neighborhood plan could probably be argued either way. But, could they avoid having to make the argument either way by looking at some of the other alternatives. He commented some of the other alternatives lessen the likelihood of litigation. He elaborated.

Stevens stated they would be right back where they started. If they updated the 96 plan, essentially what they had was a neighborhood plan because that plan was a joint jurisdiction plan. If the board used that plan and the concern was whether using the 2007 map constituted a neighborhood plan, he commented if they used the 96

plan it's a neighborhood plan-period.

Grieve said that plan is listed as one of the ones already in the growth policy. That's the distinction that he was seeing. If you just take the 2007 map and adopt it into the growth policy, and you've rescinded the '96 plan, you couldn't really argue very well that it's an update of an existing plan. If you update the '96 plan with a limited scope then table 11.1 specifically said that was a plan, you were working on that plan and now you get into the argument about what constituted a revision or a re-write. He elaborated. He said even if the board limited the scope they were going to spend a lot of time working on it. He felt they could get it done within the timeframe they have left.

Bodman asked if option #2b would take that much longer than option #1ai. They would be incorporating the 2007 future land use map into some document.

Grieve said option #2b required more workshops to gather more public input on more sections. They had criteria that needed to be followed about how to update existing plans. There were similar requirements to amendments to the growth policy and putting in a map would be an amendment to the growth policy. If the board was working on the '96 plan they would follow the process for updating an existing plan. Option #2b was limiting the scope to an update to look at the map and make sure they were still internally consistent.

Stevens commented option #1a was looking better all the time.

Larsen said the only other problem he could think of with option #1ai, was he was concerned it would be bad for the board to go out and zone all that property. He stated he could support option #1ai if in the end they could change the wording to: 'consider replacing interim zoning with county Part 2 zoning'. That way they could get some input to see if people even want them to do it. He thought they were locking themselves into having to do it if they leave the wording the way it was written.

Bodman agreed with that observation regardless of which option they chose.

Larsen made a motion seconded by Schlegel to recommend option #1a to the Board of County Commissioners.

**MOTION TO
RECOMMEND
OPTION #1A TO
THE COUNTY
COMMISSIONERS**
9:12 pm
(Disc #2-1:42:08)

**BOARD
DISCUSSION**

Bodman said the problem he had with option #1a was he didn't think the Flathead County Growth Policy provided a specific foundation for those specific zoning classifications. It provided the authority but the problem was all of those zones would be real easy to challenge. It's a broad countywide growth policy with broad countywide policies.

Grieve asked for clarification from Larsen. In his motion was he of the opinion that by recommending option #1a, was he thinking the county would pursue replacing interim zoning with Part 2 based on the Flathead County Growth Policy or was he making the motion with the thought certain areas would become unzoned because the growth policy was too broad to implement in those areas with specific zoning.

Larsen stated Grieve had made a statement if they adopted option #1a those areas would become unzoned.

Bodman stated they heard quite a few public comments stating they very clearly did not want to become unzoned.

Schlegel stated he heard a lot of people saying they didn't like to be zoned and wanted out.

Bodman said he heard both and explained further.

Calaway said he still wanted to allow the people to initiate zoning and that's why he felt option #1a worked. He didn't think the county could or would do a good qualifying job without input from the homeowners. Let them decide what they wanted and let option #1a take its course. He thought Bodman was saying he wanted the county to go back in and zone it and he felt that was going to be a problem.

Bodman said he wanted the county to go in and zone areas where appropriate. His issue was under option #1a and only having the growth policy in place, the foundation wouldn't be there for it if all you had was the Flathead County Growth Policy.

Stevens said it seemed to him you have to be guided by and give consideration to the growth policy. He had seen zones change in direct opposition to a color on a map of a master plan or growth policy because the commissioners gave consideration to the growth policy. But they gave consideration to a number of other factors in addition to the growth policy. So, although the commissioners had to give consideration to the growth policy, they also had to give consideration to other factors and typically there was a certain amount of wiggle room.

Bodman said the commissioners needed a certain amount of backing. They needed the foundation to base their zoning on. If nobody cared, they might push the boundaries along. He felt in this area a lot of

people cared and so there was going to be litigation about zoning that's put in place here. If the foundation for that zoning is shaky, then it's just going to waste everybody's time and lawyers will make good money.

The board and Grieve clarified what they were considering by recommending option #1a.

Larsen stated he would probably use option #1ai with a revision. He thought they would be going back to the status quo by recommending option #1a.

