

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
JANUARY 14, 2015**

**CALL TO
ORDER
6:03 pm**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. at the Earl Bennett Building, Conference Rooms A and B, 1035 1st Ave W, Kalispell, Montana. Board members present were Marie Hickey-AuClaire, Tim Calaway, Dean Sirucek, Ron Schlegel, Kevin Lake, Jim Heim, Jeff Larsen, Mike Horn and Greg Stevens. BJ Grieve and Erik Mack represented the Flathead County Planning & Zoning Office.

There were 4 people in the audience.

**APPROVAL OF
MINUTES
6:05 pm**

Hickey-AuClaire welcomed the new members to the board.

Stevens made a motion, seconded by Heim to approve the December 10, 2014, December 17, 2014 meeting minutes, October 29, 2014, and October 30, 2014 workshop minutes.

The motion passed by unanimously.

**ELECTION OF
OFFICERS
6:07 pm**

Stevens nominated and Schlegel seconded Hickey-AuClaire for chair.

Calaway nominated and Stevens seconded Larsen for chair.

Larsen respectfully declined the position.

On a roll call vote the motion for Hickey-AuClaire as chair passed unanimously.

Stevens nominated and Schlegel seconded Larsen for vice-chair.

On a roll call vote the motion passed unanimously.

**PUBLIC
COMMENT
(not related to
agenda items)
6:10 pm**

Grieve asked Hickey-AuClaire to reiterate the only item which had a public hearing was FZTA-14-01. The items under old business did not have their own public hearing so people needed to comment at this time if they wished to comment on old business which was the Whitefish Transitions of Lake and Lakeshore regulations and planning and zoning in the former inter-local agreement area surrounding Whitefish.

No public commented.

**ZONIGN TEXT
AMENDMENT –
HOME
OCCUPATION
(FZTA-14-01)**

A request by the Flathead County Planning Board for an amendment to the text of the Flathead County Zoning Regulations (regulations) to revise the performance standards regarding home occupations based on the Planning Board’s discussion at a Planning Board workshop on February 24, 2014. This amendment was originally recommended for approval to the Flathead County Commissioners by the Planning Board on September 10, 2014. On September 18, 2014 the Flathead County Commissioners voted to return this text amendment to the Planning Board for additional consideration. On November 12, 2014 the Planning Board advised staff to make additional changes to the proposed amendment and schedule a new public hearing to allow for public comment on the text amendment in its entirety.

The general character of the specific proposed amendment is:

Changes to restrictions on vehicle traffic for a home occupation currently found in Section 5.06.020(1)(E), allowing for additional vehicle traffic when the home occupation is reviewed as a conditional use permit by adding Section 5.06.020(2)(C) adding a definition for trip as Section 7.19.045 and amending the definition of home occupation found in Section 7.09.020.

STAFF REPORT

Mack reviewed Staff Report FZTA-14-01 for the Board.

**BOARD
QUESTIONS**

Stevens and Mack discussed the requirements for approvals of conditional use permit (CUP) and if the requirements needed to be addressed or satisfied to grant a CUP.

Sirucek and Mack discussed if there were time limits on CUPs, how they were monitored if they did not follow the conditions, and what happened if there was a complaint concerning a property with a CUP.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

Hickey-AuClaire confirmed no written comments had been received.

Mayre Flowers, Citizens for a Better Flathead, passed a handout to the board and was against the application.

Glenn Graham, 739 Greenridge Drive, was against the

application.

**STAFF
REBUTTAL**

None.

**BOARD
DISCUSSION**

Stevens and Mack discussed the deletion of animal hospitals, beauty shops, etc. from home based occupations and the fact that Kalispell allowed animal hospitals within city limits.

The board discussed the other small business which were referenced the in the deleted line and why they had chosen to delete that part of the text.

**MAIN MOTION
TO ADOPT
F.O.F.
(FZTA-14-01)**

Calaway made a motion seconded by Schlegel to adopt staff report FZTA-14-01 as findings-of-fact.

