

WHITEFISH CITY COUNCIL EXECUTIVE SESSION

July 15, 2013
5:30 pm to 7:00 pm

A Closed Executive Session for litigation update with the City Attorney. Present were Mayor Muhlfeld, Councilors Mitchell, Sweeney, Anderson, Hildner, Hyatt and Kahle. City Staff present were City Manager Stearns, City Attorney VanBuskirk and Senior Planner Compton Ring.

WHITEFISH CITY COUNCIL MINUTES

July 15, 2013
7:10 P.M.

1. CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Mitchell, Sweeney, Anderson, Hildner, Kahle and Hyatt. City Staff present were City Manager Stearns, City Clerk Lorang, City Attorney VanBuskirk, Assistant City Manager/Finance Director Knapp, Senior Planner Compton-Ring, Public Works Director Wilson, Police Chief Dial, and Fire Chief Kennelly. Approximately 12 people were in attendance.

Councilor Hildner welcomed his daughter, Erika to the meeting.

2. PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Jen Frandsen to lead the audience in the Pledge of Allegiance.

3. PRESENTATIONS – Update on high school construction project and budget – Dow Powell

Dow Powell said they heard they've been lax at giving the Council an update, so he was here tonight to update them and show a power point presentation. He said one of the school employees brought an idea to their attention and it involves the existing foyer. The initial plan had a 13.5 foot hallway connecting the new portion of the school to the old portion of the school and they realized it wouldn't be wide enough for half-time crowds at games or large events. They determined that if they kept the existing foyer and bathrooms the school would gain the existing 4,000 square feet and save on the expenses in the budget. Even with the foyer renovation the savings is about \$244,000. He said the gym is now complete. The locker room and weight rooms are in progress. The Iron Horse Foundation gave a \$1 million commitment for this project, (\$900,000 for construction and \$100,000 to purchase equipment). He said bid package 2 is the structural part of the project. In the next 30 days they will have steel going up and framing will start about the 23rd and will include all of the walls and the roof. The sewer tie-in is just about complete. He said they are trying to get the mechanical room changed over before school starts. They hope to have the locker rooms up and running for football season.

He said that bid package #1 was \$892,515 and with change orders and credits they got \$25,084. Bid package #2 was \$2,620,000 and included underground plumbing. To date, with change orders,

deductions and reductions it is \$2,677,855 which is about \$10,000 over. Bid package #3 was approved at \$10,442,987 and the low bid came in at \$11,570,066 and they are researching ways to save money. When value engineering is included in the calculation it brings it down to \$10,514,629. The School Board approved bid package #3 last week and the bidders are working on other areas for savings. Proposed solutions include using school TIF money, if possible, or using a portion of the furniture budget (FF&E) which is at \$900,000. He said they don't really have a contingency budget at this time and they'd like to have one.

Councilor Hyatt said in the beginning they talked about technology advancements in the building and Dow said they have not addressed the technology aspect of this project; they have been concentrating on constructability. Councilor Mitchell asked if the money from Iron Horse freed up some of the other budget money and Dow said the media arts room and locker rooms were put on an alternate list in Bid package #3, so they went out to find fundraising for it. Dow said Iron Horse approached them and wanted to get a better cardio area attached to the weight room and to help with the locker rooms. Councilor Mitchell asked and Dow said they are not shorting technology, just not currently addressing it. Councilor Mitchell said they are off budget by about \$260,000 and Dow said the School Board is working on it and realtors are working on selling the alternative high school. Councilor Mitchell said they were initially told that the part that is now being saved wasn't worth saving. Dow said it is worth saving and when they go to ARC they will break up the look of the building, too, and he thinks that has value. Councilor Mitchell said it has been a frustrating process, and he appreciates Dow coming tonight. Councilor Kahle thanked Dow for the update. He said there was a \$25,000 credit in phase 1; they are \$57,000 over on the second phase. Manager Stearns said they put the underground package (\$68,497) into bid #2, so, except for that they would have been off \$10,000. Councilor Mitchell said they are \$267,000 over budget and that is the bottom line. Mayor Muhlfield said the project leaders were given large marching orders and they've done a good job of cobbling together the project and the budget. He thanked the Iron Horse Foundation for their help and the building and design team for all of their work.