Bodman said he was on the same lines for the time being trying to preserve the status quo. It seemed to him the better way to accomplish that was to go with option #2b as opposed to option #1ai with the revision they spoke about earlier.

Larsen said the problem he saw with the '96 plan, at least according to discussion earlier, was that it would not give people the ability where those people would want to remain zoned. He didn't think the 96 plan would be compatible with that.

Bodman agreed there could be some potential issues. He thought there could also be some potential issues under option #1ai, such as how it would work to insert the future land use map into the Flathead County Growth Policy. He thought the end goal, as far as what actually happened on the ground, was essentially identical in his mind. He thought if they worked, they would function very similarly. There were problems with both but option #2b would have fewer problems and would be less easy to challenge in court.

Larsen suggested option #1ai said 'consider repealing the 96 plan'? He wanted the options available to them if they were to add 'consider repealing the 96 Whitefish City-County Master Plan then possibly amend the growth policy with the future land use map and then consider replacing zoning with Part 2 zoning'.

Bodman said he thought it would get weird if they didn't repeal the 96 plan but did adopt the future land use map because those two documents would not be compatible. He was leaning towards option #2b as it takes a little more work but they would make sure the two documents jive.

Grieve said with option #1ai he thought there would be some solid argument to be made by taking away the 96 plan you've taken away your ticket to follow the update process. If they were to keep the 96 plan that includes a map (he pointed the map out), and go with option #2b, they would need to update the '96 plan and limit the scope because they were saying the most outdated thing in the plan is the

map. So they would take the map and go through public workshops to listen to everybody's input on the future land uses map. What they essentially were going to identify was the 2007 Whitefish Growth Policy map, which was what the current zoning was based on, with the exception of five or six hotspots that had been identified. They already had a feel for what's not working so they could update the '96 plan by getting rid of the map, grabbing the interim zoning map and revising it so they would have a new updated map based on public input. He was concerned about the potential for litigation by taking the map and adopting it into the growth policy. If they got rid of the '96 plan, the document listed in 11.1, that's what gave the board the authority to just do an update.

Larsen said the only way he could support option #2b was to change it to 'consider replacing interim zoning with Part 2 zoning'. There might be some areas that weren't zoned and people just didn't want to be zoned.

Bodman said he thought what they were deciding right now was what they were doing for the planning document in the growth policy. As far as implementing the zoning, they would need input and there would have to be consideration but that's a whole separate process he was not looking to weigh in on. When that process did happen, he wanted to make that foundation as solid as possible so they could do whatever they decided to do.

Stevens said he never intended to use Whitefish's map for Flathead County that was never on his radar. He wanted the board to take it into consideration and be guided by it as far as what the appropriate uses might be, but he was never going to use that map. He didn't like the idea of using the '96 plan and having to go through all that update. The county would then have two master plans, the Flathead County one and the '96 updated one.

Grieve reiterated the plan was already listed in the growth policy as an existing plan so it could go through the update process. If it's not an update of one of the plans listed it would have to go through the neighborhood planning process outlined in a different section.

Larsen said he agreed with Stevens and stated option #1ai would still work. They had a couple different tools they could use on the zoning if they wanted to. They had the growth policy and the compatibility statute. Both of those things the board could work with. It didn't matter what the plan was there were goals and policies that support zoning and goals and policies that didn't support it. That's why it's so easy to file a lawsuit. If the board was going to worry about having a plan somebody could not file a lawsuit against they might as well forget it. He wanted to withdraw his first motion because after hearing discussion and understanding there had been zoning there for 30

years, he didn't want to just get rid of the zoning. There were probably people who wanted that zoning. He thought they needed a motion to consider the zoning and not just say they were going to put zoning on everybody. They could consider the map in relationship to the county growth policy and maybe they would find out the growth policy was sufficient enough. On the Whitefish compatibility issue, the statute says as compatible as possible. Staff had already done that.

**MOTION TO
WITHDRAW
PREVIOUS
MOTION**

9:33 pm

(Disc #2/2:03:51)

Larsen made a motion seconded by Schlegel to withdraw his previous motion which was to recommend option #1a to the Board of County Commissioners.

**MOTION TO
RECOMMEND
OPTION #1AI AS
AMENDED TO
THE COUNTY
COMMISSIONERS**

9:34 pm

(Disc #2/2:04:05)

Larsen made a motion seconded by Stevens to recommend option #1ai as amended to the Board of County Commissioners.

