

WHITEFISH CITY COUNCIL MINUTES

October 7, 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, Planning and Building Director Taylor, Senior Planner Compton-Ring, Senior Project Engineer Hilding, Parks and Recreation Coordinator Butts, Police Chief Dial, and Fire Chief Kennelly. Approximately 10 people were in attendance.

2. PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Chris Tucker to lead the audience in the Pledge of Allegiance.

Mayor Muhlfeld said the Credit Union withdrew their request to extend the Lookout Ridge request (agenda item #7b) until the next Council meeting.

Councilor Hyatt asked if item #9 could be moved up for a vote immediately after the Consent Agenda. The Councilors agreed.

3. PRESENTATIONS – Presentation on 2014 East 2nd Street Road and Trail Construction Project (p. 323)

Ryan Mitchell, with Peccia and Associates, said they started with neighborhood meetings back in 2012. They have almost all of the easements and permits completed and they have finalized the cost estimates. They are ready to send the project out for bid. They have sent out about five newsletters and have held two public meetings. He said the construction of Dodger Lane was an important part of this project so they can handle the traffic as they complete E. Second Street. The goal is to minimize the impact of construction and traffic detours in the neighborhood. He said the utilities will be undergrounded except for the main power transmission line that feeds Big Mountain at the west end of the project at the request of Flathead Electric Cooperative; they said it would be too expensive to put underground. They have acquired 13 easements and 19 temporary construction permits; they have one more easement and two more permits left to obtain. He thanked everyone who gave easements and construction permits to help with this project. He said the new panels by the railroad tracks are in and are wider than the existing road so they look odd right now, but they'll match the new design and wider road. The Cow Creek crossing needs a large, rectangular culvert; it will be counter-sunk to allow for fish passage. There will be some wetland areas impacted and DEQ, FWP, Critical Areas Ordinance and Corps of Engineers and 404 permits are required and they are, or will be, in the process of getting those. There will be twice as much wetland along the project corridor when they are done. He said this project has CTEP money tied with it for the trails, and the environmental document has to be approved by Federal Highway Administration and the MDOT. He explained the bidding process is next.

They will have two bid packages. One is for getting the site ready for the utility companies, and to install temporary drainage. They hope to start that work by March 1st. It doesn't require any state approval. This work is critical for the whole project schedule. After that work is completed, the contractor will have 21 days to clear the north edge of the roadway and to clear the right-of-ways and do

some grading work. The utilities have hired a utility contractor to do the utility work on the north trench. It will take about two months to do the utility work. The 2nd bid, the construction phase, has to be approved by the MDOT and the Corps of Engineers. That contract will start in June. The traffic control plans, he explained, includes factors for safety, reasonable access for neighbors, and enough working area for the contractor to do his job. Amory Road to Dodger Lane will be one lane, one-way traffic. No pedestrian traffic will be allowed from Armory Road to Dodger Lane during the construction process. Birch Drive will be barricaded off. There will be a complete closure for 14 days while they reconstruct the Cow Creek culvert area. The railroad track area of the road will have to be built up and filled and will take a 21-day closure. The two closures cannot occur at the same time, so they don't block off the whole area. They also looked at where they want to limit heavy truck traffic, to avoid tearing up City streets. If the contractor uses Second Street they have to stay on Second Street until they hit Spokane Avenue to avoid impact to neighborhoods. He said they will submit everything to the Public Works Department for review in November. Councilor Mitchell asked about access to the Dog Park and Ryan Mitchell said the 21-day won't affect that Park; the closure starts just past it.

Councilor Hildner said one of the issues about undergrounding the utilities involved folks who didn't want to underground their power and wondered how many poles will remain. Ryan Mitchell said Flathead Electric Cooperative is organizing that and they are doing a great job. He said there will be 5 power poles left on this length of the project. Councilor Hildner asked and Chief Kennelly said emergency services will be able to work around the closures. Councilor Hildner asked how they will control speed on Amory Road for empty dump trucks. Ryan Mitchell said it will be an enforcement issue by the Police. Engineer Hilding said they have some control over making sure the contractors pay attention to the speed limit, since the City authorizes the contract payments. Councilor Hildner wondered if they should have a slower speed limit and be proactive to protect children in those neighborhoods.