**BOARD
DISCUSSION**

Calaway said the board had discussed this amendment backwards and forwards. With the starts versus the closures in the U.S. of small businesses, the starts are declining and closures are increasing. There was a huge request for small businesses to start because of the overhead. The initial cost associated with startup of a new business was far above the average of what the business will have in overhead in the following years. The startup cost was usually one and a half time what a normal overhead would cost and he went on to explain why. He said the 32 trips per day would be looked at when the applicant applied for a CUP. He gave examples of possible CUP applications. Everyone he had talked to in the agricultural community supported the option of having a home based business. Nobody in the agricultural community had said it was not a good idea. The board had been through the amendment little by little. Just the benefit of being able to start a small business and keep the overhead down for the first year or two was beneficial. When they expanded, they would be the first ones to look for a place to rent which could handle the expansion.

Schlegel gave an example of a farmer he knew who had a welding shop on his property which they worked out of but he did understand Graham's concern about the increased traffic in neighborhoods. He explained the work done on the application and how the trips were counted.

Stevens agreed with Calaway, a successful business would want to move to a different location where a larger sign would be permitted. The board was looking at the application again because of a commissioner who wanted the board to look at it again and the misunderstanding of what constituted a trip. They were only increasing the trips if it was conditioned in a CUP. That was why he asked Mack what the requirements were to grant a CUP. If there was an inappropriate use, it would come out in the hearing before the Board of Adjustment. He did not think it was as big of a change in trips as it first appeared. He was in support of the application.

Larsen and Grieve discussed the definition of a trip, vehicle traffic, and traffic generation, the choice of wording and how the Planning Office dealt with the definition.

The board and Grieve discussed the definition of the trips in the text amendment, the history of the discussion concerning people arriving more than one at a time and the addressing of gravel roads.

Grieve said the other standards were still in effect with home occupations, how those standards were proven to be met and how affidavits of standards met were used if there were complaints. He went on to name density levels in zoning which would require a CUP with traffic and which would not. There were requirements concerning dust.

**ROLL CALL TO
ADOPT F.O.F.
(FZTA-14-01)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO
RECOMMEND
APPROVAL OF
CONDITIONS
(FZTA-14-01)**

Calaway made a motion seconded by Heim to adopt Staff Report FZTA-14-01 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

Heim said they had eliminated businesses which had other regulations applied to them and asked if it was necessary to have a sentence to say they were not allowed.

The board and Grieve discussed if there was a purpose to have

what was not a home occupation listed and the differences between traffic generated between different businesses.

ASK THE QUESTION

Stevens asked the question.

ROLL CALL TO RECOMMEND APPROVAL OF (FZTA-14-01)

On a roll call vote the motion passed unanimously.

BOARD DISCUSSION

Hickey-AuClaire reviewed the process the application would follow from this point on.

OLD BUSINESS 6:56 pm

Discussion of commission guidance on proceeding with planning & zoning and lakeshore regulations in the former inter-local agreement area surrounding Whitefish, and determination of next step(s) in process.

Grieve reviewed the decision of the commissioners concerning the transitioning of Whitefish and Lost Coon Lakes which included amending Flathead County Lakeshore Regulations to include Whitefish and Lost Coon Lakes, eliminate the Whitefish and Lost Coon Lake and Lakeshore Regulations and review the Whitefish Lakeshore Regulations in the future for information to update the Flathead County Lake and Lakeshore Regulations which would benefit the entire county. He said the ball was now on the board's side of the table. The commissioners had accepted the board's recommendation. The office could put on a future agenda consideration of a text amendment to the Flathead County Lake and Lakeshore Regulations and hold a public hearing on the actual text amendment. The office could prepare a draft version, prepare a staff report and bring it before the board for a public hearing like any other text amendment. Statute said the Planning Board should make recommendations to the governing body on Lakeshore so the office would prepare the file and bring it before the board. The office was happy to do the administrative work to help the board move forward with the process.

The board agreed to finish the Lakeshore project and it would be simpler to accomplish the text amendment.

The board and Grieve discussed the update or revision in the future. For the present, a text amendment to the Flathead

County Lake and Lakeshore Regulations was sufficient.

Grieve summarized what had been done in the county regulations concerning Whitefish and Lost Coon lakes up to this date and what would be required with a text amendment.

