

# WHITEFISH CITY COUNCIL MINUTES

August 19, 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, Senior Planner Compton-Ring, Public Works Director Wilson and Parks and Recreation Director Cozad. Approximately 90 people were in attendance.

## **2. PLEDGE OF ALLEGIANCE**

Mayor Muhlfeld asked City Attorney VanBuskirk to lead the audience in the Pledge of Allegiance.

## **3. PRESENTATION – Update on the Whitefish High School project – Dow Powell**

Dow Powell, the School District's Representative for the construction of the Whitefish High School said fall sports are underway and there are no locker rooms yet, but the gym is completed. The new cardio and weight room are outfitted with lockers, but no showers at this time. Away teams will use the Middle School locker room. The east side of the High School will be re-paved so the entrances will be completed before school starts. The A and B wings are moving along well. They anticipate roof trusses going up in September and hope to have it dried-in by winter time. They met with the Architectural Control Committee (ARC) about the foyer review. The design was tabled for further design modifications and they will be in front of the ARC again in September. The budget oversight committee met to get a report and toured the project. He said they didn't budget correctly for the building permit because they didn't know about the \$63,000 for impact fees. He said they have a shortfall that has grown by about \$24,000 from change orders. The good news is that they have a full price offer on the Independent School. There is a contingency that the buyer must be able to get a conditional use permit, but it is a positive step forward. The school will still have the lot next door which they will also sell. This will help to balance the budget. He said a group of folks, led by Bayard Dominick, met to discuss the launch of a fundraising project.

Councilor Mitchell said he thinks they are about \$300,000 short in the budget and Dow Powell said they are about \$270,000 short. Councilor Mitchell asked and Powell said the redesign is factored into these numbers. He said there have been 5 change orders since February and have affected the budget by about \$40,000. Councilor Mitchell asked and Powell said Bayard Dominick is helping with the fundraising, but his contract with the project is completed.

**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)

Mayor Muhlfeld asked the public to keep their comments succinct due to the length of the agenda tonight. No one wished to speak.

**5. COMMUNICATIONS FROM VOLUNTEER BOARDS**

Councilor Hyatt said the Park Board did not meet this week due to a lack of quorum.

**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 August 5, 2013 Council regular session (p. 127)**

**6b. Consideration of approving application from James D. Hill for Whitefish Lake Lakeshore**

**6c. Variance (#WLV-12-W39A) at 2726 Plaza Road to amend existing variance permit to include replacement of stairs subject to 14 conditions (p. 135)**

**6c. Consideration of approving application from Darren Paylor for Whitefish Lake Lakeshore Permit (#WLP-13-W23) at 2452 Birch Glen Road for Installation of stone steps and path, removal of existing rock walkway, replacement of a waterline, installation of a 671.48 square foot EZ Dock & Shore Station, and buoy installation subject to 42 conditions (p. 151)**

**6d. Confirmation of Glacier Hockey Association's appointment of Murray Craven as their representative to the Ice Rink Advisory Committee (p. 177)**

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

**Councilor Hildner asked to have a motion to reconsider the WAVE request to waive fees added to the agenda, after the public hearings.**

**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)

**7a. Resolution No. 13-14; A Resolution approving a Special Recreation Use License with the Montana Department of Natural Resources and Conservation with respect to the Spencer Trail Network, and authorizing the execution of documents (p. 179)**

Parks and Recreation Director Cozad said they have been working on this for a number of months with the Flathead Fat Tires, DNRC and Whitefish Legacy Partners. It is a key piece to the Whitefish Neighborhood Plan and Whitefish Trail plan. Councilor Mitchell asked if the DNRC approves this resolution and Director Cozad said they have been very involved and did approve it.

Mayor Muhlfeld opened the Public Hearing.

Peter Costain, 1210 O'Brien Avenue, said he is a Board member of Flathead Fat Tires and congratulated the cooperative efforts on this project. They are integrating community built infrastructure into an existing system. The data from the International Mountain Biking Association shows that mountain bikes are a demographic group that matches the demographics of skiers and

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golfers. He said Whitefish Mountain Resort has invested a large chunk of money in the free ride trails, too, and cyclists are a worthy group to cater to.

Fred Jones, 10 Tides Way, and Chairman of the Whitefish Legacy Partners Board, said this recreation license has been a 10 year project to protect the recreation benefits in the Spencer Mountain area. He said the City's involvement has been critical and has brought credibility to the whole project; they have been the perfect ally in these efforts. The City has helped resolve the concerns about liability and worked with the DNRC. He thanked all of the people for their efforts in this project. He thanked the DNRC for thinking outside the box. He thanked Attorney VanBuskirk, Councilor Anderson and Parks and Recreation Director Cozad for going above and beyond for this project.

Dave Skinner, former resident of Whitefish, said he couldn't find a packet on the website. He said the committee doesn't post its minutes and that frustrates him. He said this licensing process has been long and drawn out and he feels they have stuck the university system for about \$200,000. Mayor Muhlfeld clarified that the packet was available on the City's FTP site.

Cricket Butler, 855 Beaver Lake Road, said she owns the Whitefish Bike Retreat. She said they have had people visit from all over the world. They are adjacent to the Whitefish Trail and their guests have immediate access to the trail for hiking or biking. She hears the feedback from their guests and they love the trails and the town. She has been cycling in this community for over 6 years. She thinks it is wonderful that so many groups came together to promote this project. She said the Spencer Mountain trail adds to the diversity of the trails in the area.

Leslie Hunt, 2497 KM Ranch Road, said her property borders the State land and she uses it regularly. Friends of Spencer have been monitoring the use and timber sales over the past 10 years. She appreciates the opportunities they provided as part of the public process. She volunteers with Whitefish Legacy Partners and this truly is a project that is a legacy she wants to leave for her children. She is in full support of the project. She encouraged them to pass the proposal.

Andy Feury, 930 Packrat Lane, said Fred Jones made a good point that this project started over 10 years ago in May 2003. He said there has been a great collaborative effort with everyone who is involved with biking. The trail system has 22 miles of trails, four more will be completed by September and they have generated over \$7 million for the trust. They have preserved traditional financial support through logging. He said about 6% of the people who come to the community today come because of cycling. It is a significant number for the City and he encouraged them to approve the special recreation use license.

Marilyn Nelson, 565 Blanchard Lake Road, spoke in support of the trail and the special recreation use license. She said she is a donor and member of the Board of Whitefish Legacy Partners she thanked everyone who has been involved.

No one else wished to speak and the public hearing was closed.

Councilor Mitchell said he asked and Attorney VanBuskirk said the Fat Tires group has the first liability insurance, followed by the City's MMIA Insurance as the secondary. Councilor Mitchell asked if they had open meetings and minutes. Fred Jones said most of the negotiations with the DNRC were held at different locations, but they were open to the public. Councilor Anderson said the meetings were

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to negotiate the terms of the contract, and no one was ever excluded from the meetings. Councilor Mitchell said he wanted to be sure the meetings were open. Mayor Muhlfeld said City Manager Stearns sends out an email with a list of upcoming meetings so it was well broadcast through the community. Councilor Mitchell said his boys love the trail.

**Councilor Hyatt offered a motion, seconded by Councilor Kahle, to approve Resolution No. 13-14; A Resolution approving a Special Recreation Use License with the Montana Department of Natural Resources and Conservation with respect to the Spencer Trail Network, and authorizing the execution of documents.**

Councilor Anderson said there are a lot of people to thank for all of this. He said it has been eluded to that the DNRC was a very important part of this project and he agreed. Steve Frye, Greg Poncin, Anne Moran, and Mark Phares were all instrumental in making this plan work. He said they are thoughtful and very committed to the use of their property and to their mission. Councilor Hildner thanked Councilor Anderson for all of the time he donated for this project. Mayor Muhlfeld agreed and thanked Councilor Anderson.