4. COMMUNICATIONS FROM THE PUBLIC—(This time is set aside for the public to comment on items that are either on the agenda, but not a public hearing or on items not on the agenda. City officials do not respond during these comments, but may respond or follow-up later on the agenda or at another time. The Mayor has the option of limiting such communications to three minutes depending on the number of citizens who want to comment and the length of the meeting agenda)

Mayre Flowers, Citizens for a Better Flathead at 36 4th Street West, said the pharmaceutical collection program included a drop box in the police stations in Whitefish and Columbia Falls and at the sheriff's department in Kalispell. She said 400 pounds of pharmaceuticals were collected and 349.8 pounds were from the county, 25.6 pounds were from Columbia Falls, and 14.4 pounds from Whitefish. She said collection of old pharmaceuticals is a real service to the public and protects water supplies. She said she looked forward to more participation from Whitefish.

Matt Baldwin, Woodside Lane, encouraged them to have a public discussion about the City's impending maneuvers with the donut planning negotiations. He said this is an important discussion. He isn't an expert on the open meeting law, but he feels that the residents and press deserve to hear the City's stance and how each Councilor votes on this matter. He said as the *Whitefish Pilot* he represents the public and lets them know what is happening. He has asked about closed meetings before, but he thinks the residents of Whitefish deserve to hear an open discussion tonight.

Mayor Muhlfeld said they discussed this briefly in their closed session and he thinks the public can anticipate comments from the Councilors at the end of the meeting.

5. COMMUNICATIONS FROM VOLUNTEER BOARDS

Councilor Hildner said he attended the budget oversight meeting and he thinks Dow did a good job of bringing everyone up to speed. Councilor Hyatt said the Parks and Recreation Department will be putting their Master Plan in front of the Planning Board. Councilor Mitchell said the Park Board met and they are looking at how to modify the proposed landscaping along Highway 93 West to be more suitable and more easily maintained which should result in a better final product. He is proud of what that group has done so far. Mayor Muhlfeld said on July 13th he attended the opening ceremony for the Living Wetlands Trail and over 150 children and adults made their way through the trail. It came along as a PUD years ago and this is a definite public benefit. He liked watching people with disabilities and children learn how the wetlands play a critical role in water quality. He congratulated and thanked the Whitefish Lake Institute, the Averill's and the Friends of Wisconsin Avenue Wetland group. He invited the Councilors and the public to the fundraiser for the Institute on July 25th and 26th.

6. CONSENT AGENDA-(The consent agenda is a means of expediting routine matters that require the Council's action. Debate does not typically occur on consent agenda items. Any member of the Council may remove any item for debate. Such items will typically be debated and acted upon prior to proceeding to the rest of the agenda. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)

6a. Minutes from the July 1, 2013 Council special session (p. 25)

6b. Minutes from the July 1, 2013 Council regular session (p. 26)

Councilor Kahle offered a motion, seconded by Councilor Anderson, to approve the consent agenda. The motion passed unanimously.

7. PUBLIC HEARINGS (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30 minute time limit for applicant's land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)

None.

8. COMMUNICATIONS FROM PARKS AND RECREATION DIRECTOR

8a. Consideration of Park Board recommendation to purchase Soroptimist Park playground capital equipment from Resort Tax fund prior to FY14 Budget adoption (p. 36)

Ron Brunk, with the Park Board, reported that Soroptimist Park is a 1 acre park located in the north central part of Whitefish. The playground equipment is over 30 years old and doesn't meet current standards. He said they've had new playground equipment in the budget for two years. The bid is \$57,600 for the equipment delivered and installed. The Park Board thinks it is overdue and they ask the Council to support this request.

Councilor Mitchell asked if there was money and Manager Stearns said there is money in the Resort Tax for this project. Councilor Kahle asked about the money for bleachers at Memorial Park and Manager Stearns said that is separate request and that money is currently being set aside and paid out as pledged. They wanted to change the playground equipment on Pine Avenue, but there wasn't enough

money to do both so this year they are focusing on the Soroptimist Park. Ron Brunk said Kiwanis is looking at working with the City, perhaps to help with playground equipment at the other park. Mayor Muhlfeld said he asked if Resort Tax dollars could be used for park capital improvements and City Attorney VanBuskirk said it could.