Heim agreed they needed to move ahead with a text amendment and wanted the new members to have copies of the regulations under discussion and the analysis the former Whitefish Lake and Lakeshore Protection Committee had submitted. He felt this would be beneficial.

Grieve asked Donna Valade, board secretary, if there were copies of the county Whitefish Regulations, County Lake and Lakeshore Regulations and Whitefish Lake and Lakeshore Regulations.

Valade said information was sent to new board members with their packets.

Mack checked the office to see if there were extra copies.

Calaway said they would do the text amendment, rescind the Whitefish and Lost Coon Regulations, then at that point go in and compare the analysis from the former Whitefish Lake and Lakeshore Protection Committee with the Lakeshore Regulations. He suggested then making a schedule to update the Flathead County Lake and Lakeshore Regulations.

Stevens said before they do that, there was the planning and zoning transition in the former inter-local agreement area.

Hickey-AuClaire and Calaway agreed the lakeshore regulations could be amended so there was one document then to move on to the planning and zoning transition.

Sirucek clarified Whitefish and Lost Coon Lakes were the ones which were to be added to the Lakeshore Regulations and Blanchard Lake was currently covered in the regulations.

Grieve confirmed Blanchard Lake was currently covered by the Flathead County Lake and Lakeshore Regulations. He gave a brief history of which regulations Blanchard Lake had been covered by.

Mack passed out the Whitefish and Lost Coon regulations and

the Flathead County Lake and Lakeshore Protection Regulations discussion to the new members.

Grieve asked when they considered the text amendment to add the lakes to the regulations, they include language to help mitigate potential issues concerning the low water mark with Whitefish Lake. The city of Whitefish had annexed from low water down of Whitefish Lake. The lakeshore regulations had jurisdiction of the lake, lakeshore and the lakeshore protection zone which was 20 feet landward, horizontally, of mean annual high water. The city of Whitefish had, in the past, indicated anything, including a dock or anything else, which extended into their jurisdiction would require a permit from the city. It was possible that certain things, like a retaining wall would only require a permit through the county. Work in the lakeshore protection zone, stairway, etc. would require a permit through the county. Whitefish had given indication a rolling dock which rolled out past mean annual high water, through the no man's land of the shore and then past low water may require a permit through Whitefish. He suggested adding 'Whitefish Lake low water up'. This was because Whitefish had annexed low water down. Low water down would be outside county jurisdiction. He felt that addition would be an important clarification of what the county regulated which would be county jurisdiction properties from low water up, including the area between low water and high water and the area which was referred to as the lakeshore protection zone which was from mean annual high water to twenty horizontal feet back.

Horn and Grieve discussed if the low water mark was determined by feet above sea level, why Grieve wanted to include the wording 'from low water up' and what was being done to clarify what Whitefish's definition of low water was.

Grieve explained what the definition of mean high water up was, which was the average of the last five years of annual high water values and eliminate any aberrant values or outliers. Lakes in which there were not many differences in the high water value were not difficult, lakes which came up to very different values every year were more challenging. He gave the example of Echo Lake over the last several years. He elaborated on the problems of defining high water value and gave examples of different lakes in the county. The city of Whitefish currently in their regulations laid out the mean annual high water elevation for Whitefish Lake at 3,000.79 feet msl which was equivalent to

2,997.00 feet msl, and gave the same for Lost Coon Lake. To his knowledge, Whitefish Lake came up to a consistent level every year. He had never heard anyone complain about this value. He wondered, for ease of administration, if it was possible to use Whitefish's Regulations mark as the mean annual high water value.

Calaway and Grieve discussed if it was up to Whitefish to define the low water elevation, if the board could define the low water mark, the zone between the high and low water mark and the benefits of having a set bench mark for mean annual high water value.

The board and Grieve discussed the benefits of bringing the Whitefish Lake high water value elevation into the Flathead County Lake and Lakeshore Regulations, if it was appropriate to include the high water value in the text amendment and the concern about the low elevation and the need to define it.