**The motion passed unanimously.**

**7b. Consideration of a request from Mike Collins on behalf of Mountain Properties of Montana LLC, requesting a 24-month extension for the Ramsey Lakeview preliminary plat, a 4-lot (2 townhouses) subdivision on 0.63 acres at 502 Ramsey Avenue (p. 240)**

Senior Planner Compton-Ring reported that Michael Collins, on behalf of Mountain Properties of Montana llc, is requesting a 24-month extension for the Ramsey Lakeview preliminary plat. The Ramsey Lakeview preliminary plat is a 4-lot (2 townhouses) subdivision on 0.63 acres at 502 Ramsey Avenue.

The preliminary plat was approved by the Whitefish City Council on September 4, 2007. In 2010, the Council granted an extension, as provided for the in subdivision regulations in place at the time, until September 4, 2011. On June 6, 2011, the Council granted an additional 24-month extension under HB 522 that provided local jurisdictions additional flexibility. The preliminary plat now expires September 4, 2013. The applicant cited the economic downturn as the reason the development had not moved forward but now he would like to begin the infrastructure.

This subdivision is located within the city limits and is zoned WR-2 (Two Family Residential District). Upon review of the file, issues raised during the public hearing process included:

- *Flag Lots and Through Lots.* It was determined that this particular lot was a ‘through lot’ and by definition already two lots. It was also determined that the prohibition on flag lots adjacent to one another was only for lots that accessed off the same street and not off different streets, such as this project.

- *Fraser Avenue as a Street for Access.* There was some question as to whether or not Fraser Avenue was a public right-of-way or an alley. It was determined that it is a public street and eligible for primary access. Ten-feet of right-of-way are required to be dedicated on Fraser Avenue. A review of the feasibility of expanding Fraser Avenue to the east is also included.

- *Storm Water Run-Off.* A previously approved 3-lot subdivision had an engineered storm water plan and there were concerns that the additional lot might cause run-off problems. The original

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approved storm water plan anticipated considerable impervious area that would be adequate for the proposed subdivision. Any changes to the plan would require additional review by city staff. It is being reviewed by Public Works.

- *Emergency Vehicle Access.* Due to the flag lot development and narrowness of Fraser Avenue, there was concern that an emergency vehicle would have difficulty accessing the units. There was a condition placed on the plat to obtain approval from the Fire Marshal prior to final plat.

*Change in Standards:*

Since 2007, when this project received preliminary plat, certain regulations have been amended including the Subdivision Regulations. Below is a summary of items that changed and are pertinent to this preliminary plat:

- Lot 1A has some portions of the building envelope that exceed 10%, requiring a geotechnical reconnaissance to determine whether or not further geotechnical review is warranted (§12-4-10). A geotechnical investigation report was not a requirement for the application in 2007. There is adequate area to build a unit on a slope of less than 10% and this lot is a considerable distance from any water.

- While the issue of flag lots was resolved with this particular subdivision, the topic of flag lots was addressed in the subdivision regulations. The new regulations provide more options to use flag lots with a well-designed project. The new regulations would not have prohibited this particular project.

A notice was mailed to adjacent land owners within 300-feet of the preliminary plat on July 30, 2013. A notice of the public hearing was published in the *Whitefish Pilot* on July 31, 2013. As of the writing of this report, six letters/emails have been received by neighbors. They cite the following concerns: traffic on Fraser Avenue, maintenance of the property, has had adequate time to complete subdivision and shouldn't be given any more time, privacy, noise, density, shared driveway, snow removal, parking, pedestrian traffic, drainage, topography and decrease in property values.

Staff respectfully recommends the City Council, after considering testimony at the public hearing, approve the request to extend the Ramsey Lakeview preliminary plat for 24 months, expiring on September 4, 2015 based on the following findings of fact:

**Finding 1:** The 4-lot preliminary plat was approved by the Council on September 4, 2007. In 2010, the Council granted an extension, as provided for the subdivision regulations at the time, until September 4, 2011. On June 6, 2011, the Council granted an additional 24-month extension under HB 522 that provided local jurisdictions additional flexibility. The preliminary plat now expires September 4, 2013.

**Finding 2:** No other development or third party will be harmed if the preliminary plat is extended.

**Finding 3:** A legal notice was placed in the *Whitefish Pilot* on July 31, 2013 and public notice was mailed to property owners within 300-feet on July 30, 2013. As of the writing of this report, six letters have been received.

No changes can be made to the conditions. This is just a request to extend it. Councilor Mitchell asked and Planner Compton-Ring said Big Mountain and Lookout Ridge have all asked for similar extensions. Councilor Hyatt asked about emergency vehicle access. Planner Compton-Ring said the driveway from Fraser to Ramsey would have a breakaway gate for emergency services. She said the Fire Department will have to sign off on it before they get final plat. Councilor Sweeney said lot A has

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10% grades. He asked if there is a designated envelope on this lot and Planner Compton-Ring said there weren't any standards requiring that the building be set in any particular location at the time of the application of the original preliminary plat, but buildings will have to comply with setbacks. Councilor Hildner asked about soil stability studies on adjacent properties and Planner Compton-Ring said she hasn't heard of anything. Mayor Muhlfeld said when they revised the water quality ordinance it was intended to only address projects that are close to a water body and this property sits back significantly from the water.

Mayor Muhlfeld opened the public hearing.

The applicant, Michael Collins, said they would like to extend the preliminary plat. Everyone knows that there has been an economic downturn, but things are now moving. He said it is consistent with the WR-2 zoning and they didn't ask for any variations to it. It was recommended for approval 4 different times from the Planning Staff. All of the lots are significantly above the minimum lot size required in that zone. He said they identified building envelopes on the preliminary plat. In the last 3 weeks they engaged a geotechnical specialist and they are using the information in cooperation with the City staff. He said there are two new issues: stormwater drainage and utility extension. The original stormwater drainage system was not placed within the utility easement and that needs to be addressed. One of the neighbors to the east, the Bennett family asked if they could extend water and sewer so they could build their house. He said that means they've agreed to run water and sewer up the east side of their lot. All three of the residents on the east are on septic and this will give them the opportunity to get on City water and sewer. He thinks this project is good for him, his neighbors and the City. Councilor Hildner asked about the geotechnical study and Michael Collins said there is good sandy loam soil that perks well and its susceptibility to movement is very small.

Angel Dominguez, 510 Ramsey Avenue, said she is adjacent to the lot. She is not opposed to development of the lot, but this is poor planning. It was denied twice by the City Planners in 2007. She said City Planners provide expertise and had concerns in 2007; many that are still a concern now. She said Joe and MaBritt Bennett opposed the project back in 2007; they still oppose it today, but are taking advantage of a cost-share with Mike Collins to extend the utilities if the project does go forward. The design is inconsistent with neighborhood compatibility. She said Michael Collins claimed in 2007 that the density was in line with the Ackerman and Grant townhomes. She disagreed. She said those homes are not stacked up on one another. She said it is poor planning to have three sets of homes on top of each other. It is double the average of the neighborhood density now. She said there is an encroachment on public services. She is not opposed to development but it has gone from a single-family residence to a four-plex. She said the Planning Board expressed significant concerns back in 2007 and said it should be denied. She said it is a lawsuit that is waiting to happen. She said she appreciated their attention to this and requested that they deny this project.

Diana Tague, 510 Ramsey Avenue, said the neighbors are concerned about the project. She purchased the property in 2007. She asked them to consider whether this is still consistent with the City's planning goals. She said there is slightly more than an acre and they want to place 7-units with only four having direct access to City streets. She said the drainage is still a concern. She said there is a 10-foot difference between the grade between her southernmost property and this lot and this concerns her. She would like to think the neighbors in Ramsey have some say in what is done in their neighborhood.

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Larry Cook, 508 Ramsey Avenue, said the neighbors are opposed to the extension and have concerns about the drainage and the steep grade. He said the density doesn't fit the layout of the neighborhood. He is concerned about traffic and where they will park because this isn't a road. He asked how people will park up the 45 degree section. He was worried about parking for special events. He said weeds have been 2-4 feet high on this property and they are concerned for fire safety. He would like to purchase the property if Mr. Collins would sell it.

No one else wished to speak and Mayor Muhlfeld closed the public hearing.