Councilor Anderson asked and Ryan Mitchell said the dates of the closures will be determined by the contractor. Councilor Anderson said he was concerned about the Wag Race which takes place in this area and asked them to work with the organizers of that race; Ryan Mitchell said there are no closures planned from March 1st-June 1st. Anderson asked and Mitchell explained the bid package timing again. Councilor Sweeney said they need to realize that even as they are improving 2nd Street they are also abusing it and need to be sensitive to the traffic flow and needs of the residents. Mitchell said they write special restrictions for the contractors to minimize the impact on residents. Mayor Muhlfeld asked about the decision not to bury the high voltage line and whether it affected the tax dollars set aside for it. Ryan Mitchell said Flathead Electric Cooperative did not intend to bury the high voltage line because it is a major feeder and the cost to bury it under Cow Creek and Second Street would be very high and the cost was never part of any of the estimates.

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)

Scott Sorenson, 514 Somers Avenue, said he is a guest teacher at Whitefish High School and fills in occasionally at the Middle School. He said he got called to work at the Middle School and couldn't find a parking spot in the lot. He parked on the street and got a parking ticket and ended up in court. The Judge suggested that Mr. Sorensen go before the Council and let them know that there is a parking problem downtown. Mr. Sorensen suggested that teachers get ID badges which allow them to park freely on the road if necessary.

5. COMMUNICATIONS FROM VOLUNTEER BOARDS

Councilor Hildner said the Weed Committee met and agreed that the best time to spray for weeds is in the spring. The Bike/Ped committee remains committed to helping with any weed eradication efforts along the bike/ped paths. They discussed ways to reach out to involve elementary and middle school students in the noxious weed program. The committee decided to hold one additional meeting this calendar year to review and perhaps revise the weed management plan. They want to suggest changes to the weed ordinance and forward them to the City Attorney for review.

Councilor Hildner said the Bike/Ped Committee met and would like to paint the wood sections of the foot/bike bridges this fall, weather permitting. Skyepark Bridge will be coming before Council and the committee is looking forward to bike/ped path construction in conjunction with Phase 2 of the Hwy 93 N. project. There was a motion to recommend use of TIF funds for stairs from the Stumptown Inn parking lot to the trail along the river. Bids are coming in and the cost should be about \$27,000. The committee recommended that Council approve a resolution in favor of limiting watercraft on the Whitefish River to “manually powered or electric motors only.” The committee expressed concern over the need for the City to put stairs on the north side of the east approach on the Highway 93 N. Bridge to permit movement under the bridge and back up to Miles Avenue. He said this was previously approved by the Council. The committee wanted Public Works to look at the work being done behind Walgreens to make sure there is ample consideration of the future location of the bike/ped path. They voted to recommend removal of the promenade feature on Spokane Avenue from the Master Plan update because there is no connectivity to the bike/ped path plan.

Councilor Hyatt said the Park Board met and talked about the Memorial Stadium and the resolution to create a group to oversee the Mountain Trails Park Master Plan; an item on tonight’s agenda.

Mayor Muhlfeld said Whitefish was named the 2013 eCity of Montana for the strongest online community presence in the state fueling local economies. Scott Levitan from Google sent a letter acknowledging this award.