Grieve said annexation statute did not allow the county to protest annexation. So if a city was annexing 40 acres on the south side of Kalispell for a subdivision, or the lakebed, Flathead County could not protest. He agreed with Schlegel concerning the low water mark. If an annexation of 40 acres were to occur, the city gave a meets and bounds description or gave a map of the property lines. When Whitefish annexed 'up to low water', and they did not have a description of low water. At that point the only thing the county could hope to get from them was what they had as a basis for elevation above sea level for the water at low water. That was apparently forthcoming. The low water down was annexed in 2005.

Schlegel said the bottom of the river at the outlet could be defined as low water.

Grieve and the board discussed the problems with defining low water, the benefits of having an elevation on record for benchmarks, what the definition of high water was, the difference between the lakes and the five year average of high water.

Grieve read from MCA concerning what defined mean high water elevation.

The board and Grieve discussed at length the change in high water values in lakes and the challenges in dealing with those changes. They also discussed if local governments could regulate to a higher standard, the benefits of a set standard and the cons of having set standards. The board agreed Grieve could add the Whitefish mean high water value for Whitefish Lake to the text amendment. The text amendment would be on the agenda in March.

Grieve reviewed the board's recommendation to the commissioners concerning transitional zoning in the former Whitefish donut which was to repeal the 1996 Whitefish City-County Master Plan, and possibly amend the Flathead county Growth Policy to add the future land use map limited to the former inter-local agreement area using the future land use map from the 2007 Whitefish Growth Policy as a starting point. The recommendation also included revising the text of the Flathead County Growth Policy as needed to insure consistency with the future land use map. The following amendments to the Growth Policy, the Planning Board recommended the replacement of the current interim zoning with county part two zoning based on the amended Flathead County Growth Policy. The commissioners did not want to take the future land use map from the 2007 Whitefish Growth Policy and add it into the Flathead County Growth Policy. The commission felt it would take too long and didn't care to have the future land use map adopted in the Growth policy. They were ok with repealing the '96 plan and replacing the current interim zoning with part two zoning. They sent the recommendation back to the board for additional consideration and discussion. Based on public comment at four workshops a lot of variations were discussed. He had read the draft December 17, 2014 which the board had approved at this meeting and stated there was a lot of discussion of a variety of other options. He summarized how the commissioners had drafted their motion for a recommendation to the Planning Board.

Stevens asked what the commissioners' concerns were.

Grieve said amending the Flathead County Growth Policy to put the 2007 future land use map in.

Stevens asked Grieve to read the Planning Board's recommendation.

Grieve read the recommendation.

Stevens was not interested in having another series of workshops to determine another option. The process was becoming more complicated than it needed to be. He knew the commissioners were busy and probably did not have time to read all the minutes from the Planning Board meetings. He read from the 12/17/14 minutes in which he stated they did not have any intention of using the map as is on anything in the future. He intended to use that map as background reference material to decide what zones might be appropriate no matter what option the board picked. He was going to use whatever information he could get his hands on to try to determine what was reasonable. He asked Grieve if the commissioners had heartburn that the board was going to use the map.

Grieve said the option of taking the future land use map and using it as a starting point to generate a future land use map for the Whitefish area would then give specific guidance that would be implemented with part two zoning. That adoption of the future land use map of Whitefish was the part they did not care for per their discussion.

Schlegel said when he voted for the recommendation, the word possible said the commissioners did not need to do it. They could do what they wanted. It was there if they wanted and if they wanted to throw it out that was possible too.

Stevens wondered if there needed to be a joint workshop with the commissioners or if it was legal.

Grieve said that wasn't really an option according to the county attorneys. There was a separation which occurred between the two parties. It was the office's job to facilitate the back and forth between the two. The motion was what it was and the reasons were what they were and the discussion revolved around that. He was just reporting back to the board what had happened.

Larsen said he had said to possibly to adopt the map. They did not have to adopt the map. There were two tools available to them. One was making zone changes in accordance with the growth policy and two was that the zoning regulations had to be made as compatible with nearby zoning municipalities. What that told him was that they were going to be looking at that map anyway. They had to consider Whitefish's growth policy and the

county's. They didn't have to adopt that map in order to look at it. There were some problems with adopting the map. It would need to be revised somewhat because of existing problems with existing uses, which would be a long process. He didn't see a problem with the board's motion. The commissioners had taken it that they would adopt the map. That was never the intent. As the motion went through, he thought Grieve would give them the pros and cons of the process. He went and listened to the commissioners and felt they didn't want to adopt the map for the same reasons of the time needed to adopt the map. They thought the time would be better used in zoning the area. The board had to consider the '96 map anyway under zoning statute. Why did they want to spend the time arguing over the map and then have someone sue them because they had changed the map and it was not exactly like what Whitefish had?