**BOARD
DISCUSSION**

Grieve said part 7 of chapter 10 in the Flathead County Growth Policy was about growth policy amendments. He spoke about the motion on the table and what the board's options were to update the growth policy. He stated there could be amendments by governing bodies and read the criteria from that section of the growth policy. If the board was to pursue an amendment by inserting a map, a solid argument could be made it was not a full blown neighborhood plan.

Bodman said one of the items was it was not inconsistent. He wondered if a person wouldn't see it as inconsistent that the growth policy as a whole did not have a future land use map but yet they were going to amend the growth policy to include a future land use map for one very specific area. He spoke about litigation and the weakness in this option that was very inherent.

Calaway said the option was just an option. Taking this to fruition was where something like that could happen. He felt if the board accepted this option they would take it to the point where they could do a map or a text amendment or a change to the growth policy or master plan. He wanted to get to an option they could move forward on and stated there would be a lot of things that happened between now and actually adopting it and they could argue it until the cows come home.

Stevens asked Grieve if the board were to take guidance from that land use map and incorporate it into text so the amendment to the growth policy was all words and not maps, but the words are based on what they see in the map, could they avoid what Bodman was concerned about regarding having an actual boundary area. Due to the circumstances presented by the Supreme Court decision, it necessitates an amendment to the growth policy for this area. They could use verbiage as a basis for whatever kind of zoning they thought might be appropriate there and not try to incorporate a visual.

Bodman said that made sense and it seemed like it was going in the right direction.

Schlegel thought it might be confusing to people that there would be written words but not a visual map to show the differences. There was always a map to show what you were zoned someplace. They could use the map and throw it into the big map.

Larsen said he thought the way the option was worded it said possibly amend the growth policy to take the map. If the board thought it would be a problem they wouldn't put the map in there but put the words in there.

Grieve said the board was basically forwarding a concept of a path to the commissioners. Some may argue differently, but he didn't think the board was locked into anything. There was nothing regulatory about it, it was just an option. He said there were a couple of approaches the board could take and that would be part of the research they do. He read from a section of the growth policy, part 3, chapter 10, about officially adopted maps. No maps, as of yet, were listed in that section but it allowed them to be adopted. There was also a section under part 7 regarding growth policy amendments he read before about criteria and an accommodation for map changes for officially adopted maps. The intent under statute of the Planning Board was to make recommendations to the governing body about what they thought was best for the public health, safety and general welfare etc. and there would be a process to follow. They would attempt to come up with a process that involves the public and engages the requirements of the growth policy. The issue of the map vs. text he really struggled with because he envisioned a way the board could incorporate the text specific to Whitefish.

Larsen said the board probably won't use it they would do something else. They were trying to get an option to move forward.

Bodman said that was why he was swinging towards option #2b. Whether the board did a map or text or whatever, it's already focused on this area.

**ROLL CALL TO
RECOMMEND
OPTION #1AI AS
AMENDED TO
THE COUNTY
COMMISSIONERS**

*9:46 pm
(Disc #2/2:16:00)*

On a roll call vote the motion passed with Bodman, Shellerud and Heim dissenting.

**BOARD
DISCUSSION**

Grieve thanked the board for their time and the great discussion.

The board members thanked Bodman and Shellerud for their time serving on the board.

OLD BUSINESS

None.

NEW BUSINESS
*9: 49 pm
(Disc #2/02:19:09)*

Pursuant to Section 4.0.15 of the Flathead County Subdivision Regulations, review and discussion of Planning and Zoning Office fee schedule and application deadlines for 2015.

Grieve stated the Flathead County Subdivision Regulations state the board needed to review the fee schedule annually. The current fee schedule was last comprehensively reviewed in April, 2011 and since that time had been amended twice. He gave a brief summary of those amendments. The fee schedule in its entirety had not been modified to keep up with the consumer price index (CPI). He felt it was appropriate at this time to look at a few things on the fee schedule and began by saying he would like to add approximately 10% across the board to make up for the last three years of inflation. His objective was to keep the numbers rounded so it was easy to calculate. Secondly, since 2011 the office had added standard processes to most of the permit reviews such as pre-site inspections and post permit site inspections. The review templates had been expanded and/or modified to reflect a more robust review of criteria and the office did standard post-permit tracking of expiration dates. He explained the process. In addition to that, all files now had standard closing documentation. He wanted to add a fee to cover the average cost of doing this additional work. He stated he would do an analysis of what the average cost would be. He also said he would like to add a fee for two things the office had not historically charged a fee for. One was the review of conservation easements and the other thing was when somebody wanted to file a declaration of unit ownership they were required to get a certificate of compliance from our office that the proposed declaration either complies with zoning or was exempt from subdivision review. Those can be time consuming. He asked the board for their thoughts.

