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## Press Release

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### **Citizens for a Better Flathead Asks District Court to Rule on Legality of New County Zoning Policy**

In light of the Flathead County Commissioners' recent adoption of a new B-2HG zoning policy allowing for strip commercial development and retail sales and service uses along all major roads in the county, and in light of the first application of this zone to a 78.7 acre parcel on US Highway 93 just north of Kalispell, Citizens for a Better Flathead is today filing suit to ask the District Court to review and rule on the legitimacy of this zoning policy.

This new zoning policy is inconsistent with the Flathead County Growth Policy, which calls for limiting strip commercial development between towns and emphasizes the need to direct growth towards existing town centers:

The concern of seeing Flathead County turn into one continuous sprawling development was expressed in a variety of ways [during the development of the 2007 Flathead County Growth Policy]. Many residents of Flathead County do not want to see strip malls, used car lots, mini storage, warehouse stores, lumber yards, and other visually dominating land uses disrupt the perception of driving between unique rural communities. (Flathead County Growth Policy 2007, p 2)

At issue in this suit against Flathead County is the failure of this new B-2HG zoning policy to comply with the public's vision of how best to encourage economic development and where commercial growth should occur, as stated in Flathead County's Growth Policy, as well as its failure to comply with other legal standards. These legal standards include the requirement that the county adopt zoning compatible with affected cities and towns, as well as the duty to meaningfully consider significant issues raised by the public. Concerns raised by almost 900 members of the public include, among others, the well-documented research on the negative impacts of strip commercial zoning and its potential impacts on the Flathead's economy over time, concerns for impacts on road infrastructure and traffic, and concerns for the devaluation of investments that have been made by businesses, homeowners and existing cities and town centers.

**Sharon DeMeester, co-plaintiff** and a land owner and recently retired business owner, who lives in Ponderosa Estates, a subdivision on Hwy 93, is one of many residents of subdivisions that will be impacted by this new zoning that allows commercial uses to back up to within 20 feet of existing homes. She has decided to join Citizens for a Better Flathead in bringing this suit. DeMeester points out that the B-2HG zoning policy opens a “Pandora's box of unintended consequences.”

**DeMeester notes**, “In these challenging economic times, the Flathead needs to attract new business investments and tourists to sustain our local economy. But opening the door to strip commercial development along our major county roads is a recipe for turning the Flathead into an unappealing, Anywhere USA, hodgepodge of strip development.” She goes on to add that the “ugliness and unpredictable nature of strip commercial discourages business and residential investment, undermines the character of the valley and the economic health of our existing downtowns, as well as the residential neighborhoods that exist along the many roads that can be impacted by this zone across the county.” (Attached is a list and map of roads that this new zoning can be applied to.)

“Citizens for a Better Flathead fully supports the importance of economic development and job creation in the Flathead,” says **Lynn Stanley, Board Chair of Citizens for a Better Flathead**. “We believe that we can grow without destroying the very special characteristics of the Flathead that play such an important role in attracting new investment. There is an extensive body of research showing that communities that discourage highway sprawl and work together instead to direct growth towards existing town centers or appropriate industrial areas, create a quality of life that is attractive for business retention, new private investment, and to current and future residents and workers.” (See study resource sheet attached.)

**Mayre Flowers, Executive Director of Citizens for a Better Flathead** adds, “the Flathead County Growth Policy sets out policies developed from broad public input, which call for future growth that respects the world-class rural character of our small towns and the working lands that surround them as our greatest economic assets.”

The Growth Policy develops goals for protecting both the identity of individual communities and the overall rural character of Flathead County. Policies to achieve the goals balance the economic importance of growth and development with the need to protect the same characteristics that attract growth. (Source: Flathead County Growth Policy Chapter 1---The Character of Flathead County, pg. 2.)

Additionally, the Growth Policy specifically discusses the negative impact from strip commercial development:

All but one of the seven elements of the public’s vision for the future of the county outlined in Chapter 1 are directly impacted by the manner in which commercial land is developed. County residents regularly comment

on the need to prevent “strip development” from dominating the rural landscape between business centers. (Source: Flathead County Growth Policy, Chapter 2---Land Use, Pg. 22)

Key policies in the Growth Policy, including the following, call for an additional process to set forth more detailed standards:

“P.6.5 Conserve resources and minimize transportation demand by encouraging redevelopment and infill of existing commercial areas in the county.”