Councilor Hildner said he had some concerns. He drove along Fraser Avenue. He asked and Planner Compton-Ring said there is no plan to include curbs and gutters. The 10 foot dedication is only for the portion of the lot that touches Fraser Avenue. She deferred to Public Works Director Wilson who said they can't include curbs and gutters until they get more right-of-ways to widen the street. Councilor Kahle asked and Planner Compton-Ring said the underlying zone is WR-2 and these lots do exceed the minimum lot size for WR-2. Councilor Sweeney asked if the drainage issues that have been identified will be resolved before they go to final plat and Planner Compton-Ring said the stormwater drainage plan has to be approved by Public Works. Councilor Sweeney asked about the weed issue and Planner Compton-Ring said the City has to receive a complaint to proceed with code enforcement. She said they can check into it and get back to the neighbors. Councilor Mitchell said for the past four years they haven't had money for the enforcement officer, so that may be the reason for the lack of response.

**Councilor Mitchell offered a motion, seconded by Councilor Kahle, to approve a 24-month extension for the Ramsey Lakeview preliminary plat, a 4-lot (2 townhouses) subdivision on 0.63 acres at 502 Ramsey Avenue based on the findings of fact in the Staff Report WPP-07-20 dated August 13, 2013 in the packet.**

Councilor Mitchell said the past two years the Council has been granting extensions due to the change in the economy. This is a fair request, similar to what they have done with the other plats, but he would like to see this be the last extension on this property. Councilor Hyatt said they have set a precedence based on the economic downturn. He said what Mr. Collins is requesting is allowable. He said he would like Mr. Collins to fix the weed problem going forward. Councilor Sweeney said he was on the Planning Board when it came through and he wasn't in favor of it. He said the issues that have been raised today are the same issues that were raised back then, yet it was approved. He said it meets the standards for height and density. He said given the zoning and the history he doesn't see a way not to support the extension for another 24 months. He said this plat has been extended too many times. Councilor Anderson asked for the applicant to come forward.

Councilor Anderson asked and Mike Collins, 2288 Houston Point Drive, said one of the conditions of the final plat is to comply with the conditions of the preliminary plat. He asked and Mr. Collins said he has sprayed the weeds on the property twice this year. Councilor Anderson said condition #4 states that all noxious weeds shall be removed by the property owner. Mr. Collins said they have been sprayed, but they haven't been removed. Councilor Anderson said the preliminary conditions haven't been followed so he isn't willing to grant the extension. Councilor Hildner said he is concerned that this is the third application for extension. He said Mr. Collins said he is anxious to get started and Councilor Hildner questioned whether they need 24 months. Mr. Collins said they could probably do it in a year.

**The motion passed 5-1 with Councilor Anderson voting in opposition.**

**7c. Resolution No. 13-15; A Resolution amending the 2013 Fiscal Year annual budget by a Bike & Pedestrian Path Fund Balance appropriation of \$4.64 to Bike & Pedestrian Path Fund; and amending the budget by a TIF Bond Debt Fund Balance of \$2,253.00 to TIF Bond Debt Fund; all for the 2013 fiscal year commencing July 1, 2012 (p. 262)**

Assistant City Manager/Finance Director Rich Knapp reported that the table below describes all expenditures and transfers that did not have or exceeded FY 2013 budget authority and require budget amendments as allowed by Montana law MCA Sections 7-6-4006(4) and 7-6-4021.

To	From	Amount	Justification
2991-430255-820 Bike & Ped Path	Bike & Ped Path Balance	\$4.64	Transferred remaining cash out of fund to close it
3110-490200-552 TIF Bond Debt Fund	TIF Bond Fund Balance	\$2,253	Recognition of bond premium & costs amortized over life of loan higher than budget. Non-cash expense.

Mayor Muhlfeld opened the public hearing. No one wished to speak and the public hearing was closed.

**Councilor Kahle offered a motion, seconded by Councilor Hyatt, to approve Resolution No. 13-15; A Resolution amending the 2013 Fiscal Year annual budget by a Bike & Pedestrian Path Fund Balance appropriation of \$4.64 to Bike & Pedestrian Path Fund; and amending the budget by a TIF Bond Debt Fund Balance of \$2,253.00 to TIF Bond Debt Fund; all for the 2013 fiscal year commencing July 1, 2012. The motion passed unanimously.**

**7d. FY14 Budget, Tax Levy, and Assessments Public Hearing:**

- i) **Resolution No. 13 - 16; A Resolution accepting and approving the Municipal Budget for the City of Whitefish for the 2014 Fiscal Year Commencing July 1, 2013, in its final form (p. 267)**
- ii) **Resolution No. 13 - 17; A Resolution (1) determining the property tax mills to be levied on all taxable property within the corporate limits of the City of Whitefish, and (2) levying and assessing all Special Improvement assessments and other assessments on real estate within the Districts (p. 269)**
- iii) **Resolution No. 13 - 18; A Resolution levying and assessing a tax on each lot or parcel of land in the City lying within the boundaries of the City's Street Maintenance District to defray the costs of street improvements (p. 272)**
- iv) **Resolution No. 13 - 19; A Resolution levying and assessing a tax upon all real estate in Special Improvement Lighting District No. 1 in the City of Whitefish, Montana, to defray the cost of improvements in said Special Improvement Lighting District (p. 274)**

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- v) **Resolution No. 13 - 20; A Resolution levying and assessing a tax upon all real estate in Special Improvement Lighting District No. 4 in the City of Whitefish, Montana, to defray the cost of improvements in said Special Improvement Lighting District (p. 276)**
- vi) **Resolution No. 13 - 21; A Resolution levying and assessing a tax on each lot or parcel of land in the City lying within the boundaries of the City's Parkland and Greenway Maintenance District (p. 278)**
- vii) **Resolution No. 13 - 22; A Resolution levying and assessing a tax on each lot or parcel of land in the City lying within the boundaries of the City's Stormwater Improvement and Maintenance District (p. 280)**
- viii) **Resolution No. 13 - 23; A Resolution levying and assessing a tax on each lot or parcel of land in said City lying within the boundaries of Special Improvement Parking District No. 155 to defray the cost of creation of said District and of the improvements therein (p. 282)**
- ix) **Resolution No. 13 - 24; A Resolution levying and assessing a tax on each lot or parcel of land in said City lying within the boundaries of Special Improvement Water/Sewer District No. 158 (Pack Rat Lane) to defray the cost of creation of said District and of the improvements therein (p. 284)**
- x) **Resolution No. 13 - 25; A Resolution levying and assessing a tax on each lot or parcel of land lying within the boundaries of Special Improvement District No. 166 (JP Road) to defray the cost of creation of said District and of the improvements therein (p. 286)**

City Manager Stearns said they have to get the tax levies to Flathead County before the end of the month. These are resolutions for the budget and the tax mill levies. The Staff Report starting on packet page 298 is a budget overview and also highlights the major changes and issues dealt throughout all the budget work sessions; and those changes are also highlighted on page 292-293. He said the tax levy is down by .5% because City Council increased street lighting assessments by 10%. These fees can be as small as \$12 which would only be a \$1.20 increase. The City is proposing to increase the year end cash balance to 11.5%. The goal is 12-15% and they are slowing building up the cash reserves. Councilor Mitchell asked and Public Works Director Wilson said the changes on the DNRC Planning Grant was necessary because it was budgeted for revenue but not for expenditure.

Mayor Muhlfeld opened the public hearing. No one wished to speak and the public hearing was closed.

**Councilor Hildner offered a motion, seconded by Councilor Sweeney, to adopt Resolutions 13-16 through 13-25 adopting the FY14 Budget and determining the property tax mills to be levied on all taxable property within the corporate limits of the City of Whitefish, and levying and assessing all Special Improvement assessments and other assessments on real estate within the Districts for FY14.**

Mayor Muhlfeld said he wrote a budget message to the *Whitefish Pilot*, but one paragraph was omitted that gives kudos to City staff. He thanked Necile, Vanice, the department heads, Rich Knapp and Manager Stearns for a stellar job on the budget.

**The motion passed unanimously.**

Mayor Muhlfeld called a 5-minute recess from 8:35 pm to 8:40 pm.

