

## WHITEFISH CITY COUNCIL MINUTES

August 5, 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, Planning and Building Director Taylor, Public Works Director Wilson, Parks and Recreation Director Cozad, Police Chief Dial, and Fire Chief Kennelly. Approximately 4 people were in attendance.

### **2. PLEDGE OF ALLEGIANCE**

Mayor Muhlfeld asked Dan Weinberg to lead the audience in the Pledge of Allegiance.

3. **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) **None.**

### **4. COMMUNICATIONS FROM VOLUNTEER BOARDS**

Councilor Hildner said the Weed Committee met and discussed weed infested areas and Parks Director Cozad is going to send the information on to those to whom it applies. The Committee has discussed reviewing that Ordinance to tighten it up. He said weed issue awareness was raised through the water bill mailings and there were lots of phone calls; Phil Holmes in Code Enforcement said the first day after the bills went out he received 25 calls, then 15 and 10 on the next two days. There will also be weed examples this week at the Farmer's Market for public information.

Councilor Hildner said the Bike/Pedestrian Path Committee met and the Skye Park Bridge final easement language is being reviewed by the City Attorney. They hope construction will begin next year. He said the Dodger Lane project is moving along on schedule. Both bridges are partially painted – there is more to do. The Committee is working on the Stumptown Inn Trail access easement and they found out a stairway from the new bridge on Hwy 93 W can't be done – that will end up being just a minimal path down to the river. The Safe Routes to School Program is now a competitive process and the application is due in September. He said they need to come up with a park plan for the new park near the roundhouse, and follow with an update to the Park's Master Plan.

Mayor Muhlfeld said he attended the Whitefish Lake Institute fundraiser and they netted close to \$32,000. He thanked everyone who attended and donated.

5. **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)

### **5a. Minutes from the July 15, 2013 Council regular session (p. 25)**

**5b. Resolution No. 13-13; A Resolution amending Resolution No. 12-15 to extend the duration of the Whitefish Community Wastewater Ad Hoc Committee through December 31, 2014 (p. 33)**

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

**6. 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.**

**7. COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR**

**7a. Consideration of approving a design engineering contract for stormwater projects with Robert Peccia and Associates (p. 35)**

Public Works Director Wilson said the Public Works Department issued a public advertisement for Statements of Qualifications from engineering firms interested in our 2013 Storm Drainage Improvements Projects. Staff received responses from six firms and interviewed four. The Public Works Department commenced contract negotiation with the two highest ranked firms, Robert Peccia & Associates, (RPA) and the WGM Group, immediately following interviews.

The scope of work for RPA includes the following for a fee not to exceed \$49,200 from the Stormwater Fund:

- Evaluation of drainage needs in the Crestwood area and recommendations for future improvements. Any construction schedule will depend on the scope and cost of recommended improvements. He recommended a way to get the water out of the neighborhood.
- Evaluation of storm drainage flows and impacts on Birch Hill Drive and Parkway Drive, with recommendations for future improvements. Outfalls onto private property north of Parkway Drive are known to impact private property. Any construction schedule will depend on the scope and cost of recommended improvements.
- Evaluation of issues at City Beach related to boat bilge discharge and petroleum contaminants. Tasks will include coordination with regulatory agencies and review of Best Management Practices, leading to recommendations for future improvements. Our goal is to install these improvements no later than the spring of 2014.
- Evaluation of drainage needs for Armory Road in the vicinity of Armory Park, with attention to the condition and maintainability of the downstream storm main crossing Armory Park from south to north. Our goal is to implement recommended improvements in the fall of 2013. The issue is that there are no manholes in the system and it drains a very wet area.

Councilor Mitchell asked about State Park Road and Director Wilson said the pressure for development has slowed down out there and that is on a future project list. Councilor Hyatt said he sat in on the interviews and RPA had some great ideas.