Stevens commented the fee premise was fallacious. He stated he had never agreed with the premise a guy that comes in for a county service should bear the whole cost when it's the general public who gets the

benefit from it. He felt the share of the money should come from all of the tax payers instead of just one landowner who's asked for a zone change or a permit. He wondered why the bulk of the money couldn't come from the general fund instead of charging fees.

Grieve stated he understood what Stevens said and that it was a well-made point and if the majority of the board felt the same way he was fine with that.

The board and Grieve discussed whether property taxes would increase if there were no fees and what percentage of the planning budget came from fees. They also discussed how much taxes would increase for an average home if the planning office did not charge fees.

Shellerud said he had no problem with people paying fees because most of the time what they were going to do would increase the value of their property. Giving it to them for free and then charging him more taxes when the homeowner received the increase in their property value was not fair. He thought there should be fees and the planning department should be able to recover costs.

Grieve said the way the fees were now, we were definitely subsidizing some of the work on the permits because of the processes that had been added. If the board felt philosophically there was a balance here, a benefit to the public and they should pay something or if the majority felt they didn't want to see this move forward then let him know.

Calaway wanted to see it in writing because there was a lot of information to digest and then they could analyze it as well.

Stevens made a motion seconded by Hickey-AuClaire to recommend to the Board of County Commissioners that there be fee increases as presented by Grieve.

**MOTION TO
RECOMMEND TO
THE COUNTY
COMMISSIONERS
AN INCREASE IN
PLANNING FEES
AS PRESENTED**
10:12 pm
(Disc #2/2:42:55)

**ROLL CALL TO
RECOMMEND TO
THE COUNTY
COMMISSIONERS
AN INCREASE IN
PLANNING FEES
AS PRESENTED**
10:13 pm
(Disc #2/2:43:48)

On a roll call vote the motion passed unanimously.

ADJOURNMENT

The meeting was adjourned at approximately 10:15 pm. on a motion by Shellerud. The next meeting will be held at 6:00 p.m. on January 14, 2015.

