

City accuses county of spot zoning in lawsuit

By HEIDI DESCH Whitefish Pilot | Posted: Tuesday, August 18, 2015 1:00 am

Whitefish has filed a lawsuit against Flathead County that claims county commissioners did not consider city input when rezoning a parcel of farmland in the former “doughnut” area.

The suit was filed last month in Flathead County District Court. The city is asking the court to declare the commissioners’ decision invalid when it approved a rezone of the 62 acres.

Also included in the lawsuit as a defendant is Evan Shaw, who requested the rezone of his property north of the intersection of Montana 40 and Whitefish Stage Road.

Commissioners approved the rezone in June which shifts the minimum lot size for the property from 10 to 5 acres.

Flathead District Judge Ted Lympus signed an alternative writ of mandate in the case. Lympus ordered the county commissioners to either revoke the zone change or appear in court on Aug. 28 to show cause why they shouldn’t throw out the zone change.

The city claims the rezone shouldn’t be allowed because the commissioners failed to follow state law, which requires the county’s zoning decisions be guided by its growth policy, community goals and the pattern of development.

Whitefish city attorney Angela Jacobs Persicke, in court documents, calls the decision, “unlawful, arbitrary and capricious.”

Persicke said the property is designated in the county growth policy as “important farmlands,” which calls for densities of one unit per 20 acres or more.

In addition, she points to the county planning staff report on the request that says the rezone does not comply with the city-county master plan and it is not compatible with urban growth in the vicinity of Whitefish because it would create a smaller lot size than is recommended under the city’s future land-use map.

In the lawsuit, Persicke said commissioners failed to recognize the city’s and public’s objection to the rezone.

“Commissioners failed to give any meaningful consideration to the city’s position, which was stated numerous times that the city opposed the proposed zoning map amendment,” she said.

City planning director Dave Taylor stated the city’s opposition to the zone change in letters to commissioners and at public hearings.

Persicke notes that a neighborhood campaign to halt the zoning request garnered 101 individual protests or 31.9 percent of the property owners in the Southeast Rural Whitefish Zoning District. Forty percent was needed to stop it.

Persicke says the requested rezone benefits only one owner — Shaw.

She claims the rezone is incompatible with the city-county master plan, the city growth policy and the city's long-range planning and zoning. Based on this, she says, the rezone "constituted illegal spot zoning."

In court documents, the city is asking the court to direct the county to withdraw the rezone and that the commissioners should "conduct any further proceedings in regards to the proposed zoning amendment in accord with the provisions of Montana zoning statutes, controlling case law, and the [Flathead County Zoning Regulations]."

In addition, the city is asking for recovery of its costs and attorney fees related to the lawsuit.

Lympus is retiring at the end of the month. Montana Supreme Court Chief Justice Mike McGrath signed an order calling retired District Judge Kitty Curtis to assume jurisdiction of the lawsuit, and Curtis has agreed to hear the case, according to court documents.