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 September 16, 2013 Council regular session (p. 49)

6b. Ordinance No. 13-06; An Ordinance amending Whitefish City Code Title 11 Zoning Regulations and Title 12 Subdivision Regulations within the bounds of State law (Second Reading) (p. 61)

6c. Consideration of approving application from Sherwood Capital LTD for Whitefish Lake Lakeshore Variance (#WLV-13-W29) at 2982 East Lakeshore Drive to replace and extend a retaining wall; remove a man-made harbor by using fill to restore the area to be consistent with the natural shoreline; restoration of disturbed areas and subject to 29 conditions (p. 73)

6d. Resolution No. 13-27; A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City a certain tract of land known as 416 Ramsey Avenue, for which the owners have petitioned for and consented to annexation (p. 150)

- 6e. Resolution No. 13-28; A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City certain tracts of land known as 2524, 2522 and 2520 East Lakeshore Drive, for which the owners have petitioned for and consented to annexation (p. 154)**
- 6f. Confirmation of appointment of representative, Kelly Davidson, to the Ice Rink Advisory Committee as the Adult Ice Hockey group representative (p. 162)**
- 6g. Consideration of approving amended Protective Covenants, Conditions, and Restrictions (CCR's) for the Lakes Cottages subdivision (p. 163)**

Councilor Hildner asked to remove 6c. for further discussion. Councilor Kahle asked and Manager Stearns said the requests for annexation in items 6d. and 6e. were made by the homeowners.

Councilor Kahle offered a motion, seconded by Councilor Sweeney, to approve the consent agenda without 6c. The motion passed unanimously.

- 6c. Consideration of approving application from Sherwood Capital LTD for Whitefish Lake Lakeshore Variance (#WLV-13-W29) at 2982 East Lakeshore Drive to replace and extend a retaining wall; remove a man-made harbor by using fill to restore the area to be consistent with the natural shoreline; restoration of disturbed areas and subject to 29 conditions (p. 73)**

Mayor Muhlfeld said the applicant's representative, Bill Hart, was here tonight if they had questions for him. Councilor Hildner said he was unclear from the information in the packet about how the maps correspond to the proposed action. He said there wasn't uniformity in the committee on this proposal. He thinks it requires further staff consideration. Councilor Mitchell said page 77 says the Whitefish Lakeshore Protection Committee recommended approval. Councilor Hildner said there was not a firm recommendation in the first place and the maps are unclear. He can't tell the intent of this variance and whether the retaining wall is moving forward or backward. He would like to see more complete staff work. Mayor Muhlfeld said it is not common to pull an item for the Consent Agenda, so he wanted to offer clarification on this issue. He said it went to the Lakeshore Committee on August 14th and the proposed replacement of the existing retaining wall didn't pass. A man-made harbor change has been approved because of the US Army Corps permit. He said that the committee held a special meeting to get this before the Council tonight, and passed it unanimously, but Councilor Hildner still has concerns about it. Councilor Sweeney said he has concerns, too, about the location of the wall. Councilor Anderson said he wasn't certain what the landowner was asking or what the Lakeshore Protection Committee was recommending. He said it wasn't presented in a clear way yet, so he also thought they needed more information and wondered if staff could give them more information.

Manager Stearns said Director Taylor no longer attends the Lakeshore Protection Committee meetings. He said a representative of the applicant is here and might be able to answer their questions. He said Nikki Bond's staff report is on page 73 and recommends approval subject to 29 conditions.

Director Taylor said that the Lakeshore Protection Committee did eventually recommend approval of the whole thing. Councilor Mitchell recognized the applicant's representative.

Bill Hart, 2982 Lakeshore Drive, said he was available to answer questions. Councilor Hildner asked what happened between the first meeting and the special meeting. Mr. Hart said they originally intended to put the wall further back, but they decided to just place a stone wall at the same location as the existing cement wall, but they will extend in another 50-60 feet to prevent further erosion. He said

they are at a 60% angle and then it levels out. Councilor Hildner said he would like to see a map and Mayor Muhlfeld said it is on page 94 of the packet. Mayor Muhlfeld clarified that the variance was triggered because the wall is deviating from the original alignment and the wall will be constructed with dry, stacked stone versus riprap. The applicant indicated that the need for the dry, stack stone is determined by the steep angle. He said the issue is whether this meets the variance criteria. He said if they need more information they can postpone it until they get more information from staff.

