



Press Release

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FOR IMMEDIATE RELEASE
9 P.M. MST, Dec. 13th, 2016

THE MONTANA SUPREME COURT AFFIRMS LOCAL GOVERNING BODIES MUST WORK TOGETHER

On Tuesday, December 13, 2016, the Montana Supreme Court affirmed the Flathead County District Court's 2013 decision in favor of Citizens for a Better Flathead that invalidated the Flathead County Commissioners' decision to re-zone approximately 60 acres of land bordering Highway 93 north of Kalispell into a "B-2HG" zoning classification. The B-2HG classification allows three categories of business uses along highway corridors in Flathead County: (1) permitted uses (uses allowed without further review, including banks, barber shops, bed and breakfast operations, hotels, and general retail and food stores with less than 5,000 square feet of gross floor area); (2) conditional uses (uses that are permissible but which require a public hearing, including bars and casinos, gas stations, funeral homes, farm equipment sales, supermarkets over 5,000 square feet, structure containing multiple and/or mixed permitted uses, and others); and (3) administrative conditional uses (uses that require county review, but do not require a public hearing, including lumber yards, day care centers, boat sales, and rental service stores and yards).

The cities of Kalispell and Whitefish joined Citizens and nearby property owners in objecting to the re-zoning during the public comment process before the Commissioners approved the re-zoning. The Supreme Court affirmed the lower court's decision that declared the rezoning invalid. The Supreme Courts relied on a number of grounds in concluding that the challenged re-zoning was in violation of the controlling zoning statutes. First, the Supreme Court determined that the Commissioners failed to properly ensure that the re-zoning was made in accordance with the Flathead County Growth Policy. Specifically, the Supreme Court noted that the proposed zone change along the busy Highway 93 corridor between Kalispell and Whitefish did not comply with important provisions of the Growth Policy, including avoiding strip development in rural areas between business centers, and the policy of mitigating traffic impacts by restricting direct access on to highways from private properties.

Second, and perhaps most importantly given the ongoing tension between land use decisions of the county and municipalities, the Supreme Court determined that the Commissioners failed to assess possible conflicts with planned city growth as required by

the zoning statute. As explained by the Supreme Court, "in view of clear conflict between the proposed Map Amendment and the stated growth purposes expressed in Kalispell's growth plan for property that was immediately adjacent to the city, it was incumbent on the County to more broadly consider this issue and assess the impact of the proposed Map Amendment on Kalispell's growth plans. As Citizens' briefing states, "[w]hile some tension [between county zoning and city planning] is perhaps inevitable, open conflict is unnecessary."" (Opinion at paragraph 25.)

Mayre Flowers, executive director of Citizens, stated that, "I am pleased with this important precedent, which will hopefully reduce the conflict between our county and our municipalities over land use decisions that affect both jurisdictions. Clearly, as affirmed by the Supreme Court, under our zoning laws both are given a voice in the decision making process."

The Montana Supreme Court ruling did not invalidate the county creation of the B-2HG zone, recognizing that as a mere zoning tool its legality is hinged to the location to which it might be applied. Should a request for the B-2HG zone be made for another area in the county, the legality of its application by the county will now be clearly tied, as the precedent of this Supreme Court ruling established, to being clearly compatible with nearby city zoning, the county growth policy, and other applicable state law.

Citizens for a Better Flathead recognizes that we are all fortunate to live in a truly "last best place." We are one valley and our quality of life, our economic future, and our children's future all depend on our respectfully working together. This requires each of us to support the community dialogue, necessary research, and visioning needed to find solutions that will sustain the special qualities of the Flathead. By planning to sustain the qualities that attract growth to our region, we can plan together for a prosperous future.

Additional documents and information about Citizens for a Better Flathead can be found at www.flatheadcitizens.org. [Click here](#) to read the full Montana Supreme Court Ruling.