- 7e. Ordinance No. 13\_\_\_\_; An Ordinance approving a zoning change and amendment of the Whitefish Zoning Jurisdiction Map to rezone Tract 1K from WR-1 (One-Family Residential District) to WR-2 (Two-Family Residential District), and to rezone Tracts 1D and 1DA from WA (Agricultural District) to WER (Estate Residential District), in Section 32, Township 31 North, Range 21 West, Whitefish, Flathead County, Montana, located at East 2nd Street north of the East 2nd Street and Armory Road intersection (1<sup>st</sup> Reading) (p. 407) Staff report is combined with 7f.**
- 7f. Ordinance No. 13\_\_\_\_; An Ordinance approving the East 2nd Street Multi-Family/Condominium Planned Unit Development (PUD) overlay (1<sup>st</sup> Reading) (p. 407)**

Mayor Muhlfeld said they will hold one public hearing to hear the applications for a zone change and the related PUD tonight, but motions for actions will be taken separately. He said he attended two Planning Board meetings and this meeting will be different. He said they will not hold an open forum, but a regular public hearing tonight at the Council meeting. He read the Principles for Civil Dialogue.

Planner Compton-Ring reported on a request by William MacDonald and Sean Averill on behalf of Community Infill Partners llc to rezone three parcels; the westerly parcel from WR-1 (One-Family Residential District) to WR-2 (Two-Family Residential District) and the two easterly parcels from WA (Agricultural District) to WER (Estate Residential District) at 100 Wild Rose Lane and 1500 E 2<sup>nd</sup> Street for 103 units. All three parcels front on E 2<sup>nd</sup> Street and are located within the City limits.

The purpose of rezoning the properties is to facilitate the proposed Planned Unit Development (WPUD 13-01) to develop a mixed single family/multi-family project. The PUD application accompanies the rezone request.

The WR-2 district is intended for residential purposes to provide for one-family and two-family homes in an urban setting connected to all municipal utilities and services. The WER district is a residential district to provide for single-family, large tract or estate development. These areas will typically be found in suburban areas, generally serviced by municipal sewer and water lines.

This request is reviewed in accordance with the Whitefish Zoning Regulations based on statutory criteria and is in accordance with the Growth Policy. The properties are currently being used for two single family homes and some agricultural purpose. There are three properties – one is zoned WR-1 and two are zoned WA. The Growth Policy identifies the westerly parcel as Urban Residential and the two easterly parcels as Suburban Residential. The property is adjacent to planned industrial, suburban/urban residential, suburban residential and urban residential zoning. The proposed changes are in accordance with the Growth Policy. All properties are served by Whitefish Police and Fire. Public services are immediately available to the property. Water and sewer will be extended into the property and the new public right-of-way will be extended into the property. The new public right-of-way is proposed with the development. Sidewalks and trail systems are proposed. This project is considered infill because it is surrounded by residential development. Maximum building height and size are standards in the zoning regulations. The proposed density is higher than the neighborhood, but not higher than density around the schools. The current agricultural zoning is not consistent with the neighborhood. The district is single family lots and a few scatter multi-family projects. The character will change from

rural pastoral to multi-family. It is designed with single families on the exterior and multi-family units in the center. Architectural review will be required.

Planner Compton-Ring said the properties have had a rural look while development has grown up around them. Urban scale development in town is recommended. Staff recommended that WR-2 would revert back to WR-1 if this project did not go forward. The PUD would overlay the entire 23.789 acres. The Planning Board held three public hearings and the project design has evolved. The Planning Board first recommended that the project be tabled and that the applicant consider the public input and hold a neighborhood meeting. A meeting was held and about 25 people attended resulting in the applicant offering a revised site plan. At the 2<sup>nd</sup> Planning Board meeting there was extensive comment from the neighborhood and the proposal was tabled again until July so the applicant could listen to and consider the concerns of the public. The Planning Board recommended that the applicant come back with lower density and smaller units. Another neighborhood meeting was held and about 20 people attended.

The site plan before them tonight is the plan the Planning Board reviewed in July. There are 143 units; 92 apartments, 16 single family units with 15 accessory apartments and one existing home retained as a detached single family home condominium. Density is 6.02 units/acre which is lower than the 7.31 units/acre originally proposed. There is an extension of Armory Road that will facilitate future connectivity to the east. There is 68% open space and a series of trails. The applicant is taking advantage of the density bonus, so 10% of the units will be deed restricted units under management by the Whitefish Housing Authority for a total of 14 units for moderate income families. There will be parking for the public to use the trails. Sewer and water easements will be provided up Cow Creek and under the train tracks. In exchange the applicant is requesting some zoning deviations.

- Density Increase and Blending the Density across the Project. The PUD chapter permits an applicant to increase the density provided a minimum 10% of the project is set aside for affordable housing meeting the needs for 'moderate income' families. (§11-2S-3B) The purpose of the PUD permits flexibility in development design, including the blending of the densities across a project if it results in a better design. (§11-2S-1)
- Type of Housing. While the purpose and intent of the WR-2 and WER require single family (or two-family in the case of the WR-2), the PUD chapter permits a variety of residential uses including multi-family. (§11-2S-2)
- Roads. The applicant is proposing private streets to serve the apartments and condominiums.
- Pedestrian Ways. In lieu of constructing sidewalks along the private streets, the applicant is proposing a series of paths that loop throughout the project and connect the buildings to each other and the public rights-of-way.
- Drainage. The applicant is proposing a Low Impact Development approach to stormwater by not including curb and gutter. They are proposing to use swales and depressions and detention areas to treat and convey stormwater.

*Benefits Provided.* In exchange for the above described zoning deviations, the applicant is providing the following benefits:

- Affordable Housing for Whitefish Housing Authority management – 14 rental units
- Sewer Easement from E 2<sup>nd</sup> Street to north edge of property
- Water Easement from E 2<sup>nd</sup> Street to north edge of property
- Extension and construction of 60-foot public right-of-way

- Sidewalk along the north side of E 2<sup>nd</sup> Street the entire length of the project
- Public access to the pathway system

Planner Compton-Ring said comments on stormwater management, quality and quantity were expressed by neighbors. This project must submit an engineered stormwater plan to Public Works. She said there is not a condition for restoration. They are meeting all of the standards. Large trees are protected on the property and the applicant is proposing open space, trails, and amenities including playgrounds and shelters. Staff recommended a phased open space plan. This latest version has been scaled down by size and mass to better match the character of the neighborhood. There are no 16-unit buildings in the new design; they are now 2, 3, 4 and 5 unit buildings. The PUD allows attached multi-density units and this provides efficient use of infill. The project is within walking distance to schools, town and parks. In March staff recommended a density reduction and a method for transitioning density through the project. This change has been made and staff is satisfied with this approach.

Staff had concerns about the density in the site plans offered in March and May. There aren't a lot of areas close to the schools. It may be an ideal location, but it continues to be a controversial location. She said the applicant is providing services, but the density is more intense than the existing neighborhood.

The Whitefish City-County Planning Board held three public hearings on March 21, 2013, May 16, 2013 and July 18, 2013 to consider the request. Following the first two hearings, the Planning Board tabled action and directed the applicant to listen to the comments made during the hearings and meet with the neighborhood. Following the July hearing, the Planning Board recommended approval of the above referenced rezone, subject to one condition as contained in the staff report and the planned unit development subject to eighteen conditions as contained in the staff report and adopted the staff report as findings of fact (5-1, Vail voting in opposition; Anderson, Smith and Blake were absent). The Planning Board also added the following two conditions of approval and made an additional recommendation for Council consideration:

19. Review the intersection of Armory Road and E 2<sup>nd</sup> Street with the Public Works Department and shift it to the west. (WCCPB, 7-18-13)

20. Conduct a traffic study that determines if the projected traffic from this development falls within 15% of the traffic projected from WR-1/WER zoning development. (WCCPB, 7-18-13)

The Planning Board also recommended that the Council place Armory Road on a priority list for roadway improvements that would also include sidewalks.

Staff recommended approval of the above referenced rezone subject to one (1) condition of approval and planned unit development subject to eighteen (18) conditions set forth in the attached staff report.

