

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE
FLATHEAD COUNTY GROWTH POLICY AMENDMENTS
REMOVAL OF WHITEFISH INTERLOCAL AGREEMENT
STAFF REPORT FPMA-08-02
JUNE 24, 2008**

A report to the Flathead County Planning Board and Board of Commissioners regarding a request by the Board of Commissioners for amendments to the Flathead County Growth Policy to establish jurisdiction over all lands outside the City of Whitefish and remove references within the Growth Policy to the February 1, 2005 Interlocal Agreement with the City of Whitefish.

The Flathead County Planning Board will hold a public hearing at the Roy Duff Memorial Armory at 305 Armory Road in Whitefish, Montana on Wednesday, July 16, 2008 at 6:00 pm. Documents pertaining to this application are available for public inspection at the Flathead County Planning and Zoning Office, located in the Earl Bennett Building at 1035 First Avenue West, Kalispell, Montana.

I. BACKGROUND

On February 1, 2005 an Interlocal Agreement was passed between Flathead County and the City of Whitefish giving Whitefish jurisdiction over planning, zoning, subdivision review and lakeshore and floodplain permitting for an area around Whitefish and Whitefish Lake. On March 13, 2008 the Flathead County Commissioners passed Resolution #1783B which rescinded their consent to the 2005 Interlocal Agreement with the City of Whitefish.

The Flathead County Growth Policy was adopted on March 19, 2007 and contains references to the 2005 Interlocal Agreement in text, policies and maps. Since Flathead County has rescinded its consent to the 2005 Interlocal Agreement with the City of Whitefish, it is necessary to amend the Flathead County Growth Policy to remove references to the Interlocal Agreement and update portions of the document applicable to the acquisition by Flathead County of planning, zoning, subdivision review and lakeshore and floodplain permitting jurisdiction over lands outside the City of Whitefish.

II. PROPOSED AMENDMENTS

Below is a numbered list of specific proposed amendments to the text of the Flathead County Growth Policy, followed by a description of changes to the "Designated Land Uses, 2006" map. These changes are necessary to establish jurisdiction over all lands outside the City of Whitefish and remove references to the February 1, 2005 Interlocal Agreement with the City of Whitefish. Proposed deletions are shown ~~stricken~~ and proposed additions are shown *italicized*.

- 1) **Flathead County Growth Policy, Chapter 11, Goals & Policies, page 162:**

~~P.48.1 Maintain and continue coordination and review of the provisions of the existing interlocal agreement between Flathead County and the City of Whitefish. Promote representation by county officials of those residents outside the City of Whitefish, while giving consideration to both the interests of those residents as well as the growth needs of the City of Whitefish during county planning processes.~~

~~P.48.2 Maintain communication on planning issues adjacent to the interlocal agreement boundary. Request comments from City of Whitefish agencies on subdivision, zoning and other land use issues within 2 miles of city limits and give consideration to those comments during the county review process.~~

~~P.48.3 Annually review the provisions of the interlocal agreement for adequacy, accuracy and relevancy and revise as necessary. Whenever practical, hold additional public hearings and/or workshops on land use issues in locations convenient for county residents around Whitefish to attend.~~

2) Flathead County Growth Policy, Chapter 11, Part 1, page 165:

Whitefish

The City of Whitefish has a unique character and economy based on a history of railroading and tourism. Real estate and construction have emerged as additional drivers of the Whitefish economy. Whitefish is a rapidly expanding municipality with an economy that depends in part on maintaining the unique “mountain ski resort” character. However, some drivers of the Whitefish economy that are closely linked to the character of the town are located just outside city limits (*such as Whitefish Mountain Resort, Lost Coon Lake, Blanchard Lake and many of the lakefront properties on Whitefish Lake*). When economic success is inextricably linked to preserving and maintaining the unique character of a municipality and adjacent areas, it is appropriate for the municipality to have jurisdiction over those areas important for county planning and implementation efforts to give consideration to both the municipality’s growth planning as well as the desires of residents within those areas.