Marie Hickey-AuClaire, Chairman

Mary Fisher, Recording Secretary

*APPROVED AS **SUBMITTED**/CORRECTED: 1 / 14 / 15*

**Flathead County
Rural Whitefish Planning & Zoning Jurisdiction Transition
Option Analysis Matrix¹**

| | | | | | | | | | | |
|---|--|---|---|---|---|---|--|---|--|---|
| Option: | 1) Take no action, allow interim zoning to expire. ² | | | 2) During term of interim zoning, pursue planning process to update 1996 Whitefish City-County Master Plan. ³ | | | 3) During term of interim zoning, pursue planning process to update 1996 Whitefish City County Master Plan using current city-adopted 2007 Whitefish Growth Policy as starting point. ⁴ | | | |
| Sub-Option: | 1a) After expiration of interim zoning, repeal current county adopted 1996 Whitefish City-County Master Plan. Rely on Flathead County Growth Policy for land use decisions. | 1a-i ⁸) Prior to expiration of interim zoning, repeal 1996 Whitefish City-County Master Plan then possibly amend Flathead County Growth Policy to add future land use map from 2007 Whitefish Growth Policy and revise text as needed. Replace interim zoning with county Part 2 zoning classifications based on Growth Policy. | 1b) After expiration of interim zoning, only administer plans and zoning adopted by Flathead County Commissioners. ⁵ | 1c) After expiration, allow only Part 1 zoning applications/amendments. Part 1 zoning does not require compliance with a neighborhood plan or growth policy, only description of a “development pattern” for each district. ⁶ | 2a) Use 1996 plan “as-is.” Replace interim zoning with existing county Part 2 zoning classifications consistent with this plan. ⁷ | 2b) Update 1996 plan, limit scope of update to future land use map and associated text within plan. Replace interim zoning with existing county Part 2 zoning classifications consistent with this updated plan. | 2c) Update 1996 plan, do not limit scope and create updated plan with format and content that suits rural Whitefish for 20-year planning horizon. Replace interim zoning with existing county Part 2 zoning classifications consistent with this updated plan. | 3a) Review/adopt 2007 plan “as-is.” Replace interim zoning with existing county Part 2 zoning classifications consistent with this plan. | 3b) Modify 2007 plan, limit scope of update to adopting future land use map and associated text and remove portions not workable and/or desirable to rural residents. Replace interim zoning with existing county Part 2 zoning classifications consistent with this updated plan. | 3c) Choose option 3a or 3b, then implement with new, special county Part 2 zoning classifications adopted to match permitted uses and bulk and dimensional requirements of “W” zoning in place at end of interlocal agreement. |
| Pros: | <ul style="list-style-type: none"> Eliminates plan and planning processes that are typical source of allegations of errors in a litigation-prone situation. Reduces long-term demand on county planning resources. | <ul style="list-style-type: none"> Allows use of Whitefish’s Future Land Use Map (upon which present zoning is based) without adopting entire 2007 Whitefish Growth Policy. Avoids more time consuming plan review processes in Options 2 of 3. | <ul style="list-style-type: none"> Least demand on county planning resources. Those who had their property zoned by Whitefish with a “W” zoning classification and did not support the zoning would be unzoned or revert to county zoning. | <ul style="list-style-type: none"> No updating or adoption of a broad community plan required prior to consideration of individual Part 1 districts. Landowner support would be required, 60% of landowners in an area 40 acres or more in size. | <ul style="list-style-type: none"> Allows quickest adoption of a permanent replacement for current interim zoning using existing Part 2 zoning classifications. Uses entire 1996 plan jurisdiction. | <ul style="list-style-type: none"> Process of updating an existing plan is clearly outlined in Part 4 of Chapter 11 of Growth Policy. Likely achievable within two-year interim zoning lifespan. Addresses planning in entire 1996 plan jurisdiction. | <ul style="list-style-type: none"> Process of updating an existing plan is clearly outlined in Part 4 of Chapter 11 of Growth Policy. Addresses planning in entire 1996 plan jurisdiction. Optimal outcome is a plan that may serve rural Whitefish for many years. | <ul style="list-style-type: none"> Minimizes demand on county planning resources since plan exists. Recognizes work done by community in 2007. Adopts zoning close to what was there, without “Special Provisions” of Whitefish’s zoning that created controversy. | <ul style="list-style-type: none"> Uses public process to identify and eliminate or revise controversial policies of 2007 plan. Adopts zoning close to what was there, without “Special Provisions” of Whitefish’s zoning that created controversy. | <ul style="list-style-type: none"> Provides for most consistent land use regulations with what existed under Whitefish’s jurisdiction. Most compatible with adjacent municipality’s urban growth and zoning, required by 76-2-203 M.C.A. |
| Cons: | <ul style="list-style-type: none"> Eliminates detailed guidance for future land use decision making in rural Whitefish area. | <ul style="list-style-type: none"> Permanent Part 2 zoning to replace interim zoning wouldn’t be based on a separate local plan. Flathead County Growth Policy contains broad goals and policies with opportunity for debate over meaning/applicability to very specific areas. | <ul style="list-style-type: none"> Areas that were amended to a “W” zone from a county zone would go back to county zone, creating non-conforming uses. Those who supported the “W” zoning on their property and/or may have pursued zone changes, PUDs or permits under “W” zoning would now be unzoned. | <ul style="list-style-type: none"> Significant administrative challenges associated with adding Part 1 zoning districts to existing Part 2 zoning regulations. Separate rules and standards, separate revenues and expenditures sources to track, separate planning and zoning commissions, etc., all for each district. | <ul style="list-style-type: none"> 1996 plan is dated and doesn’t reflect many existing conditions and/or current projected trends. Many current zones and/or zoning amendments adopted under Whitefish’s jurisdiction may be “downzoned” to comply with this plan.⁷ | <ul style="list-style-type: none"> Doesn’t allow for full inventory of existing characteristics, projected trends, available public services and infrastructure, etc. in 2014. Plan remains somewhat dated. Requires more county planning resources (staff and Planning Board) than some other options. | <ul style="list-style-type: none"> Achieving scope of work will require substantial county planning resources (staff and Planning Board) and a public/political will to progress quickly through process. May still not be achievable within two-year interim zoning lifespan. | <ul style="list-style-type: none"> Many policies of 2007 plan controversial to rural landowners. Plan jurisdiction boundary not the same as 1996 plan, would need to be expanded or would create a doughnut of 1996 boundary. Current county zoning classifications are still different than Whitefish’s previous “W” classifications. | <ul style="list-style-type: none"> Plan jurisdiction boundary not the same as 1996 plan, would need to be expanded or would create a doughnut of 1996 boundary. Current county zoning classifications are still different than Whitefish’s previous “W” classifications. | <ul style="list-style-type: none"> Adopting new “special” zones into text of Flathead County Zoning Regulations takes more time in addition to plan update and zoning map adoption. “Special” zones can introduce challenges with consistency and interpretation. Ex. Ashley Lake, North Fork, etc. |
| Follow-up question or issue created by option: | <ul style="list-style-type: none"> Repeal of 1996 plan may not comply with Goals 46 and/or 49 of Growth Policy. | <ul style="list-style-type: none"> Review Growth Policy to ensure proposed amendments will retain internal consistency of document. | <ul style="list-style-type: none"> Significant concerns from parties that pursued zone changes or got permits with zoning in place. | <ul style="list-style-type: none"> Research how to administer/enforce multiple Part 1 zoning districts. | | | <ul style="list-style-type: none"> What happens at end of 2 years if project is not complete? | <ul style="list-style-type: none"> Since 2007 plan is not listed as an “existing” plan in Part 4 of Chapter 11 of Growth Policy, process to use is not as clear as using 1996 plan. | <ul style="list-style-type: none"> Since 2007 plan is not listed as an “existing” plan in Part 4 of Chapter 11 of Growth Policy, process to use is not as clear as using 1996 plan. | |