Staff is concerned with the two additional conditions recommended by the Planning Board and would recommend the following:

*Condition 19:*

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The Public Works Department has reviewed a concept which would move the north leg of the Armory Road intersection 125-feet west of the existing 'T' intersection. This alignment would present more conflicts for motorists and pedestrians than a typical 4-way intersection and southbound Armory vehicles' headlights would shine directly into an existing home on the south side of E 2<sup>nd</sup> Street. We believe this configuration would create more problems than it might solve and prefer a condition that directs the developer to work with the Public Works Department to design the safest possible intersection. We recommend Condition #19 should be reworded to state:

19. The applicant, the applicant's engineer and the City Public Works Director shall explore the idea of moving the proposed Armory Road extension to the west and review its implications in order to establish the optimal alignment.

*Condition 20:*

City staff would recommend eliminating condition #20. The traffic study as part of the application, developed by a Professional Engineer using accepted engineering practices, determined there is adequate capacity on the surrounding roads. The 15% standard chosen by the Planning Board is not based on any recognized criterion and it hasn't been vetted through the public hearing process or reviewed and approved by the City Council.

*Armory Road Placed on a Priority List:*

The City is currently planning for East 2nd St from the Shareview alley to the BNSF tracks. The City's only source of funds for this type of project is the Resort Tax fund. A priority list for Resort Tax funded street projects was adopted in 1998 and revised in 2011. Armory Road is currently 25 projects out on the priority list. The typical pace of construction has been one project per year, with some projects requiring two years to complete. So given the current schedule of priorities, Armory Road would not be eligible for full reconstruction using Resort Tax funds until sometime after 2035. One funding alternative might be a Special Improvement District (SID), whereby property owners within a defined neighborhood district would carry the cost of design and construction in the form of assessments added to their property taxes over a period of 20 years.

The Resort Tax Monitoring Committee has considered reviewing the Resort Tax street reconstruction priority list over the coming months/winter. This would be an opportune time to propose a higher priority for Armory Road. Interested parties should bear in mind; priorities have typically been set with attention to spreading improvements around the community from one year to the next. East 2nd St will be reconstructed next year, so it seems unlikely an adjusted schedule of priorities will set up Armory Road for major improvements in the immediate future.

A suggestion was apparently made to consider a stand-alone path project on Armory Road, without full street reconstruction, and several points come to mind. The funding available for stand-alone path projects is much more limited than what is available for full street reconstruction projects and even a stand-alone path project could easily cost over \$200,000. When you consider the major improvements planned for East 2<sup>nd</sup> St next summer, including a bike/ped path from Shareview Alley to Armory Park, as well as the critical need for bike/ped paths in other neighborhoods, it's hard to imagine trail funds being dedicated to a second project in this neighborhood right away.

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The public involvement and comment at all three public hearings have been substantial. At the hearings, 50-70 people were in attendance and 14-29 people per hearing testified before the Planning Board. It is difficult to briefly summarize neighborhood concerns in this transmittal as they are vast and varied. All the emails and letters received from the public are attached and should be carefully reviewed by the Council. Generally, the overarching themes of concerns from the neighborhood include: density, project out of character with the neighborhood, product-type (apartments instead of single family homes), traffic (volume, safety and construction traffic), lack of pedestrian and bicycle facilities on Armory Road, long-term maintenance of the project and concerns with a transient population. She reviewed the conditions for approval.

She said a petition was received today, signed by over 25% or more of the property owners within 150 feet who are in opposition to the zone change on Tract 1K; therefore requiring the Council must have a 2/3 vote of the Council for it to pass in accordance with State Law 76-2-305-2b (MCA).

Councilor Mitchell asked about Condition #17 and Planner Compton-Ring clarified that the affordable housing bonus is 10% or 14 units. Council Mitchell asked and Director Wilson said they will look at the alignment for the sewer and the water. The City provides the sewer line and will upsize the water line for their needs. Councilor Mitchell asked and Director Wilson said he was satisfied with the traffic study; he has no reason to question the traffic study. Councilor Sweeney asked if the phasing will occur on Second Street first and Planner Compton-Ring said they will go from Second Street north with the utilities. Councilor Hildner said there is some conflict on the sidewalk with Public Works and the Bike/Ped committee and he wondered if the right-of-way would be preserved. Director Wilson said there is no right-of-way beyond this property so there is no practical way to extend the sidewalk beyond it on the north side of Second Street. Councilor Anderson asked the capacity of the traffic study and Planner Compton-Ring said the applicant could describe that. Mayor Muhlfeld asked about Condition #6. He said years ago when they approved the Cow Creek easement they didn't have an easement on Rose Crossing Lane. Director Wilson said they initiated the extension with the developer and he thinks that it is the best way to go. Manager Stearns said they should refer to the conditions on page 414 because they are the most recent conditions.

Mayor Muhlfeld opened the public hearing.

Sean Averill, Community Infill Partners, thanked Planner Compton-Ring and the staff for putting the staff report together. He said they have been moving slowly through this project and have tried to listen to the public. He said all development impacts others, but they are trying to limit the impact to the community as much as possible. He presented a power point presentation describing their purpose and plan. He said there was a need for affordable housing, young professional housing and rentals. They chose this project location because it is close to the schools and downtown. There is no other large site like this within the .85 mile radius of downtown.

Eric Mulcahy with Sands Surveying said 6.89 acres are in the urban designation, and the eastern property is suburban; that is why they came with a request for different zoning. They are requesting WR-2 and WER zoning to be in compliance with the Growth Policy. Without affordable housing they could have a maximum density of 117 units. The Growth Policy encourages affordable housing and a density bonus allows a density increase by a half to offset the costs to provide affordable housing. With affordable housing the density is 174 units. The applicant is proposing 143 units, so the affordable

housing number would be 14 units. He said this is one of the first projects since the recession to utilize the density bonus to create affordable housing.

Scott Elden, 444 O'Brien, Montana Creative, said he and Aaron Wallace were with the project as the design team. He said they received a lot of public input and created 3 different iterations of the plan. The first site plan began with 174 multi-family units, 22 apartment buildings, 71% open space, 8 and 16 plexes, but no single family units. The second site plan addressed the concerns of staff and the community. Single family homes are on the outside and the apartments are smaller units that have walk-ups separate entrances. There is a perimeter trail around the whole project that will be open to the public. Each single family residence will have to go for ARC review for project variety. This site plan will offer one-bedroom units, 2-bedroom, and 3-bedroom units. They are providing 32% impervious surface which is very low. For rentals there will be 29 buildings with 93 residences. The pocket living neighborhood design is a new concept in Whitefish. He said it will meet housing needs for young professionals as well as affordable housing. The PUD requires community benefits and they are providing 2,300 feet of trail, 5.5 acres of riparian area, a City road connection, a City sidewalk, a 20' City sewer interceptor project easement and a City water connection project easement. There will be a management office on site and the Whitefish Housing Authority will manage the 14 units in that program. He said they could build a traditional subdivision with 89 buildings with 267 bedrooms, but they are only proposing 53 buildings with 270 bedrooms. The traditional subdivision would offer 35% green space, but they are providing 68% green space. The vehicle trips per day in a traditional subdivision would be 890 and theirs will generate 989 trips.

Ryan Mitchell, civil engineer, said he did not do the traffic study; but they use traffic studies for information to evaluate traffic systems and impacts for specific projects. The project is bordering Second Street and it has a typical capacity of 10,000 vehicles/day. The proposed traffic from the development increases the trips to 3,821 and it will constitute 85% of the proposed usage from the project. Armory Road has a typical capacity of 3,000-5,000 vehicles/day. The proposed traffic from the development would increase the trips to 1,162. It will be 15% of the total usage from this project.

Bill VanCanagan, legal counsel for the applicant, said land use law is one of his specialties. He has dealt with numerous cases with spot zoning. He said he assists local government with implementation of regulations. He also represents the Montana Association of Realtors and their legislative matters. He has submitted a comprehensive letter addressing the spot zoning issues and cites the Montana cases that deal with this issue. This project does not fall within the legal definition of spot zoning. He said there is no stark contrast between one property and the next in this project. This development is infill in a residential development. It is in full compliance with the Growth Policy. He said the Planning Board has completed a comprehensive study. He said staff has created a very comprehensive staff report and sent the project back to the applicant several times. He urged them to approve the application.