Councilor Kahle said after the first split vote the committee received further information and voted to approve it unanimously. Bill Hart said they are doing the best they can to protect two trees and it involved moving the wall back. Councilor Kahle asked and Bill Hart said they are requesting the variance because of erosion. There is an existing pink concrete wall that they would like to remove. They are trying to clean up the lakeshore on their property. Councilor Hildner asked and Bill Hart said he will import clear, clean native rock to fill the man-made harbor. He said Mike Koopal has offered a turbidity curtain for them to use as they fill in the harbor. Councilor Sweeney asked why stacking was better than riprap and Bill Hart said he will use large rocks that will step up with terraces as they go up, because it is a steep bank. Rip-rap would not be as affective at this slope angle. Director Taylor said a detailed drawing was on page 107 in the report.

Councilor Kahle asked and Bill Hart said Mike Koopal has reviewed this application and has been a big help. Councilor Kahle said in his opinion they aren't in the place to second guess the Whitefish Lake Institute and the Whitefish Lakeshore Protection Committee. He said he was comfortable with the project now. Councilor Hyatt said page 127 shows the picture with the terraced walls. Councilor Anderson asked and Bill Hart said the wall height will vary based on the bank angle. Councilor Anderson said that answered the questions he had. Manager Stearns said page 107 includes a cross section detail of the wall.

Councilor Mitchell said he thinks they've done their job and held several meetings and thought it should be approved; he trusts the Lakeshore Protection Committee.

Councilor Mitchell offered a motion, seconded by Councilor Hyatt, to approve the application from Sherwood Capital LTD for Whitefish Lake Lakeshore Variance (#WLV-13-W29) at 2982 East Lakeshore Drive to replace and extend a retaining wall; remove a man-made harbor by using fill to restore the area to be consistent with the natural shoreline; restoration of disturbed areas and subject to 29 conditions

Councilor Hildner said he appreciated the opportunity to have this discussion; he also trusts the Lakeshore Protection Committee. He has concerns about moving the erosion further along the lakeshore and thinks it is worth having these discussions.

The motion passed unanimously.

9a. Authorization to proceed to bidding for East 2nd Street road reconstruction and trail construction project (p. 323)

Senior Project Engineer Hilding reported that they are requesting authorization to proceed with construction bidding for the East 2nd Street project as shown in the presentation tonight from Engineer Mitchell.

Councilor Mitchell offered a motion, seconded by Councilor Kahle, to approve moving forward with construction bidding for all phases of the East 2nd Street Reconstruction Project.

Councilor Hildner said he would like to see the speed limit reduced because he is concerned about safety. Councilor Anderson said he thinks this is a good project, but there is about \$340,000 in additional expense to the City because the power lines are being buried here and that doesn't need to occur. He said there was no fiscal reason to bury the power lines. These are not new utilities, so they aren't required to be buried. He said he will vote against this because it pushes out other road projects that could be funded by the Resort Tax funds.

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

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. 13-29; A Resolution specifying rate increases for water, wastewater and garbage collection services beginning October 1, 2013 (p. 190)

Manager Stearns said Director Wilson is out of town tonight, but the report from the prior packet explained the rationale for this request and the consumer price index increases. Staff recommends water and wastewater rate increases of 5.7% and a garbage collection rate increase of 3%. Values associated with lesser water and wastewater rate increases of 3% are also provided in the staff report.

Councilor Hyatt said since the Council gave staff a 3.7% cost of living increase he wouldn't vote for more than a 3% increase in rates. Councilor Mitchell said the City has an increase in garbage reserves even without a rate increase this year. Councilor Mitchell said he would approve 3% for the water and sewer. He said there was talk about building the cash reserves in case the City ever decided to eventually take back hauling trash.

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

Councilor Hildner said 3% on solid waste amounts to .25 cents per month and he sees it as an opportunity to move toward bear resistant trash containers in a timelier manner. He also favors a 5.7% increase in water and wastewater because that is \$4.25 for an average user. In 2005-2007 there were 30-33% rate increases and he would rather work toward building a reserve so they don't have that kind of a rate jump when they need to rebuild the water system. Councilor Kahle asked if there was a way to stipulate that the 3% increase in solid waste would go toward bear proof containers. Manager Stearns said the Police department hasn't worked out a proposal for bear proof containers yet, but the fee for a regular container is \$4/pick-up and the bear container is \$10.87/ pick-up.