¹The purpose of this document is to inform rural Whitefish landowners, Flathead County decision makers and the general public about some of the options that were discussed at Planning Board public workshops on October 01 and October 15, 2014 and that are currently available for planning and zoning in the rural areas outside the city of Whitefish at the end of the term of the current interim zoning. This analysis was originally requested by the Flathead County Planning Board at the October 01, 2014 public workshop. It was prepared by planning staff and given to the Planning Board on October 08, 2014 and posted on the planning office's website on October 09, 2014. At the October 15, 2014 public workshop, after public comment and board discussion, the board requested staff add Option 1a-i (see footnote #8 below). This additional option was added by planning staff on October 16, 2014 and the revised analysis was re-posted to the planning office's website on October 16, 2014. This document is intended to serve as an informational starting point for discussion, public participation and additional research. Given the unprecedented nature of the rural Whitefish area jurisdiction transition, in order to create this document and present options, some assumptions had to be made.

For those unfamiliar with planning terminology, plans referenced herein (such as the county wide Flathead County Growth Policy, the 1996 Whitefish City County Master Plan and the 2007 Whitefish Growth Policy) are non-regulatory documents that generally outline a community vision for the future, inventory existing characteristics of a community, present projected growth trends, and establish goals for how growth should occur within the plan's jurisdiction. Policies regarding such things as location of growth, public services and infrastructure to serve growth, and environmental impacts of growth are typically set forth in a plan to guide decision makers over time and help achieve the goals. Communities are not required to adopt plans, but if a community chooses to adopt plans, they must be made and adopted according to state laws. These laws are found in 76-1-601 et. seq., M.C.A. Since plans are non-regulatory, they are implemented using regulatory methods (regulatory means those for which an enforcement mechanism is authorized if violated, such as a misdemeanor) such as subdivision regulations and zoning regulations. Zoning is regulatory, and Part 2 zoning must be made in accordance with, or implement, the stated goals and policies of a plan. See footnote 6 below for an important explanation of differences between Part 1 and Part 2 zoning in rural areas.

²The current interim zoning was adopted September 09, 2014 pursuant to Resolution #2394 and will expire at the end of one year. The Commissioners may extend the interim zoning for up to one additional year. The interim zoning was adopted to most closely replicate the permitted land uses and bulk and dimensional requirements of the "W" zoning that was adopted by the Whitefish City Council outside of city limits prior to and during the period of the Interlocal Agreement.

³The 1996 Whitefish City County Master Plan was adopted jointly by the Flathead County Commissioners and Whitefish City Council on February 06, 1996 and February 20, 1996 (respectively). This is the local plan for the rural Whitefish area referenced in Part 4 of Chapter 11 of the Flathead County Growth Policy. The 1996 plan boundary extends approximately 4½ miles outside Whitefish city limits as they existed at that time.

⁴The 2007 Whitefish Growth Policy was adopted by the Whitefish City Council in November 2007 and at that time applied to areas within city limits and within the interlocal agreement boundary. The interlocal agreement boundary was *approximately* 2 miles from Whitefish city limits as they existed in 2005. This 2007 Whitefish Growth Policy was not adopted by the Flathead County Commissioners for areas outside Whitefish city limits.

⁵Under this option/scenario, the 1996 Whitefish City County Master Plan and any county zoning adopted by the Flathead County Commissioners in the past would continue to exist. Zoning in areas that had been zoned with a "W" zone by the Whitefish City Council would cease to exist. "W" zoning within one mile of city limits that was passed by the Whitefish City Council prior to 2005 pursuant to 76-2-310 M.C.A. would not exist. County zones that were adopted by the Flathead County Commissioners in the past that have been amended by the Whitefish City Council to a different county zone or to a "W" zone would revert to the last zoning approved by the Commissioners.