Sean Averill read the mission statement of the Growth Policy which says they will provide affordable housing. He said they have several ideas they can propose to offset more of the neighbor's concerns if the Council would like them to share them after the public hearing.

Councilor Sweeney said the traffic studies are confusing. He said there is an increase of 1,162 vehicle trips and he wondered what the current use is on Armory Road.

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Bob Abelin from Abelin Traffic services said the current volume on Armory Road ranges from about 700-1000 trips/day. With this development there would be another 150 trips, so it would increase to about 1100 trips/day. Councilor Kahle asked and Bob Abelin said the capacity on Second Street is about 10,000 trips. Councilor Anderson said page 723 says the latest site plan iteration would decrease the traffic trips to 989 trips/days. MDT said Second Street has about 3000 trips per day and they will increase it by about 750. Councilor Hildner asked if the list included the ADU's per unit and Planner Compton-Ring said they do.

Rebecca Norton, 530 Scott Avenue, said she attended the Whitefish City County Planning Board and everyone spoke against it. She thinks the density is too intense. She thinks the traffic is a major issue and she wants to be sure Cow Creek is protected. She didn't like the idea of the Armory Road people having to pay for a Special Improvement District. She would like to see the project designed to match the neighborhood and more character-based.

Lori Collins, Director of the Whitefish Housing Authority, said they are in support of this development because of its inclusion of affordable rentals which are in extremely short supply. They are also in favor of this because of its proximity to schools and the bike and walking trails. She thanked the developer and staff for providing affordable housing because their waiting list is 3.5-5 years for affordable rentals.

Ryan Zinke, 409 W. Second Street, said people ask what has changed in Whitefish and the biggest change is that people don't live here. He said most of his 1980 WHS graduating class lives in Columbia Falls. He said he has looked at this project and he is in support of it. He said he would like to see a left turn lane coming from town to turn into this project.

Nancy Tigue, 1319 E. Second Street, applauded the development, but said she lives on Second Street and she has deep concerns for the safety of pedestrians and bike riders. She would like to see the density reduced.

Jim McIntyre, 719 W. 3<sup>rd</sup> Street, said this is a great plan and he supports it. He said it has a lot of green space, mixed uses and a good design. He thinks it would be a positive addition to Whitefish.

Kate McMahan, 151 Wedgewood Lane, said she lives in the neighborhood. She said the neighborhood did not have opportunity to read the information on spot zoning. She addressed the "public benefit" doctrine that was referenced in the legal analysis by Mr. VanCanagan. She noted that the source for the public benefit doctrine that was cited in the letter is over fifteen years old. Second, this citation does not come from case law in Montana. For guidance on analyzing spot zoning as it relates to public benefits, she would refer the Council to a recent Montana Supreme Court decision from 2010, the Plains Grains L.P. versus the Board of County Commissioners in Cascade County; this case is referenced in the letter from the applicant's attorney. She is very familiar with this case because she wrote the expert report that contained the spot zoning analysis that was relied upon by the court in making their decision. In regards to the public benefits determination, she quoted from the Montana Supreme Court:

"This inquiry should focus on the benefits of the proposed rezone to surrounding landowners, not the benefits – financial or otherwise – that would accrue from the proposed development." And

"The proposed rezone smacks of "special legislation" in that the benefits would accrue to a single landowner to the detriment of the surrounding farmers and ranchers."

She said that her neighbors here tonight have testified at three Planning Board hearings and submitted volumes of letters attesting to the detrimental effects resulting from the increase in maximum density of 80% that would be allowed by this proposed rezoning. Pedestrian safety, property values, the change in character and the loss of the quiet enjoyment of the neighborhood are the significant detriments that the neighbors have described and the Council should give serious consideration to these concerns. She referenced a more recent court case from Flathead County that was issued just a few months ago from Judge Ortley. In this case, the court overturned the action of the County Commissioner's that rezoned land from suburban residential to a greenbelt highway business district. Again, she is familiar with this case because she wrote the expert report for the plaintiffs which contained a zoning analysis of this action. In the Plains Grains case from Cascade County and the recent case from Flathead County, both Planning Boards and both County Commissions made findings that the proposed rezoning was consistent with the Growth Policy. In both cases, however, the courts ruled that this finding was made in error and that the Growth Policy did not support the proposed rezoning. In both cases, local officials relied –in good faith - on general policies and descriptions that appeared to support the rezoning action. In both cases, however, the local officials failed to acknowledge more specific policies that provided clear direction on the application of zoning districts to individual parcels. In the matter before you tonight, the Planning board failed to consider the policy that states, "Protect and preserve the special character, scale, and qualities of existing neighborhoods while supporting and encouraging attractive, well-designed, neighborhood compatible infill development." The neighborhood east of Cow Creek has an existing density of 2 to 3 dwelling units per acre. The proposed zoning district that would allow a maximum density of 18 dwelling units per acre. She said this is not compatible development.

She referred to a landmark case from the United States Supreme Court referred to as the Village of Arlington Heights vs. the Metropolitan Housing Commission. She said she is familiar with this case because her first job out of college was working for the Village of Arlington Heights as a community development planner. In this capacity, she was responsible for writing the Village's housing plan and rewriting the Comprehensive Plan including the housing element. She became very familiar with the affordable housing concerns that were at issue in this case and said the facts of the case are very similar to the proposal in front of them tonight. There was a request to rezone land in a single family neighborhood to allow for townhomes in order to provide affordable housing. Even with a demonstrated need for affordable housing, the United States Supreme Court upheld the single-family zoning and did so primarily because the future land use map in the comprehensive plan indicated that this land was designated for single-family development. As stated by the Supreme Court, "There is no reason to doubt that there has been reliance by some neighboring property owners on the maintenance of single-family zoning in the vicinity."

She said that for many households the investment in their homes represents the biggest investment in their lives. Residents of this neighborhood have purchased homes and have chosen to raise families in an area that has a peaceful – pastoral setting. Rezoning Tract 1K from WR-1 to WR-2 would allow a density that is far and above what anyone envisioned for this neighborhood. In both the cases from the Montana Supreme Court and the United States Supreme Court, it is clear that the courts give priority to the investment made by surrounding property owners and the potential detrimental impact to those investments. She asked the City Council so give the same weight to these factors that the courts have. She said the proposed rezoning does not comply with the Growth Policy, it is special legislation benefitting one land owner and it does meet the test for spot zoning. She referenced the

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graphic in the slide show by the applicant that depicted a subdivision with 99 lots. And said this lot layout is based on a lot size of approximately 7,000 square feet. This layout is inaccurate and misleading. The minimum lot size for the WER zoning district, which the applicant has requested for the easterly 17 acres, is 20,000 square feet. She said she had redrawn the layout with the larger lot size and submitted this layout for the record. Under this layout, which complies with the WER zoning, only 44 lots would be accommodated on the parcel – not the 99 lots suggested by the applicant. She said with this revised layout, there is a noticeable difference in the scale and intensity of the development.

Jack Quatman said he and his wife, Phyllis, live at 150 Johns Way. There are huge concerns for public safety. He said the traffic study is smoke and mirrors. He said his wife Phyllis has a copy of the traffic study in June 2013 that showed 500 trips per day on Armory Road. He said there was a letter from the Fire Department saying they had concerns about getting their fire trucks in there. He said he talked to Chief Dial who said no one has asked him if he had any concern about 150 units on Second Street. He said they were told by the developer that this project is about the community of Whitefish. He said they heard that they are thinking of 1, 3 and 6 month rentals and that doesn't represent people committed to the community. This is way off base from the Growth Policy and the historical nature of this neighborhood. He said the Council cannot ignore the public comment. They are saying they want to change two sets of zoning to create this project. He said they are all aware of the Walton issue and how the City lost the lawsuit. He said if they make an exception for this developer they will set up a precedent that will allow them to get sued in the future. He said this could be a constructive change to the Growth Policy if they allow this zone change through the back door. He said he is a donut resident so he can't vote for them; that litigation is winding its way through the courts. He said the traffic on Armory Road is going to more than double. He said the Planning Board wanted to add conditions to get a second, unbiased traffic study and to move the improvement of Armory Road to the top of the list. He asked them not to approve this project. He asked those in the audience who were opposed to stand and about 45 people stood.