Councilor Hyatt offered a motion, seconded by Councilor Kahle, to approve the FY14 budget expenditure of \$57,600 for the purchase and installation of new play equipment and fall material for Soroptimist Park.

Mayor Muhlfeld said he thinks many families in that neighborhood will be happy.

The motion passed unanimously.

9. COMMUNICATIONS FROM PLANNING AND BUILDING DIRECTOR

9a. Consideration of application from Bevill Limited Partnership for a minor, two lot subdivision preliminary plat for Orchard Lane 2 consisting of two lots at 463 and 465 Colorado Avenue (p. 39)

Planner Compton-Ring reported on a request by Bevill Limited Partnership for preliminary plat approval of a two-lot subdivision with an existing townhouse building. The updated regulations allow small projects to come directly to the Council. The subject property is approximately 0.354-acres. The townhouse received Architectural Review approval in 2012 and the construction of the townhouse was completed on January 22, 2013. The owner has the units for sale and the prospective purchasers are interested in owning the units along with the land.

The property is located on the east side of Colorado Avenue between Aspen Grove Street and Cedar Street. The property is addressed as 463 & 465 Colorado Avenue; the lots are 7,914 and 7,491 square feet. It is zoned WR-2, Two-Family Residential District, intended for residential purposes to provide for one and two-family homes in an urban setting connected to all municipal facilities and services. This application is reviewed as a minor subdivision in accordance with the Whitefish Subdivision Regulations. Each lot will have access via a new internal private street ending in a suitable emergency turn around. This driveway and private street are currently not paved due to the utility installation, but it needs to be paved and meet emergency access prior to final plat per the zoning regulations.

An engineered storm drainage plan is required, as the resulting impervious surface will result in more than 5,000 square feet. The plan should include a long-term maintenance plan for Homeowners' Association implementation. City water and sewer have been extended to serve the lots within the development. The existing service line to Lot 2 will need to be abandoned and connected to the sewer main prior to final plat. Subdivisions creating one additional lot are exempt from parkland dedication requirements and no parkland is being proposed. Impacts to the parks in the area as a result of this subdivision will not be significant. The Whitefish City Growth Policy designates this area as Urban. The density and zoning of the subject property falls within the guidelines for the Urban designation according to the Whitefish Growth Policy.

It is recommended that the Whitefish City Council adopt the findings of fact within staff report #WPP 13-03 and approve the preliminary plat for Orchard Lane 2, as submitted by the applicant, subject to the following conditions:

1. The development of the subdivision shall be in substantial conformance with the approved preliminary plat.
2. The existing service line to Lot 2 will need to be abandoned and connected to the sewer main prior to final plat. (Engineering Standards, Chapter 4; Staff Report, Finding 4)
3. The private road and driveway shall be paved prior to final plat. (Whitefish Zoning Regulations, §11-6-3-1D; Staff Report, Findings 1 and 4)
4. The applicant shall submit a site specific drainage plan that shows how runoff water from the impervious surfaces will be retained on site. (Engineering Standards, Chapter 5; Staff Report, Finding 3)
5. All areas disturbed because of road and utility construction shall be re-seeded as soon as practical to inhibit erosion and spread of noxious weeds. (Whitefish Subdivision Regulations, §12-4-30)
6. That a common off-street mail facility shall be provided by the developer and approved by the local post office. (Whitefish Subdivision Regulations, §12-4-24)
7. The following notes shall be placed on the final plat:
 - a. *The internal road shown on the final plat are intended to be privately owned and maintained and open to the public. It is understood and agreed that these internal roadways do not conform to City requirements for public roadways. Because of the road configuration, they are not suitable for all-season maintenance by the public authority. The owners (and successors in interest) of the lots described in this plat will provide for all-season maintenance of the private roadways by creation of a corporation or association to administer and fund the maintenance. This dedication is made with the express understanding that the private roadways will never be maintained by any government agency or public authority. It is understood and agreed that the value of each described lot in this plat is enhanced by the private nature of said roadways. Thus, the area encompassed by said private roadways will not be separately taxed or assessed by any government agency or public authority.*
 - b. That house numbers shall be posted on the house in a clearly visible location.
 - c. Garbage shall be stored in a secure location until the day of pick up or in a bear proof container pursuant to §4-5-4A.
 - d. All noxious weeds, as described by the Whitefish City Code, shall be removed throughout the life of the development by the recorded property owner. (Subdivision Regulations, Appendix D)
8. A Homeowners' Association shall be responsible for snow plowing the private road and maintaining the stormwater facility. The CC&Rs shall contain a maintenance plan for the facilities they are responsible. (Staff Report, Findings 1 and 3)
9. The preliminary plat is valid for a period of three years from the date of approval. (Whitefish Subdivision Regulations, §12-3-8)