⁶Under Montana law, there are two basic types of zoning that can be adopted in rural areas. Part 1 zoning is referred to as "citizen initiated" zoning. When 60% of the landowners in an area of 40 acres or more petition the county for zoning, the Commissioners may adopt it. Part 1 zoning districts each have a separate "Planning and Zoning Commission," each would have separate regulatory standards, each have a separate levy within the district to pay for administration and enforcement of the zoning district, and are adopted to implement a separate "development pattern" identified for each district. Part 1 zoning is not specifically required to be made in accordance with a Growth Policy. See 76-2-101 et. seq., M.C.A. regarding details of "citizen initiated" Part 1 zoning. Currently, Flathead County only has one Part 1 zoning district in the Egan Slough area and because it has unique and separate regulatory standards and administrative requirements, it is not a part of the Flathead County Zoning Regulations. Part 2 zoning is the second type of zoning under Montana law and it is referred to as "county initiated" zoning. Part 2 zoning may be initiated by the Commissioners for purposes of "promoting the public health, safety, morals, and general welfare" of a jurisdictional area and must be made in accordance with a growth policy or plan. The current Flathead County Zoning Regulations are adopted under Part 2 zoning. See 76-2-201 et. seq., M.C.A. regarding details of "county initiated" Part 2 zoning.

⁷Pursuant to the criteria for adopting Part 2 zoning found in 76-2-203 M.C.A. and Section 2.08.040 of the Flathead County Zoning Regulations, zoning regulations must be made in accordance with the Growth Policy. The 1996 Whitefish City County Master Plan has been adopted as an element of the Flathead County Growth Policy. Therefore, any permanent zoning would have to comply with the 1996 plan and according to the Introduction, the plan is composed of two major components, the text and the map, that must be weighed equally (page 3). Since the 1996 plan was not updated by the county while the interlocal agreement was in place, some of the current zoning that was adopted by Whitefish in accordance with the 2007 Whitefish Growth Policy would not comply and could not be adopted under the current county 1996 plan.

⁸Option 1a-i added after Planning Board discussion at October 16, 2014 public workshop.

Flathead County
Whitefish & Lost Coon Lake and Lakeshore Jurisdiction Transition
Option Analysis Matrix¹

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|---|---|---|--|--|---|---|
| Option: | 1) Amend the <i>Flathead County Lake and Lakeshore Protection Regulations</i> ² to include Whitefish and Lost Coon Lakes. | 2) Option 1, then review, revise and update the <i>Flathead County Lake and Lakeshore Protection Regulations</i> ² in next fiscal year. | 3) Continue using Flathead County's <i>Whitefish Area Lake and Lakeshore Protection Regulations</i> ⁵ that were used prior to interlocal agreement. | 4) Adopt Whitefish's <i>Whitefish Area Lake and Lakeshore Protection Regulations</i> ⁶ that Whitefish used during interlocal agreement. | 5) Work with public and Whitefish to create new Whitefish & Lost Coon lakeshore regulations agreeable to both governing bodies, adopt separately. | 6) Discuss with City of Whitefish a mutually agreeable arrangement to give city lakeshore jurisdiction for Whitefish and Lost Coon Lakes ⁷ . |
| Pros: | <ul style="list-style-type: none"> • Efficient administration and enforcement for Flathead County. • Consistent with ~57 other lakes regulated in rural Flathead County³. • Allows resources to be focused on interim zoning replacement. | <ul style="list-style-type: none"> • Allows county to adopt best provisions for rural jurisdiction of multiple regulations and apply to all ~59 lakes. • End result is one updated set of regulations for all rural Flathead County. | <ul style="list-style-type: none"> • This is what Flathead County is doing now, no changes needed. • Maintains many unique provisions found in current City of Whitefish regulations since those regulations originated from this document. | <ul style="list-style-type: none"> • Provides for consistency across jurisdictions in an existing document, but only if adopted by county as written. • These are the most recently updated regulations unique to Whitefish and Lost Coon Lakes. | <ul style="list-style-type: none"> • Governing bodies can create one set of regulations with which they are both comfortable. • Most consistent option while maintaining separate jurisdictions. • If successful, promotes cooperation. | <ul style="list-style-type: none"> • Only option for 100% consistent regulations across Whitefish and Lost Coon Lakes because one jurisdiction is interpreting, administering, enforcing and amending. • Consumes least county resources. |
| Cons: | <ul style="list-style-type: none"> • Least consistent option with current City of Whitefish regulations. • Does not recognize unique history and cultural identity of Whitefish Lake. • Last updated 12 years ago. However, see Option #2. | <ul style="list-style-type: none"> • Requires county resources allocated to review and update at same time as county is working to replace interim zoning (could use consultant for lakeshore update). • Increases demand on Planning Board time over next 1-2 years. | <ul style="list-style-type: none"> • Not consistent with current City of Whitefish regulations used inside city limits. • Long term costs for two sets of lakeshore regulations. • Some provisions hard to enforce. • Needs update to jurisdictional references. | <ul style="list-style-type: none"> • Some 2009 revisions hard to enforce in rural area. • Any edits by county, or any future amendments not adopted by both jurisdictions result in inconsistent regulations. • Reviewing & revising consumes county resources. | <ul style="list-style-type: none"> • Extremely time and resource consumptive for both jurisdictions. • No guarantee efforts will be successful. History shows very different political wills. • Future amendments by one governing body may not be adopted by other. | <ul style="list-style-type: none"> • Current political climate creates challenges with establishing cooperative agreements. • Discussions may simply not yield a mutually agreeable scenario, resulting in wasted time. |
| Follow-up question or issue created by option: | • Impact of Whitefish's annexation of lake bottom ⁴ ? | • Impact of Whitefish's annexation of lake bottom ⁴ ? | • Status of WF Lakeshore Protection Committee? | • Status of WF Lakeshore Protection Committee? | • Status of WF Lakeshore Protection Committee? | • Representation for rural lakefront landowners. |