**Councilor Hyatt offered a motion, seconded by Councilor Anderson, to approve a design engineering contract for Phase I evaluations of storm drainage improvements with Robert Peccia and Associates, in an amount not to exceed \$49,200, for preliminary engineering in the Crestwood, Parkway Drive, City Beach and Armory Park areas. The motion passed unanimously.**

**7b. Consideration of approving a design engineering contract for stormwater projects with WGM Group (p. 35)**

Public Works Director Wilson said the scope of work for WGM Group involves the evaluation of drainage needs along Monegan Road north of JP Road, with tasks including preliminary needs assessment, hydrologic analysis, and evaluation of alternative solutions, public involvement and recommendations for improvements. Staff foresees a contract amendment to enable engineering design in the fall of 2013 and a schedule for construction in 2014, based on the availability of funds. Staff has negotiated a fee not to exceed \$25,460 from the Stormwater Fund.

**Councilor Hyatt offered a motion, seconded by Councilor Anderson, to approve a design engineering contract for Phase I evaluations of storm drainage improvements with WGM Group, in an amount not to exceed \$25,460, for preliminary engineering in the Monegan Road area, north of JP Road. The motion passed unanimously.**

Director Wilson said he hopes to be back in a few months with follow up recommendations for some of these projects. Councilor Mitchell asked if they ever thought of draining Monegan Road into the river and Director Wilson said they have to treat it first, but that is a routine process. He said there is a site constraint there, which is one of the challenges.

**8. COMMUNICATIONS FROM CITY MANAGER****8a. Written report enclosed with the packet. Questions from Mayor or Council? (p. 38)**

Councilor Kahle thanked Chief Kennelly and the Firefighter's Association for the brush truck. Councilor Mitchell asked if there were any excess funds in the Tester grant after the final ESC report and Manager Stearns said when the Council approved the bay door replacement it used up all of the money and some impact fee money. Mayor Muhlfeld said the new Welcome to Whitefish sign looks good and he thanked Public Works for helping to get that done. Mayor Muhlfeld asked and Manager Stearns said he was able to move the permitting tag from MDT so it is less obtrusive. Councilor Mitchell said the sign looks really nice and he also thanked Manager Stearns for fixing the rails at the parking lot on 1st Street & Central Avenue.

**8b. Other items arising between July 31<sup>st</sup> and August 5<sup>th</sup>**

Manager Stearns said last week DNRC approved two planning grant applications. The first grant provides \$50,000 for an engineering report for the Stormwater Inflow and Infiltration (I & I) improvement project and will allow the City to apply for a TSEP grant during the next legislative season. In the past, part of the work included slip lining the inside of the pipes. The second grant is for \$5,000 for the Whitefish Wastewater Improvement Project, for a preliminary engineering report for a sewer extension project and will also allow the City to apply for a TSEP grant.

He said he sent the Councilors an email today after the City received its Certified Taxable Value from the Department of Revenue; the City's value increased only 2.19%. The Preliminary Budget estimated the growth at 4%, but it is only a \$47,465 impact. The Final Budget will reflect the change in a lower year-end cash value unless the Council directs staff otherwise. He said the street light district

assessment will be increased by 10%, but offset by a reduced tax rate so that, hopefully, it is revenue neutral from some.

**8c. Consideration of request from WAVE Board of Directors for reimbursement of building permit fees and impact fees for WAVE expansion (p. 43)**

Manager Stearns said he wrote a staff report outlining the history and the current issue. He said that Dan Weinberg, one of the founders of the WAVE and Treasurer of the WAVE Board came to see him about the \$25,622.06 cost for the building permit and impact fees. Mr. Weinberg and other members of the WAVE Board felt that the January 15, 2004 Agreement meant that all building permit and impact fees would be waived, not just for the initial construction of the original WAVE facility. The WAVE has planned for its second major expansion for the past year. After getting architectural review approval, the building permit and impact fees for this expansion was calculated to be \$25,622.06. The start of construction was delayed because of concern over the amount of these permit and impact fees and then whether the agreement between the WAVE and the City provided that the City should be responsible for the fees.