Calaway discussed how Grieve had done the interim zoning as close to the Whitefish zoning as possible and people could come in and rezone their property.

Larsen said he thought the recommendation they had forwarded had given them flexibility.

Grieve and the board discussed option 1a, and how the relationship with Whitefish was becoming similar to the relationship with Kalispell concerning applications outside city limits.

Larsen said they may end up with conflict.

Grieve said they could work on the potential conflicts if they had more time to work on the part two zoning.

Larsen said what they had was a zoning district right now which had similar zoning to Whitefish's.

Staff reviewed what was included and what zoning was referenced for zoning in the area. There were two Whitefish zoning designations for which the county had no comparable zoning and they had been adopted as a one year place holder with a one year extension.

Grieve reviewed how analysis and process was done concerning zoning.

The board said they did not have to adopt the '96 plan in order to consider it.

Grieve continued to explain how Kalispell's future growth plan was considered for applications outside the city limits and how the analysis could be done around Whitefish.

The board asked if they changed the recommendation to option 1a-i, what would need to be done and if it could be done tonight?

Grieve said they could take action tonight, and reviewed what notice was required on items requiring a public hearing. This was an agenda item under old business as a follow up on something the board had held multiple workshops on, had made a recommendation on which had gone to commissioners and the commissioners had sent it back and they are now discussing it. There was no reason why the board could not make another motion to send another recommendation back to the commissioners for their additional consideration prior to them saying they do or do not like the recommendation, go ahead and get to work on it. That was an option.

Stevens said he moved they send back their original recommendation with a note saying 'please read the minutes.'

The board discussed what exactly the motion was Stevens wanted to send back to the commissioners.

Larsen asked if Stevens's motion was serious.

Stevens said he had not gotten a second yet.

Sirucek said he had tried to decipher the differences between option 1a and 1ai and he had gotten lost. He asked if someone could tell him the differences between the two.

Larsen said option 1a would repeal the master plan and go to zoning using the Flathead County Growth Policy. Option 1a-i included possibly adopting the Whitefish Future Land Use map.

Grieve said 1a and 1a-i were pretty different. Option 1a would repeal the '96 plan and rely on the growth policy for land use decisions that would include some moving forward with part two zoning per the growth policy. That required consideration of the document which 1a-i was saying instead of referencing it in the

part two zoning process, adopting it into the growth policy so part two zoning could be adopted based on the map. He read option 1a for the board.

The board and Grieve discussed if the option allowed them to do part two zoning, and options for wording of a recommendation concerning part two zoning.

The board and Grieve discussed the differences between part one and part two zoning and the benefits of part two zoning, possible wording for a motion and the timeline for workshops.

Grieve said the county was standing at a crossroads related to planning and zoning and lakeshore in Whitefish. They were trying to pick a road to take. Instead of a board or commissioner or planning director picking a road, and then picking a public process well down that road, everyone is trying to have a lot of public participation while standing at the crossroad. The irony of this was the process they were undertaking, making sure they were dotting the I's and crossing the T's, making sure the public's right to know was going on, that was the stuff later on when lawsuits happened they point back to and said at this meeting they decided to do this. The point of all this is once a path is chosen, there would still be another public process for amending whatever occurs. That's why when they talk about modifying the recommendation and sending it off to the commission, he was pointing that out. He didn't want anyone to allege later they should have held another public hearing because the option you changed to...

The board discussed which way to proceed.

Grieve said they had already had four workshops, the board made a recommendation 1a-i, the commissioners had a discussion and sent the recommendation back with thoughts, this was on the agenda for the meeting. There was no reason the board could not revise, come up with another recommendation based on all the public comment they had heard and send it to the commissioners. He would ask the commissioners if they liked the recommendation or not, then he would bring it back to the board. Then they would choose a road and take the first steps down the road on the process.