“P.7.1 Determine commercial development features that support the seven elements of the Flathead County vision detailed in Chapter 1: The Character of Flathead County.”

“P.7.2 Develop regulations that promote P.7.1 and mitigate the negative impacts of commercial development.”

Chapter 5: The Flathead Economy; p.69; concludes; “...Land area needs must be demonstrated together with strategies for steering commercial growth to selected locations. Such a coordinated effort will help to assure that Flathead County’s economic goals will be reached.”

**The public comment record shows** that prior to the county commissioners’ approval of this B-2HG zone **876 residents spoke up in opposition to the adoption** of the proposed new zoning designation while only **7 residents other than the applicants commented in favor**. The Cities of **Kalispell and Whitefish also submitted extensive comments opposing** this new zoning designation, and the county planning board recommended by a vote of 6 to 2 that the county commissioners deny the proposed change. Nevertheless, the county commissioners approved the new zone on July 27<sup>th</sup>, 2011.

**On December 5<sup>th</sup> the county held a public hearing on the first application of this new B-2HG zoning policy, known as Noonan et al., to 21 lots covering some 78 acres off of US Highway 93 North, near Ponderosa Estates.** Numerous neighbors surrounding this area turned out to protest, explaining that they had invested in their neighborhood with the understanding that the current zoning was established as agricultural and rural residential. They stated that they believed that this existing zone should be left in place to protect their homes and the investments they had made in them. They emphasized concerns that this new zone allows for almost any retail use within 20 feet of their homes. The commissioners, however, approved the Noonan et al. zone change application, after removing several lots that did not have direct frontage or an easement to US Highway 93.

Frustration similar to that of area homeowners was expressed earlier to the Flathead County Commissioners by **Howard Mann, owner and developer of Silverbrook**

**Estates**, a 325-acre subdivision built to City of Kalispell standards. Mann has invested more than \$4 million in high-capacity sewer and other utility pipes running to Silverbrook, at Kalispell's northern edge. Additionally, he has installed sidewalks, curb and gutters, stormwater systems and built extensive landscaping and buffers along the highway in compliance with standards for city zones. His development sits just across Highway 93 from the recently re-zoned Noonan et al. parcels. The Noonan et al. zone allows for some 69 different commercial uses including the catch all category of "general retail" with no requirement for sewer and water, and much lower standards for the overall development. **Mann's comments opposing the zone change as reported in the minutes of the county commissioners state, "[I am] surprised the county would even consider adopting a zoning text amendment that encompasses the city corridor between Kalispell and Whitefish, without sitting down with those entities to develop a comprehensive corridor plan that everyone is comfortable with."**

**The City of Kalispell** in its comments raised many concerns about the new zone, including the undesirable **impacts to traffic and road infrastructure** from permitting commercial development along all major roads in the county. New commercial development over the past decade north of Kalispell has required the addition of numerous additional stoplights, turn-lanes, and the diversion of federal funds, originally earmarked for the Kalispell Bypass, to build additional spur roads to the bypass to help to mitigate the traffic increases caused by this additional and rapid commercial growth. Still traffic congestion in this area is a frequent complaint heard in the Flathead. Federal funding for similar infrastructure fixes will likely not be available again for a long time and certainly not to address the scale of highway strip commercial development the B-2HG zone allows for.

Kalispell has planned for future commercial development within the city limits by already designating land to accommodate the next fifteen years of commercial needs for the Flathead region. Whitefish has similar plans to accommodate future commercial growth within the city limits. Kalispell and Whitefish have also both recently adopted new professionally reviewed transportation plans to accommodate this future growth. Flathead County, however, has chosen to reject a similarly prepared comprehensive transportation plan that the county commissioned and paid for. The rejected county transportation plan identified many existing deficiencies in the county's current transportation system and laid out recommendations to accommodate future growth.

Expressing its concerns over adding yet more commercial capacity to the region and the likely traffic issues the county would need to deal with (at a time when federal and state funds for highway expansions and maintenance are shrinking), the City of Kalispell submitted comments stating:

"Rezoning this area to B-2[HG] would not only legitimize commercial strip zoning along the highway but move Highway 93 North closer towards the uncontrolled commercial and industrial growth between Evergreen and Columbia Falls. The section of Highway 2 between Evergreen and Columbia Falls was constructed to four lanes to quickly move vehicle traffic between the two communities. However, a lack of vision along this corridor and

improper zoning has increased the number of stop lights and slowed down traffic directly conflicting with the intent of the highway to the point that now a free flowing federal highway intended to carry traffic at 70 mph has been reduced to a 55 & 60 mph highway that has become rife with traffic accidents. This negatively affects all of us.”