Dick Zoellner said he lives in the donut and wished he had representation. He said the City and County need to get together on the roads. He lives on Voerman Road. The east/west corridor is an issue because of the sun blinding people. He said they need to address the road and safety issues and future Councils are going to be forced to initiate an SID. He said he is against the project.

Carol Nelson, 1590 E. Second Street, said they bought their home in 1984 and she is concerned about the impacts on the neighborhood. She asked them to deny it.

Velvet Phillips-Sullivan, 1637 E. Second Street, said some of the people on the governing bodies have forgotten why they were elected. She said when she was on the Council they were instructed to ask whether it aligns with the Master Plan and with the zoning that is currently there. She said some members seem to only be concerned about whether the developers will be able to make money on the project. It is not their job to make sure the project pencils out for the developers. She is offended. She thinks the project violates the Master Plan and the prohibition against spot zoning. She asked them to remember whom they represent and the long term impacts of this development. If they approve this they are setting a dangerous precedent.

Sarah Fitzgerald, 148 Wedgewood Lane, said she is a former City Council member. She said they bought 4 acres in the neighborhood based on the neighborhood and the zoning. She said the developers want to change the zoning. They keep hearing affordable housing, but they are asking for

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\$900 for one bedroom units. She said City staff said it will connect the bike paths, but ironically, the path they want to connect with is one that she and her neighbor donated land for—at great cost to themselves. She said the neighborhood has spoken and is asking them to deny this request.

Melinda Morrison, 170 Armory Road, said she and her husband Bruce are in opposition to this project. She urged them not to change the zoning from WR-1 to WR-2. She is an attorney and believes it is spot zoning and is not in conformance with the Growth Policy. She urged them to deny.

Suzy Stagg, 1306 E. Second Street, spoke in opposition. She said the change of zoning is not appropriate. She said they are not opposed to the property being developed, but they are opposed to the zoning change. She said the applicant said they wanted to meet the needs for families, but then they created homes which aren't applicable to families. She has supported other projects that changed the character and traffic out there because they benefited the whole community. She said the applicant stands to gain financially from this, but the neighbors don't stand to gain anything. She has heard the comments from the Councilors, the applicants; but in listening to the neighbors she wanted to commend the people who keep coming to these meetings, taking time away from their families to speak out.

**Councilor Kahle offered a motion, seconded by Councilor Anderson, to extend the meeting past 11:00 o'clock pm. The motion passed unanimously.**

Mayor Muhlfeld called a 10-minute recess from 11:00 pm to 11:10 pm.

Erin Barbee, 1310 E. Second Street, echoed the concerns about public safety for pedestrians on Second Street and Armory Street. The road narrows beyond Pine Street and there is a line of sight issue. She said there are many children who will be put at risk. She quoted from the Daily Interlake which said the current condition of Armory Road shouldn't hamstring the project. The City has had plenty of time to address the poor roads as they have added amenities out on Armory Road.

Kelly Davidson, 585 Armory Road, said she understands being a contractor and knows there are boundaries and parameters. She asked them to consider the precedent they are setting, and she cautioned them to be careful with the parameters they set. She didn't want them to set parameters due to the economic downturn or due to financial hardship. She asked them to assure that the community actually receives the benefits which are promised. She said there is a lot of distrust for this process and people are skeptical. She said they can't come to consensus on the traffic numbers or the dangerous intersections. She asked them to hear the concerns about traffic and safety.

J.D. Hughes lives at the corner of Armory Road and Second Street. He thanked Planner Compton-Ring for her report, but said she didn't mention anything about the bad effects on the community. He said he wondered if they would give him the same zoning for his property. He said he likes to make money, too, but he doesn't want to impact the community. He said they don't need fancy presentations if they are good, honest people. He said the Council is the only hope they have as a community. He thanked David Kauffman for providing the agricultural property for 10 years. He asked the Council to look at turning this property into a City park or a cemetery or something good for the community.

Bob Horne, urban planner, said the applicants have lowered their density but it is still out of character and the wrong zoning for this area. He said they support infill and know this property is going

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to develop, but they want them to keep the WR-1 zoning which allows 99 units/24 acres. He said their neighborhood is full of affordable housing and rentals. He doesn't think it is accurate to say the developers have listened to their concerns. They suggested that the developers stay with the WR-1 zoning and patio homes. The patio homes have gone away. He said staff did the neighbors a disservice in the staff report by not stating that this project is not in compliance with the Growth Policy. He said Eric Mulcahy said density bonuses are common, but this is not a suitable location. He said Scott Elden said this rhythm matched the neighborhood. The community is different on the east side of Cow Creek. He said Armory Road is 24 feet wide with deep drainage ditches. He said capacity is not the issue. He said Jack Quatman spoke about a traffic study on Armory Road which estimates about 582 trips/day. He said capacity-wise Armory can handle 5 times that load, but the issue is safety. He said Pine Avenue and Second Street is heavily used, but that intersection wasn't addressed in the Traffic Study and that is unacceptable. He said he submitted a map showing land that can handle heavy development on the Highway 93 South corridor. He asked them to deny the zone change and PUD requests.

Chris Bernat, 119 Wedgewood Lane, spoke in opposition to the project.

K.K. Jentz, 309 Sugar Bowl, is a business owner who moved his manufacturing company up here and he has 60 employees. He said they can't find affordable housing for their employees to live in Whitefish.

Park Schara, Bigfork, said his goal is to be in Whitefish. He has five kids which limits his rental options. He was a self-employed builder when the economy tanked. They can't live in Whitefish because of the lack of rental space. He thinks there has been a lot of planning and compromises made for this project. He said he sees this as a great opportunity to provide jobs. He said from infrastructure to landscaping they hire about 60 people for home construction projects. Most of them are young guys with families. He said this project could help a lot of families. He said these guys have proposed an incredible development.

Nikkee Aston, a current renter in Whitefish, said it was hard to find a rental. She said there should be a better market for rentals so she was in support of the project.

Sarah Scott, 130 Armory Road, spoke in opposition. She is a teacher in Whitefish and lives on Armory Road. This development changes their neighborhood. The developers have single family homes they estimate at \$350,000 and that is not affordable for teachers.

John Bates who grew up at 155 Armory Road said the traffic has continued to increase and it is dangerous. He said he is an EMT and his wife is a nurse and there is no way they would choose to live on this street.

Heidi VanEveren, 4 Pine Avenue, said she is opposed to this project. She said an infill project could be figured out for this area that doesn't have such high density.

Michael Downey, 140 Hueth Lane, said he has seen a lot of development out on Armory Road. He said the Fire and Police Department are already stressed in our community. Crime rates increase when there is a transient population. He said there are safety issues, as well. He thinks the community has spoken—they aren't opposed to development, but they are opposed to poor development. He quoted

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Chet Hope who said they need to focus on the type of developments they do in this town. The Council is elected to represent the community and they need to listen to the concerns of the people.

David Kauffman, 4610 Highway 40, owns the property in question. He moved to this property in 1962 and it was outside the City limits. In 1988 he bought the neighbor's property to protect the area from being developed and to buffer his parent's property. In about 2000 the Council annexed large tracts of property, including his, even though they didn't need sewer services. His taxes jumped 38% the first year and they have gone up about 100% now. He said he is entitled to develop the property according to the City statutes. When the last Growth Policy was reviewed the City property still ended at Larch Lane. If the City reaches out and takes in new properties then the other properties should see an increase in density. He had no voice when he was annexed, but now the rules apply. He understands the traffic issue and thinks the Public Works is going to fill the low spot just west of Cow Creek. He said Bob Horne said the property east of Cow Creek was "different." He would love to have this property stay like it is forever. He hoped someone would buy it and keep it as a park, but now they just want to keep him from developing it. He thinks the developers have worked hard to work with the neighbors. He cares about the neighborhood. He thinks the designers have worked to create a great project that is unique. He said when the City annexed that property they took on Armory Road—no shoulders, deep ditches and all. He said the past Council created this knot when they annexed the property in. He said finances dictate the choices we have to make sometimes and that is why he is selling his property. He feels the City can benefit from this project.