Councilor Sweeney offered a motion, seconded by Councilor Hildner, to approve Resolution No. 13-29; A Resolution specifying rate increases for water, wastewater and garbage collection services beginning October 1, 2013 at the rate of 5.7% for water and sewer, and 3% for garbage.

Councilor Sweeney said by taking small steps they can begin to defray some of the possible dramatic increases in the future. He said the City is also facing a 3% rate increase from the vendor who hauls the trash so this is fiscally conservative. He said the same goes for water and wastewater. Councilor Kahle said the 3% increase doesn't do a lot to help with bear proof containers and that account is already going to show a profit this year, so he can't support it. If they were separate he would be more likely to support the water and sewer increase because there is direct value to the customer. Councilor Mitchell said he keeps his trash in the garage until morning, so why should he have to pay for bear proof containers. Why would they want to put that regulation on people like him who keep their trash in the garage and put it out on the morning it is collected? Manager Stearns said that option complies with the ordinance. The ordinance gives people the option to put their containers out after 4 a.m. on the day of collection or to buy a bear proof container.

The vote on the motion was tied. Councilors Hyatt, Kahle and Mitchell voted in opposition. Councilors Hildner, Anderson and Sweeney voted in favor. Mayor Muhlfeld voted in favor and the motion passed.

Mayor Muhlfeld called a 5-minute recess from 8:45-8:50.

7b. Consideration of application from Whitefish Credit Union, on behalf of Lookout Ridge Investors, LLC, for a two year extension of the Lookout Ridge Preliminary Plat (p. 212)

This item was postponed at the request of the Whitefish Credit Union.

7c. Resolution No. 13-___; A Resolution of the City Council of the City of Whitefish, Montana, indicating its intention to adopt amendments to the Whitefish Downtown Business District Master Plan as an amendment to the 2007 Whitefish City-County Master Plan (2007 Growth Policy) (p. 248)

Planning and Building Director Taylor reported that the original Downtown Master Plan, which was also completed by Crandall-Arambula in conjunction with the City of Whitefish and the Heart of Whitefish, was adopted in April of 2006. Implemented items include Depot Park Master Plan, First/Second/Third streetscape improvements, Central Avenue streetscape and utilities, surface parking lots, zoning and ARC changes. Having these in place enabled the City to get the TIGER grant to rebuild 2nd Street (Hwy 93) from Spokane Avenue to Lupfer Avenue. The current update was initiated in the fall of 2012 and involved several public meetings. The following information includes additional information added by Crandall-Arambula. The update overview recommends essential priority projects including retail parking with new structures and a new City Hall. The report also proposes expansion of Central Avenue retail north to Depot Street and South to 4th Street; and expansion of retail into the Railway District along First, Lupfer and Third. Parking structures are proposed for First and Baker and Second and Spokane Avenue, along with a parking structure to serve Railway District. A paved plaza downtown living room is proposed for Depot Park. There are neighborhood connections with expanded retail opportunities. They are proposing new streets in the Railway District and a protected bikeway and expansion of multi-use trails. They are proposing expanded stoplight traffic signals to make it easier to access the Railway District. They are looking at enhancing the gateways into Whitefish. The land use framework is complex and they propose expanding the Commercial element along Central Avenue and Spokane Avenue. The previous and current plan included the Whitefish Landing concept, but with the Idaho Timber property, the question is whether it would be more appropriate for hotels and mixed use housing. The current plan calls it out for Resort Residential use.

The whole concept downtown involves a retail loop. Director Taylor said there is an issue on a bikeway going to Railway/Baker when there are no crosswalks there (either use First/Baker or underpass.) Engineer Hilding said the Bike/Ped committee didn't like the two-way promenade because it didn't connect to any other two-way paths. Councilor Hildner said there were also concerns about potential tree removals with this project.