~~On February 1, 2005, under authorization by the Interlocal Cooperation Act (7-11-104 M.C.A.), the Flathead County Commissioners signed an interlocal agreement granting the City of Whitefish planning jurisdiction over an area adjacent to city limits. The interlocal agreement contains provisions for future cooperation, coordination and communication between parties and an annual meeting to review boundaries of the agreement. The agreement also transfers jurisdiction of Lakeshore Protection Regulations on Whitefish Lake to the City of Whitefish. During the process of planning for lands adjacent to the City of Whitefish, Flathead County representatives should work with local residents as well as representatives of the City of Whitefish to protect the quality of life of current residents, anticipate future growth of the city and accommodate the needs~~

of County government to provide services and facilities. This can partly be accomplished by holding public meetings regarding planning issues in convenient locations around Whitefish and by requesting comments from the City of Whitefish on planning issues. Further adherence to this process can be achieved by having land use issues (zoning, subdivision, etc.) reviewed by representatives of both jurisdictions prior to being decided on by the Flathead County Commissioners.

3) Flathead County Growth Policy, Appendix C, Part 1, page 38 (same policies as appear in Chapter 11 of Growth Policy, categorized as “Action Items”):

<p>P.48.1 Maintain and continue coordination and review of the provisions of the existing interlocal agreement between Flathead County and the City of Whitefish. Promote representation by county officials of those residents outside the City of Whitefish, while giving consideration to both the interests of those residents as well as the growth needs of the City of Whitefish during county planning processes.</p>	<p>Regular updates of interlocal agreement. Flathead County shall administer all planning and zoning, subdivision review, lakeshore protection regulations, and floodplain regulations outside Whitefish city limits.</p> <p>Standard adjacent property notification as well as legal notices.</p>
<p>P.48.2 Maintain communication on planning issues adjacent to the interlocal agreement boundary. Request comments from City of Whitefish agencies on subdivision, zoning and other land use issues within 2 miles of city limits and give consideration to those comments during the county review process.</p>	<p>Agency referral process.</p>
<p>P.48.3 Annually review the provisions of the interlocal agreement for adequacy, accuracy and relevancy and revise as necessary. Whenever practical, hold additional public hearings and/or workshops on land use issues in locations convenient for county residents around Whitefish to attend.</p>	<p>Regular updates of interlocal agreement. For routine, landowner-initiated applications follow standard public and adjacent landowner notification procedures, for county-initiated changes to plans and/or zoning follow standard public notice procedures and hold public hearings and/or workshops in or around Whitefish, as</p>

	<i>venues are available.</i> Same as P.48.1
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Flathead County Growth Policy, Designated Land Uses, 2006 Map:

Since the Flathead County Commissioners rescinded their consent to the Interlocal Agreement and the City of Whitefish therefore no longer has jurisdiction over lands outside city limits, the “2007 Whitefish City-County Growth Policy” no longer has jurisdiction over the lands outside Whitefish.

Chapter 10 of the Flathead County Growth Policy provides a list of existing plans incorporated into the Growth Policy as addenda when it was adopted (March 19, 2007). The Whitefish City County Master Plan (adopted by Resolution #677-G on 02/06/96) is already listed as an existing plan and therefore becomes the default plan by which the lands outside Whitefish City limits are governed, until such time as it can be updated. The map that accompanied that document (Whitefish City-County Master Plan Map Year 2020) replaces the area over Whitefish shaded brown on the “Designated Land Uses 2006” map.

III. REVIEW OF GROWTH POLICY AMENDMENT CRITERIA

1) Does the amendment affect overall compliance of the Growth Policy with 76-1-601 M.C.A.?

76-1-601 M.C.A. contains requirements for county Growth Policies to contain statements on “how the governing body will coordinate and cooperate with cities and towns located within the county’s boundaries on matters related to growth policy.” Interlocal Agreements are one way for cities and counties to coordinate and cooperate, but they are not required.

The amendments to the Flathead County Growth Policy as proposed will maintain compliance with 76-1-601 M.C.A. by outlining Flathead County’s policy on communication with the City of Whitefish on growth issues within 2 miles of the city limits. The proposed two mile boundary is adapted from 76-3-601(2)(b) M.C.A. regarding subdivision review near a second-class city and is a reasonable distance to extrapolate as a tool for coordination and communication on other planning issues.

2) Is the amendment based on existing characteristics and/or projected trends that are substantially different from those presented in the most recent update?