**MAIN MOTION
TO**

Larsen made a motion seconded by Schlegel to recommend Option #1a with the addition of '*consider implementing type two*

**RECOMMEND
OPTION 1a
WITH
ADDITIONAL
LANGUAGE**

zoning.'

Larsen asked Grieve what the exact wording was because he did not have it.

Grieve said it was option 1a plus *'The Planning Board recommends considering replacement of the current interim zoning with county part two zoning.'*

Larsen agreed that was his motion.

**BOARD
DISCUSSION**

Stevens said he went before the commissioners and testified on the accessory dwelling unit text amendment. He could have cleared up some confusion for the commissioners if he had been allowed to speak as to what the board had thought when they forwarded the recommendation on the amendment. He could not do that since he had already spoken as a member of the public. He suggested having a member of the board sit with the staff so the commissioners could ask questions of if there were concerns.

Larsen said he was there, but did not speak representing the board.

Stevens said there was a benefit of having a member of the board at the commissioners hearing to answer questions.

The board and Grieve discussed the pros of having a member of the board available for the commissioners hearing as a resource person for difficult applications.

Schlegel said he was disappointed because the board had worked very hard on the recommendation and the wording of *possible* was the commissioners could take it or throw it out.

The board discussed briefly the work which had gone into the previous recommendation.

Grieve said if the board made a recommendation to the commissioner and they were ok with that recommendation, he would come back to the board and say let's start moving on the next thing. Based on the motion on the table, the board would start on a series of workshops to first repeal the 1996 Whitefish City-County Master Plan then consider part two zoning in the area. He summarized the process.

Schlegel said they should move forward with the process.

Larsen said it was an advantage to move ahead without spending time on the map. Let's get ahead on zoning. It was fairer to the people to move ahead and have a say on their zoning. Interim zoning expires in two years. He asked Grieve where they were in their timeline.

Grieve said September 9, 2014 was the date of interim zoning so they were four months into the 24 month timeframe.

Larsen did not see the point on wasting nine months on arguing over a map and eating into the time. He felt it was fairer to let the people weigh into their zoning.

Grieve asked if they wanted to set a workshop.

Stevens said there was still a motion on the table.

ASK THE QUESTION

Sirucek asked the question.

ROLL CALL VOTE TO RECOMMEND OPTION 1a WITH ADDITIONAL LANGUAGE

On a roll call vote the motion passed unanimously.

BOARD DISCUSSION

Grieve wanted to point out to the attorneys watching in the future, the motion which just passed was to take option 1-a off of the document entitled 'Rural Whitefish Planning and Zoning Jurisdiction Transition Option Analysis Matrix'. That document was posted on the Planning and Zoning website quite some time ago. Multiple workshops had been held, and the Planning Board had taken public comment on all those options including the previous recommendation as well as the current recommendation. There had been plenty of opportunity for input on this. This motion at this meeting, during an item on the agenda discussion is valid. He said he would take the modified recommendation back to the commissioners. He asked if the board would like to set a workshop. He said with the clock was ticking; the process would be moved along faster and gave different scenarios. A workshop did not require legal notice in

the paper, it would be noticed online.

The board discussed what was on future agendas. A workshop was set for February 11, 2015 after their regular meeting.

Grieve summarized what the process would be for the workshop. He asked if the board had anything they wanted him to prepare for them for the workshop.

The board and Grieve discussed how they could engage the public for future workshops, the option and cost of a mailing, notification of future workshops, hot spots for the zoning, how to deal with them, the option of having the area split into three specific areas for workshops and information the board wanted to have before the workshop on February 11, 2015. They decided to have a representative from the board attend the commissioners hearing concerning the amended recommendation.

NEW BUSINESS Grieve wanted to point out a lot of the information the board was commending him on was due to people working in the office.

ADJOURNMENT The meeting was adjourned at approximately 8:23 pm. on a motion by Schlegel. The next meeting will be held at 6:00 p.m. on February 11, 2015.

Marie Hickey-AuClaire, Chairman

Donna Valade, Recording Secretary

APPROVED AS **SUBMITTED**/CORRECTED: 2 / 11 / 14