Councilor Hildner asked about bear resistant containers and Planner Compton-Ring said it is standard language. Councilor Sweeney said nothing is changing, except the ownership of the property and Planner Compton-Ring agreed. Councilor Hildner asked about the homeowner's agreement and the

applicant said the homeowner's standards on animals can be changed to match the City's standards (re: chickens).

Councilor Anderson offered a motion, seconded by Councilor Sweeney, to approve the Preliminary Plat of Orchard Lane 2, a minor 2-lot subdivision at 463 and 464 Colorado Avenue, adopt the findings of fact and subject to the nine conditions within staff report #WPP 13-03.

The motion passed unanimously.

10. COMMUNICATIONS FROM CITY MANAGER

9a. Written report enclosed with the packet. Questions from Mayor or Council? (p. 78)

Councilor Kahle asked about downtown parking. Manager Stearns said he and Councilor Anderson met with the Heart of Whitefish last week and they are trying to finalize a date to meet with the working group. Mayor Muhlfeld asked about the application and bids for the grant for tree-thinning and Manager Stearns said he didn't know what the bids were. Public Works Director Wilson said he would check into it and send out an email to the Council. Councilor Hildner said the \$18,000 on the Fire Safe Grants would represent about 25%. Manager Stearns said Director Wilson could update that in the email to the Councilors.

9b. Other items arising between July 10th and July 15th

Manager Stearns said they put up the gateway way finding sign and Welcome to Whitefish sign near Walgreens. He commended the Public Works crew that helped complete the project.

11. COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

11a. Standing budget item - None.

11b. Email from Kimberly Sikorsky of Jersey Boys Pizza requesting changing one 2 hour parking space on 1st Street or Spokane Avenue to a 15 minute loading/unloading zone parking space (p. 93)

Councilor Hildner asked and Director Wilson said Public Works didn't have an opinion on this. Manager Stearns said two comments were received from City staff who felt it would set a bad precedent. However, Director Taylor said he knows of problems parents have making quick stops in and out of the Middle School so he thought that maybe a 15-minute parking spot on the east side of Spokane would be valuable. Manager Stearns said the Jersey Boys already have an existing sign for delivery parking only. Councilor Hyatt said he thinks it is more important for the school than for the pizza place. Manager Stearns said these types of spaces are difficult to enforce, so the signs aren't foolproof. Councilor Mitchell asked and City Attorney VanBuskirk said having special parking places for particular businesses is hard to provide for all those for whom it would benefit. Mayor Muhlfeld said this is coming from Jersey Boys, but if the school wants a spot it should come from them. Councilor Mitchell said there are a lot of businesses who would like a 15-minute parking spot, but he doesn't think they can start this precedent. Councilor Anderson agreed. The rest of the Councilors agreed.

11c. Email from Fred Frost regarding fireworks (p. 96)

Councilor Hyatt said he lives in the same neighborhood and the fireworks went off at 5 a.m. Manager Stearns said Chief Dial responded to Mr. Frost. He said they had about 50 calls per day and gave out 13 citations. The Police Department is recommending that all the citations be issued for \$500 fines, so they are taking in fairly seriously. He said 46 people may face \$500 fines. Councilor Hildner applauded that recommendation. He suggested that they have a discussion on whether they want to shorten the fireworks to only July 4th within City limits.