Bart Erickson, 321 Fairway Drive, is on the WAVE Board. He said the Duck Derby is this weekend and he invited them to attend. He said the WAVE was a joint venture with a non-profit group and the City. It is a successful partnership, currently there are 4,836 regular members and 241 30-day memberships as well. There are 95 employees, with 30 full time employees. He said the City helps make this happen. He said Manager Stearns sits on the Board and keeps an eye on the money coming in and out; they take their fiduciary responsibilities very seriously. He then gave the Council a legal argument. He said the original agreement provided a waiver of the impact fees and inspection fees. He said former Attorney John Phelps said he never intended that the waiver of the fees would be ongoing, but the 2006 amendment refers to paragraph 13 of the Master Agreement with respect to improvements. He thinks that it allowed a waiver that is still viable today. He said the 2010 lease agreement contains language in paragraph 6 that says the WAVE will be responsible for all fees and costs. He said the 2010 agreement only applied to the lease, so it doesn't apply to the agreement that applied to the fees. He said the waiver of fees should still apply. He said the City still owns the building. They would be assessed themselves for the fees. He said public raised \$500,000 for the initial project and the City only put in about \$200,000. He said the WAVE management is required to maintain the facility for the public. Per the agreement the City's Parks and Recreation Department has free use of the facility and the fees for the public are kept as affordable and as reasonable as possible; they give the public a good deal. A scholarship program is available for different levels of financial assistance and is used by about 300 members. They give free swimming lessons to 3<sup>rd</sup> graders; and the facility is used by the Red Cross for blood drawings; and ski swaps and graduation parties are held at the WAVE. He said no other non-profit is required to do as much as they are required to do for the community and he asked them to consider waiving the fees.

Councilor Sweeney said they make references in this agreement that make it a contractual agreement. He doesn't see any other facility where private funds were used to create the facility and then it was handed to the City for use. He said he would have no problem waiving the impact fees and building fees for this facility. This building was built with private funds and given to the City.

Councilor Hyatt asked and Councilor Mitchell said Smith Field was also built by private funds and turned over to the City. Manager Stearns said making the argument for a legal point of view might not be the best way to look at it. It is not the most important issue. He said equity is a better argument;

he said he can see both sides. There is the aspect that if these entities don't come to the City in advance asking for money for these fees, then they come later and it makes it seem like they are pressuring the City. He said Dan Weinberg thought the waiver of the fees would continue beyond the initial construction as an example of the partnership between the WAVE and the City. He said there is a legitimate argument on equity. He said a few years ago instead of waiving fees the City appropriated money for reimbursement, so it does not set a precedent. He said since they render building inspection services the City should get money for those fees. If they want to reimburse this money then he would take it from the TIF funds because it is in the District and contributes to the economical development of Whitefish. Manager Stearns said he is in a difficult position here because he is also a member of the WAVE Board of Directors because the agreements in the past call for the City Manager to be a WAVE Board member. He would recommend that the City Council agree to reimburse the WAVE Board for the impact fees of \$11,611.06 from the Tax Increment Fund for the expansion of the City owned and leased facility, but not reimburse the \$14,011.00 cost of the building permit.

Councilor Hildner said he is not clear on the commercial use of that facility. He wondered if those businesses influence the use of the WAVE and the need for expansion. Mr. Erickson said the original agreement with the City provided for sub-leasing to the physical therapy and other businesses that help provide guaranteed revenue. Councilor Hildner asked if the waiver subsidizes the commercial aspect and Mr. Erickson said those rental rates are set based on the market rates. Councilor Hyatt said no facility benefits all of the public. He said it is important to give part of the money back, but not all of it. Councilor Mitchell said he is worried about setting a precedent. He said TIF has picked up impact fees, but not building fees. He would rather see a reimbursement than a waiver. He said many of the people in the TIF area don't use the WAVE and they are asking those people to pay, if they waive the fees. He said he is in favor of reimbursing the impact fee only, as it is recommended in the staff report. Councilor Hyatt said he agreed with Councilor Mitchell. They need to know this is not the last time they will hear this from a non-profit. He said the WAVE is a fantastic amenity for the City, but they need to be careful about setting a precedent for future requests. Councilor Anderson said Sections 17 & 18 in the Master Agreement weights the document towards no waiver of either of the fees. He said the agreement doesn't address this issue at all, so it is really a Council decision. Bart Erickson said in the original 2004 agreement, parts 1-13 are not negated by the 2010 agreement. Councilor Anderson said the expansion is not addressed in this agreement. He said the impact fees are more palatable for reimbursement, but he has a hard time reimbursing the building fees. Councilor Hildner asked and Councilor Anderson said the impact fees are focused on infrastructure and it is well-aligned for TIF money. He said the building permit money isn't very well aligned with TIF money.