Resolution #1783B rescinding the Flathead County Commissioner’s consent to the 2005 Interlocal Agreement was passed on March 13, 2008. The rescinding of

the agreement creates a jurisdictional situation substantially different from that which existed when the Growth Policy was adopted (March 19, 2007).

The most recent update to the Flathead County Growth Policy was adoption of Appendix C: Implementation Plan on April 15, 2008. The jurisdictional characteristics created by the Commissioner's rescinding their consent to the Interlocal Agreement on March 13, 2008 are substantially different than those at the time Appendix C was adopted.

3) Does the amendment create inconsistencies within the document?

The proposed amendments do not contradict other sections of the document because they are located in a Chapter with few direct cross-references. Chapter 11 of the Flathead County Growth Policy is dedicated to statements of coordination. These statements, along with accompanying goals and policies function for their own purpose.

While there is certainly a relationship between the policies set forth throughout the document and the statements of coordination in Chapter 11, the proposed amendments avoid inconsistencies by retaining methods for coordination and cooperation with the City of Whitefish.

4) Does the amendment further protect and comply with the seven elements of the public's vision for the future of Flathead County?

According to Resolution #1783B rescinding the Flathead County Commissioner's consent to the 2005 Interlocal Agreement, the approximately 7,000 residents of the area outside the City of Whitefish but within the Interlocal Agreement jurisdiction have had their constitutional rights negatively impacted by the agreement. Furthermore, according to the resolution many residents within this area are significantly impacted by "enormous costs, regulatory burdens, vitiation of property rights, and potential loss of property values."

The amendments proposed would further the public's vision for the future of Flathead County by providing increased protection of the private property rights of those residents outside the city but inside the Interlocal Agreement area. Other elements of the public's vision will be protected by the Flathead County Growth Policy and subsequent county planning for the subject area.

5) Has the proposed amendment undergone a sufficient process of county-wide, public participation and review?

The amendments became available to the public on Wednesday, July 2 at 8:00 am. A legal notice of the proposed amendments appeared in the Daily Interlake on June 29, 2008. A copy of the legal notice and staff report was mailed to agencies on July 2, 2008. An email with a copy of the proposed amendments attached was

sent to the “growth policy update” list of just under 1,000 email addresses on July 2, 2008. A public hearing will be held in the Roy Duff Memorial Armory at 305 Armory Road in Whitefish, Montana on Wednesday, July 16, 2008 at 6:00 pm.

IV. COMMENTS RECEIVED

1) Agency Comments

Requests for comments were mailed to agencies with a copy of the legal notice and staff report on 07/02/08. Agency comment requests were not mailed earlier because the proposed amendments are contained in this staff report, which was finalized on 07/02/08. Agency comment requests provided the date of the public hearing and encouraged those agencies with comments to attend the hearing and present comments to the Planning Board.

2) Public Comments

A legal notice of the proposed amendments and public hearing appeared in the Daily Interlake on June 29, 2008. The staff report containing the proposed amendments to the Flathead County Growth Policy was available for public review at the Flathead County Planning and Zoning Office (1035 First Avenue West, Kalispell) from 8:00 am on July 2, 2008 until 5:00 pm on the date of the public hearing (July 16, 2008).

V. SUMMARY

The amendments to the Flathead County Growth Policy as proposed, when combined with a revised Planning Board and Commissioner’s resolution of adoption, are appropriate to establish planning jurisdiction of the Growth Policy over all lands outside the City of Whitefish. The Whitefish City-County Master Plan and Whitefish City-County Master Plan Map Year 2020, as adopted by the Flathead County Commissioners on February 6, 1996 and incorporated as an addendum to the Flathead County Growth Policy on March 19, 2007 is an adequate planning document to provide interim guidance until such time as it can be updated through a comprehensive planning process.

The Flathead County Commissioners are encouraged to adopt the proposed amendments to text and maps with an effective date that will allow time for staff to prepare new growth policies, update the “Designated Land Uses, 2006” map with the Whitefish City-County Master Plan Map Year 2020 land use designations, and more closely examine the mechanisms by which Flathead County staff will administer zoning, subdivision review, lakeshore and floodplain permitting as an implementation of planning documents.