Mayor Muhlfeld inquired whether there is a motion following the executive session.

Councilor Hildner offered a motion, seconded by Councilor Sweeney, to approve the filing of the stay pending appeal and to authorize the appeal of Judge Ortley's July 8, 2013 Order in the Phillips lawsuit to the Montana Supreme Court.

Councilor Mitchell said this is the hardest thing that he has done. He has always tried to work things out without going to court. He is trying to figure out how they're affecting people who live in the donut and they still don't have answers. He said philosophically he is opposed to this, but he understands why they are doing it. He said he wanted the public to understand that he was struggling with this tonight. Councilor Kahle said he also struggles with this, but as an elected official for the City of Whitefish his responsibilities are for the City. He said they need to remember that the City was sued and they need to see it through to the end. He hopes they can continue to negotiate with the county. Councilor Hyatt said when he was elected he stood on the fact that he wanted people to have representation and the people in the donut still don't have representation. He said he didn't believe they need to take this to the Supreme Court.

The motion passed 4-2 with Councilors Hyatt and Mitchell voting in opposition.

Councilor Hildner thanked Attorney VanBuskirk and Manager Stearns for service above and beyond the call of duty. He saw Attorney VanBuskirk pulling weeds outside the old police station and Manager Stearns with his hands full of garbage he picked up on his walk to work. He thanked both of them for their efforts. He said if every person picked a weed or picked up litter they'd be a lot further along. He said the cable on the City parking lot is frayed and needs to be replaced. He said the weeds at Baker Commons got mowed and he thanked them for that and said it looks a lot better. He passed out gummy worms for national gummy worm day.

Councilor Hyatt said he went out to the Viking Creek restoration and preserve with his daughter and it is an incredible trail. He thanked Mike Koopal, the Whitefish Lake Institute and the Averill family.

Councilor Anderson said the 13-year old all stars won the All-Star tournament. He said the 12-year olds have a tournament in Columbia Falls this weekend. He said the local teams have really gotten to know each other and it is about families and it affirms why they live here. Councilor Kahle read an email from Doug and Nikki Reed who want more recycling in Whitefish. She said they launched a boat from Whitefish city beach and saw a lot of garbage overflowing. Mayor Muhlfeld said a Whitefish High School student called who said he was working on an Eagle project, maybe this would be a good fit.

Manager Stearns said glass recycling is a problem, but they can look at what they can do. Councilor Hildner said Compton-Ring completed the half marathon and he congratulated her.

Mayor Muhlfeld said the results of the septic leach investigation of Viking Creek and City Beach was completed in May and he wondered what they found. Director Wilson said there was some contamination along those areas and the sewer lines were reviewed via camera, but they weren't failing. He suggested the investigators look into septic tanks along Viking Creek. Mayor Muhlfeld said he saw the City Parks crew refurbishing the garden beds along Highway 93 south and he wanted to thank Director Cozad and the staff. Mayor Muhlfeld said the county is looking at a shortfall of \$50,000 in the county landfill recycling program. He said Mayre Flowers was quoted as saying that perhaps the next step would be to form a working group and he will pass that idea along to the county, letting them know the City would be willing to participate.

Mayor Muhlfeld said the invasive species check station team is set up in Hungry Horse. Councilor Sweeney asked if they've had to quarantine any boats and Manager Stearns said he would ask Director Cozad to let them know. At City Beach the big improvement is that the Whitefish Lake Institute has someone there from 8 a.m. to noon on Saturdays and Sundays. Councilor Hyatt asked and Mayor Muhlfeld said Flathead Basin Commission, the City of Whitefish, the Bureau of Reclamation through USFS and Trout Unlimited all contributed to the cost of the invasive species station. Mayor Muhlfeld said Happy Birthday to Betty Adams who turned 94 this summer. Councilor Mitchell said Highway 93 West is looking really good.

11. ADJOURNMENT (Resolution 08-10 establishes 11:00 p.m. as end of meeting unless extended to 11:30 by majority)

Mayor Muhlfeld adjourned the meeting at 8:31 p.m.

Mayor Muhlfeld

Jane Latus Emmert, Recording Secretary

Attest:

Necile Lorang, City Clerk