**Councilor Mitchell offered a motion, seconded by Councilor Hyatt, to reimburse the WAVE Board for the impact fees of \$11,611.06 from the Tax Increment Fund for the expansion of the City owned and leased facility, but not reimburse the \$14,011.00 cost of the building permit.**

Councilor Mitchell asked and Councilor Anderson said he was wondering where that money would come from. Manager Stearns said the TIF money is related to infrastructure. They can use TIF funds for City facilities. Councilor Sweeney said they agreed to waive the impact fees in the initial agreement. He said privately developed facilities that are given to the City should perhaps have fees waived. They shouldn't expect them to pay building fees or impact fees. That is fair and equitable for the City. These facilities enhance the quality of life in the City. They should look at this on a broader basis. Councilor Hyatt said there are 4836 regular members and 241 30-day members. He said the cost is only \$2.91 one time for each of the members. He said he talked with Attorney VanBuskirk about the agreements. He said the WAVE is doing a great job, and he supports Councilor Mitchell's motion.

Mayor Muhlfeld said the argument is that the facility was built by philanthropic money and the City owns and maintains it. Mayor Muhlfeld said the Food Bank is being built with 100% private fundraising and the City only reimbursed the impact fees. Councilor Sweeney said the difference is that the City won't own the building. It is a valuable facility for the residents of the City. Councilor Mitchell said the Smith Fields are a City asset, but they paid all of the fees. Councilor Sweeney said he would be happy to waive the fees for Smith Field, too. Councilor Hildner said waiving fees gives him more heartburn than reimbursing fees. He said when the O'Shaughnessy wants to expand they will ask for reimbursement of the fees, too, because they are setting a precedent.

**The motion passed 4-2 with Councilors Anderson and Sweeney voting in opposition.**

Councilor Hildner asked if they want to do anything about the building permit fees. Mayor Muhlfeld said he thinks it was encapsulated in what they just voted on.

#### **8d. FY13 year-end financial report (p. 96)**

Finance Director Knapp reported on FY13 year-end. He said property tax supported funds' final cash balance increased \$226,836 which is the first time they haven't had a negative May cash since May of 2009. He said Parks and Recreation required an additional \$63,000 transfer from the general fund. Building had a net gain and was able to pay back \$59,000 to the General Fund and still retained a higher cash ending balance. Also, two of the three building permits for the High School project have been deposited; Building License and Permits revenue was the highest since FY 2007. The Library Fund is doing well and holding its own. The Fire Union pay increases are not reflected in any of the numbers in this report and are planned for FY14. Ambulance fees net write downs were about 12% lower than the previous two years—Medicare write downs were higher than expected. Water and Sewer charges are 7% and 6% higher respectively, while water and sewer rates were increased by 2.5% in October 2012; the increase in revenue was probably due to higher usage. Solid waste remains healthy despite no rate increase. Planning related fees are collectively about 174% of budget. Impact fees are more than double two years ago which will exceed budget projections and reflects growth. The City's interest earnings are about 1/5 lower than even two years ago. The City reduced debt by 11%.

Councilor Mitchell thanked the Councilors and staff for the year-end cash value of \$1.2 million because it was only at about \$200,000 when he came on the Council.

### **9. COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS**

**9a. Standing budget item - None.**

**9b. Discuss upcoming implementation of no parking in bicycle lanes on Baker Avenue  
(p. 105)**

Manager Stearns said staff wanted to make a broader pedestrian area near Kiddie Park. He said that City Clerk Lorang did some research and found that Resolution 03-20 and Ordinance 03-17 state that they can't operate or park a vehicle in any marked bicycle lane in the City. He said those compel staff to mark "No Parking" from 5<sup>th</sup> Street to the bridge on both sides of Baker Avenue. Councilor Hyatt said that this parking is used heavily during the duck derby. He questioned if they had to take out all of the parking. He said on Second Street they have parking and bike lanes. Manager Stearns said that is different because they have a wider right-of-way. Chief Dial said a lot of people use Riverside Park and they need a better site line to protect pedestrians using the crosswalk. Councilor Mitchell said

he struggles with this. He thinks there are about 10 different venues that need parking. They are losing more parking places downtown, so he would be in favor of doing something near the crosswalk, but not to give up all the parking. The rest of the Council expressed consent for staff to mark this area as no parking.