Noah Cowzer, 128 Armory Road, said they are young professionals and have successfully rented in Whitefish for the past 6 years. They bought a lot on Armory Road to start their life. He asked them to vote in opposition.

Ryan Kann, 120 Birch Drive, said he doesn't think this is a case of "not in my backyard." He said this will set a precedent for other properties as Whitefish expands. He thinks the design team did a great job, but the next one might not be great. He asked them not to set a precedent.

Mayor Muhlfeld asked City Attorney VanBuskirk if, due to the lateness of the hour, the Council decides to delay their action this evening, what would be the process. City Attorney VanBuskirk advised the meeting can be continued (or tabled) to the next meeting or to a date certain, and continued public comment would be allowed at that time. It would also allow time for Council to voice their follow-up questions, if any, regarding any of the testimony heard tonight. If the Council chooses to have action tonight, then the Public Hearing would be closed.

**Councilor Hyatt offered a motion to table and to keep the public hearing open. The motion died for lack of second.**

**Councilor Kahle offered a motion, seconded by Councilor Hyatt, to table both ordinances and to keep the public hearing open to the next meeting.**

Councilor Hildner said if it is their desire to not make a decision tonight then they need to make a motion to continue the public hearing to a date certain. Councilor Mitchell said he spent the day reading the packet and he thinks the public is waiting for them to make a decision so the public doesn't have to come back.

## WHITEFISH CITY COUNCIL MINUTES

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Councilor Kahle said he agreed that this is a critical decision and best attendance they've had. He said he has a lot of questions especially about safety and traffic. He would love to hear from police and fire, so he is not ready to make an informed decision. Councilor Sweeney said he doesn't want to make everyone come back, but given the questions he has about how affordable housing is defined, he needs more time. He has issues about Armory Road and he needs information from staff. Councilor Hyatt said he wants to table it because the fire and police chiefs haven't been able to express their concerns. This is a big decision. Councilor Anderson said he had quite a few questions, too. He wondered if they should compile those and give them to the applicant and staff to get answers. Attorney VanBuskirk asked if they would feel comfortable asking staff to put together some more analysis. Councilor Kahle asked if it was appropriate to acknowledge someone from the audience and Mayor Muhlfeld asked him to wait.

Manager Stearns said staff needs to know the questions or concerns the Councilors have. He worries that there might be a delay to get the questions in writing. He said they would have to get them by Wednesday. Councilor Anderson said if the applicant has other ideas then they need to be submitted before the public hearing so the public has a chance to comment on them. Councilor Mitchell said there is a viable concern about safety and he wondered who was qualified to address those concerns. Manager Stearns said Director Wilson can talk about the roads and fire and police can talk about road widths and emergency access. Councilor Hildner thanked everyone for their patience. He said he has listened carefully to their comments and will give them every consideration.

Mayor Muhlfeld acknowledged the public to return to the podium.

Bob Horne asked if the public can provide information on the Councilors questions and Manager Stearns said they can post it on the website or via his email list. Bob Horne said if they have to wait for the packet they won't have the time to answer the complex questions.

Kelly Davidson asked how many times they are going to postpone. She said this is the fourth time most of these people have showed up with the same questions and issues. Councilor Hyatt said the Councilors have just read a 400 page packet and they have had numerous hours of public comment and they want to make a good decision. Mayor Muhlfeld said the comments from tonight will carry over to the next meeting. Councilor Hyatt reminded the public that it is the first time the Councilors have heard this project.

Ken Stein, 1495 Lion Mountain Drive, thanked them all for the time and effort they have put in. He questioned why they need to come up with the questions for the experts to answer. No offense, he said, but that is out of the scope of their job.

J.D. Hughes came back to the podium and said he would be nicer this time. He said most of the people in this area said they are willing to let them change the zoning to what is currently in the area; so there were other alternatives to consider.

Nancy Tigue asked them to all be present at the next meeting. Councilor Mitchell said he may not be here at the next meeting. He has a hard time sending out questions to staff to appear on the website. He thinks it needs to go out in the packet the way they normally do it.

**The motion to table passed 5-1 with Councilor Mitchell voting in opposition.**

Manager Stearns said neither the public nor the applicant can lobby the Councilors because this is a quasi-judicial issue. City Clerk Lorang said in order for printed public input to be included in the packet it must be received by the City Clerk's Office by the deadline of the Tuesdays before the meeting by 4:00 p.m.

Bob Horne asked and Manager Stearns said they will post the questions on the website.

## **8. COMMUNICATIONS FROM CITY MANAGER**

### **8a. Written report enclosed with the packet. Questions from Mayor or Council? (p. 893)**

Councilor Mitchell asked how the BID is going and Manager Stearns said they have met three times. There will be a work session in September, but there is no concrete proposal at this time.

### **8b. Other items arising between August 14<sup>th</sup> and August 19<sup>th</sup>**

Manager Stearns said Tom Lopaz, Chief of Staff for Senator Tester and field representative Virginia Sloane met to talk about the Stoltze Conservation Forest Legacy Grant application to help conserve 3,000+ acres, along with discussing invasive species and tax exempt municipal bonds.

He said Director Taylor wanted to remind the public that there is a public open house on the Highway 93 South Corridor Study Plan 4:30 pm - 6:30 pm, August 20<sup>th</sup>.

### **8c. Consideration of a two year employment contract extension for City Attorney Mary VanBuskirk (p. 898)**

Councilor Mitchell offered a motion, seconded by Councilor Kahle, to approve a two year employment contract extension for City Attorney Mary VanBuskirk. The motion passed unanimously.

**8d. Reconsideration of the request to waive the building permit and impacts fees for the WAVE.**

Councilor Hildner moved, and Councilor Anderson seconded, to reconsider the motion on August 3 by Councilors Mitchell and Hyatt on the request to reimburse the WAVE impact and building permit fees.

Councilors Mitchell, Kahle and Hyatt voted in opposition and Anderson, Sweeney and Hildner voted in favor. Mayor Muhlfeld voted in opposition and the motion failed.

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

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

**9b. Letter from Whitefish Community Library about library restroom use during Farmers' Market and special events (p. 908)**

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Councilor Mitchell asked and Councilor Hyatt said the library gets a huge influx of traffic for the restrooms during Farmer's Market; and, in addition, the trash cans are full and overflowing. He suggested that the Heart of Whitefish provide porta-potties. Councilor Hildner said the Library is a public building and a public restroom. The Parks Department maintains that bathroom. He said the Heart of Whitefish already provides recycling and garbage cans.

**9c. Consideration of approving Landlord's Release and Consent for assignment of lease for WAVE expansion financing (p. 909)**

City Manager Stearns said the lease with the WAVE states there is no approval of the lease without release from the City Council. It assigns the lease revenue to the bank. He said he and Attorney VanBuskirk are reviewing all of the documents and they think this is the only one that requires Council approval. Councilor Mitchell asked and Manager Stearns they would only be responsible for any expansion bills if they chose to be. The debts are attached to the property. It is a \$7-9 million property and the current loan is about \$2.5 million. If The WAVE couldn't meet its payments the Councilors could decide whether they wanted to protect the investment. The bank is requiring assignment of the lease as part of the collateral for The WAVE. Councilor Anderson said if there is a foreclosure then the bank gets to operate the asset. He said the City doesn't want to be a guarantor.

**Councilor Anderson offered a motion, seconded by Councilor Hildner, to approve the Landlord's Release and Consent for assignment of lease for WAVE expansion financing. The motion passed unanimously.**

Councilor Hildner said there are new, permanent race marks on the street and they need to be sure race organizers know to use non-permanent markings. Mayor Muhlfeld agreed. Mayor Muhlfeld said if it hadn't been so late he would have allowed the reconsideration so they could talk about the WAVE fee waivers and he apologized for not giving them that opportunity.

**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 at 12:40 a.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