### **Nationally recognized Transportation Planner Dan Burden Visited Proposed Zone**

Last Spring, Citizens for a Better Flathead was asked by Marilyn Noonan, who along with a small group of other property owners proposed this new zone, to suggest “tweaks” that might make this a zone something that Citizens for a Better Flathead could support. In addition to contacting other professional planners around the region, we invited in nationally recognized transportation planner Dan Burden to visit the Flathead and to help us evaluate this proposed new zone. (In 2001, **Burden was named by TIME magazine as “one of the six most important civic innovators in the world.” Also that year, the Transportation Research Board of the National Academy of Sciences honored Dan by making him its Distinguished Lecturer. Burden has spent the last 35 years as a transportation/land use consultant receiving wide acclaim for his work.** (<http://www.walklive.org/>))

Burden spent a day meeting with residents along US Highway 93 corridor; however, none of the Noonan group, who was invited, chose to attend. After touring roads in the county where this zone can be applied Burden was asked if this was a type of zoning he saw being applied in some of the other 3000 plus communities he has worked in over the course of his career and if it was a zoning proposal that could be “tweaked” and improved. His response was a firm no, and echoed the concerns we had heard from other planners we had already spoken to. Burden concluded that, “To basically say that either US Highway 93 and even more surprisingly that all major roads in the county are now open to speculative investment and development is almost unheard of, and certainly in my long career in communities across the county I have only heard ill effects coming from this. It is not something that can be ‘tweaked and fixed.’” Burden also expressed concern for the likely negative economic impact this zone will have:

“I think this zone will over time harm a lot of people, a lot of businesses, and a lot of property values will get negatively impacted. This happens when a zone like this undermines the predictability and trustworthiness that people want to see, this happens when you lose the opportunity for people to work together to build something that is meaningful and respects the past, the history of place, and the values of the people. Taking time now to get professional help and to thoughtfully plan for highway corridor development in the Flathead represents a colossal opportunity for Flathead residents and the Flathead economy. To move forward without additional serious study, I think would be a recipe for colossal failure. ”

**A review of the area chambers of commerce and economic development agencies web sites** and promotional material, which promote and market the Flathead for business and job development as well as tourism, demonstrates that these agencies do not pitch the Flathead as a place where all major roads in Flathead County are open for strip commercial development, nor do they host images of strip commercial development. Quite to the contrary, they promote and describe the Flathead as follows:

“...[Kalispell’s] thriving economy, and exhilarating, growing community of friendly residents who take great pride in their home, are a few of the many reasons why the quality of life here is exceptional – and why the Flathead’s unparalleled beauty is treasured by all who live here.”

(<http://www.kalispellchamber.com/kalispell-montana/community/>)

“Over two million people visit the Valley each year due to the remarkable scenery and outdoor recreation opportunities. A surprising number of those visitors feel compelled to return and make the Flathead their home, incorporating their experience from around the world into the natural surroundings and relaxed lifestyle of the area.”

(<http://dobusinessinmontana.com/quality-of-life/>)

**Citizens for a Better Flathead believes that permitting over 63 possible commercial uses, including the catch-all category of “general retail,” to be located in a continuous pattern of strip development along all major roads in the county, and in existing neighborhoods along these roads, cannot begin to be mitigated by the inclusion of the minimal landscaped buffers and graduated building heights as called for in the new zone. We believe that the strip development this zone invites should be replaced with standards for limited nodes of neighborhood commercial development and standards for encouraging infill development in existing cities and towns. This is the development pattern supported by the public in the Flathead County Growth Policy.**

Additional documents and information detailing Citizens for a Better Flathead’s concerns with the County’s approval of this new zone can be found at [www.flatheadcitizens.org](http://www.flatheadcitizens.org).

**Since 1992, Citizens for a Better Flathead has worked to foster informed and active citizen participation in the decisions shaping the Flathead’s future, and to champion the democratic principles, sustainable solutions, and shared vision necessary to “Keep the Flathead Special Forever.”**