¹The purpose of this document is to inform Flathead County decision makers and the public about some options that are currently available for regulating Whitefish and Lost Coon Lakes, per 75-7-207 M.C.A. The document is intended to serve as an informational starting point for discussion and public participation.

²Adopted by the Flathead County Board of Commissioners April 13, 1982. Covered all lakes in Flathead County until separate regulations were created for Whitefish and Lost Coon Lakes in 1990 (see footnote #4 below). Most recently revised January 24, 2002. This document can be found on the Flathead County Planning and Zoning Office website at http://flathead.mt.gov/planning_zoning/downloads.php (click on the folder labelled “Lake and Lakeshore Protection Regulations”).

³Per 75-7-203 M.C.A., the *Flathead County Lake and Lakeshore Protection Regulations* govern all lakes over 20 acres in size for at least 6 months in a year, presently including Blanchard Lake but excluding Whitefish and Lost Coon Lakes. According to Flathead County GIS, this applies to approximately 57 lakes in rural Flathead County.

⁴The City of Whitefish has annexed Whitefish Lake to the low water mark. Dock permits issued for rural properties may therefore be doing work inside city limits. Mayor John Muhlfeld raised this jurisdictional concern in a letter to the Commissioners on September 04, 2014.

⁵Adopted jointly by the Flathead County Commissioners on January 03, 1990 (Resolution #769) and the City of Whitefish On January 01, 1990 (Ordinance #89-12) as a separate set of lakeshore regulations governing Whitefish and Lost Coon Lakes. Administered by Flathead County for rural properties on Whitefish and Lost Coon Lakes until February 01, 2005 (effective date of Interlocal Agreement) and then again starting on July 15, 2014 (effective date of Montana Supreme Court ruling terminating Interlocal Agreement). This document can be found on the Flathead County Planning and Zoning Office website at http://flathead.mt.gov/planning_zoning/downloads.php (click on the folder labelled “Lake and Lakeshore Protection Regulations”).

⁶After February 01, 2005 (effective date of Interlocal Agreement), the City of Whitefish continued to use the regulations that had been adopted jointly with Flathead County. However, subsequent amendments were not approved by Flathead County since the jurisdiction was solely Whitefish’s. The regulations were amended by Whitefish to include Blanchard Lake since that lake was inside the Interlocal Agreement area. In 2009, Whitefish adopted a significant revision to the regulations (Ordinance 09-08). These regulations are referred to as the *Whitefish Area Lake and Lakeshore Protection Regulations*. A link to this document can be found on the City of Whitefish website at <http://www.cityofwhitefish.org/planning-and-building/floodplain-development.php>.

⁷Per 75-7-214 M.C.A., governing bodies of lakes that are in two different jurisdictions are “empowered and encouraged,” but not required, to enter into agreements to establish compatible criteria.