**9c. Consideration of a no parking zone on Idaho Avenue near the intersection with Edgewood Place (p. 109)**

Manager Stearns said concern was expressed about the narrow parking area on Idaho Avenue. Chief Kennelly also had concerns about the parking on the grass because catalytic converters can start fires and he suggested that they make this area a non-parking area. He said parking around City Beach is very tight. He said they could consider creating a parking lot on some City property near their trailer parking area, but it will require a retaining wall. They could get an engineering estimate, but it will likely be an expensive project. Mayor Muhlfeld said there were eight trucks with trailers parked on the road and grass this past Sunday. Councilor Mitchell asked if they could gravel the grass area for parking to reduce the fire hazard. He doesn't like that they are reducing parking availability. Manager Stearns said they would have to do some kind of laydown for the curbs, but they can evaluate it. Mayor Muhlfeld said no one is opposed to people parking there, but the fire safety is an issue. Councilor Kahle said he was concerned about the slope and the possibility for liability. He said they need to either make it a parking lot and do according to standards or not do it at all. Director Wilson said there is a water main right through that grassy area, so there is limited ability to flatten it. Chief Dial said they towed two or three vehicles because they were sticking out in the road. He said they need parking down there because it is a mess.

**Councilor Kahle offered a motion, seconded by Councilor Hildner, to make a no parking zone on Idaho Avenue near the intersection with Edgewood Place as shown in the packet. The motion passed 5-1 with Councilor Mitchell voting in opposition.**

**9d. Letter from Flathead Basin Aquatic Invasive Species Workgroup regarding Aquatic Invasive Species efforts (p. 115)**

Mayor Muhlfeld said he will bring a full report to the Council in September from the Hungry Horse station.

**Councilor Comments:**

Councilor Hyatt asked them to buy their ducks. Councilor Anderson said he was hoping for a second motion on the WAVE to allow the City to give financial assistance on both fees as requested. Mayor Muhlfeld said there was some confusion on this motion. He asked and Attorney VanBuskirk said they can bring up a motion to reconsider this item tonight, or at the next meeting. Councilor Mitchell said he'd like to have a discussion about possible solutions for bathrooms at Farmer's Market. He said the library has written a letter about the major use of the bathrooms at the library. Manager Stearns said they are working on designing public restrooms on the outside of the O'Shaughnessy Center. Councilor Mitchell asked and Director Cozad said construction would begin in the fall or the spring. Councilor Mitchell asked and Manager Stearns said the Fire Union just notified him requesting another session of mediation. They are trying to set up a meeting for later in August. He hopes they are willing to settle in mediation and not arbitration. Councilor Mitchell thanked all the other departments

who solved their wage problems. Councilor Hyatt said he will go by the Library tomorrow night from 6-6:30 p.m.

Mayor Muhlfeld said he received messages about floating businesses on Whitefish Lake. He suggested they ask staff to look into restricting commercial and retail sales out on the lake. He would like to direct staff to look into whose authority it is to regulate commercial sales out on the lake. Councilor Mitchell asked and Director Cozad said he is more concerned for those who comply with rules. Mayor Muhlfeld said DNRC and FWP have authority on the lake and the City has annexed it to the low water mark, so the question is who has authority to address these businesses. Councilor Kahle said he thinks it is a good idea, but they need to be careful to distinguish between retail businesses and boat dock maintenance businesses. Mayor Muhlfeld agreed and said it is the commercial and retail sales he is concerned about. Councilor Hyatt said there are fishing guides, too. Councilor Hildner said they ought to have something in place by boating season next year. The Councilors all agreed.

**10. 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 to Executive Session at 8:54 p.m.

**11. EXECUTIVE SESSION – CONTRACT AND PAY FOR CITY ATTORNEY** - Pursuant to §2-3-203(3) MCA, the presiding officer may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceeds the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

Mayor Muhlfeld and Councilors Mitchell, Sweeney, Anderson, Hildner, Kahle and Hyatt were present. City Staff present were City Manager Stearns and City Attorney VanBuskirk. The meeting adjourned at 9:30 p.m.

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Mayor Muhlfeld

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Jane Latus Emmert, Recording Secretary

Attest:

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Necile Lorang, City Clerk