Director Taylor said land use proposals include a mix of uses, retail on the ground floor, public parking locations, commercial uses, parks, multi-family and single family zoning and industrial. Councilor Mitchell said on Central Avenue it looked like they moved retail one block further south. Director Taylor agreed and said this would amend the future land use, but not the zoning at this time. It would have to be changed by current landowners or the City could take the initiative to change the zoning, but some people might not like that idea. Commercial uses include service uses, offices, medical clinics and sales of goods. High Priority Projects include a parking structure at City Hall and Second; a parking structure at Spokane and Second Street, improvements on Baker Avenue and improvements on Depot Park.

IMPLEMENTATION ITEMS

The Next Steps portion outlines several updates that need to be made to other regulatory documents and establishes priority development projects. These include:

- Change the 2007 Growth Policy Future Land Use maps in the 'Whitefish Landing' region northwest of the Railway District from Resort Residential to Urban. Director Taylor said he thinks that resort residential may remain more appropriate than urban and may be impacted by the Highway 93 West Corridor Plan and its vision for the Idaho Timber property, so that item could use some discussion by the board. Councilor Kahle asked about the property listed as "inconsistent" and Director Taylor said it was originally proposed as the landing and is not high density.
- Existing zoning ordinance districts that are inconsistent with the framework elements include: WI (Industrial and Warehousing District) north of Railway Avenue west of viaduct and east of Columbia Avenue.
- Eventually changing the WI zoning south of the BNSF tracks to residential of some sort.
- Amend zoning to require ground floor retail exclusively in the downtown loop (First to Central to Third to Lupfer)
- Require zero lot line development in core
- Amend ARC standards to require 70% transparent glass along ground floor facades on Central and parts of First and Third streets (see page 49)
- Amend ARC standards to require 50% transparent glass along ground floor facades on fringe streets in the downtown core (see page 49)
- Require parking access restricted frontages in the downtown core
- Establishes City Hall and a Second and Baker Parking Structure as the Number 1 priority project
- Establishes a parking garage at Second and Spokane as the Number 2 priority project (the rankings of these priorities should be reviewed and debated)
- Establishes Baker Avenue streetscape and roadway improvements as the Number 3 priority
- Establishes Depot Park hardscape improvements as the Number 4 priority

- Establishes other projects as priorities such as Railway District and Central Avenue pedestrian street improvements, a Railway District anchor site, etc.

The Planning Board recommended approval and offered an amendment to keep the pedestrian tunnel under the Baker/Wisconsin viaduct project in the revised Master Plan. At the public hearing someone raised the question of the zoning issue as they expand west of town. They would rather see the City take initiative if they want to facilitate commercial uses. Ian Collins brought up the value of the City having a plan in place when they applied for a Tiger Grant.

Councilor Sweeney said he is not prepared to move on this item tonight. Councilor Hyatt agreed. Councilor Hildner also agreed that Director Taylor has raised some important questions. He thought the Downtown Association might be willing to bring Crandall-Arambula back for a work session.

Manager Stearns said the work sessions are booked up for the rest of the year, unless they want to have a special meeting. Councilor Kahle said it seems that the town is moving from a natural town to something that is contrived. He is concerned about mandated glass and retail on the ground floor. He doesn't want to see them turn it into an outdoor mall. Councilor Mitchell agreed with Councilor Kahle. He said it is changing from a family town to a tourist town. He thinks the plan is poorly done.

Councilor Sweeney offered a motion, seconded by Councilor Anderson, to table this request until after they hold a work session.

Councilor Hyatt asked if they could move something else to a later work session meeting. Councilor Anderson asked if there is urgency with this because it is a Master Plan. Manager Stearns said no, but this Council has been through the whole planning process and new members would have to be brought up to speed. Councilor Mitchell said this item takes priority over any of the other work sessions they have scheduled. Mayor Muhlfeld said he agreed with Manager Stearns that he'd like to see this Council see this update through. Councilor Kahle asked if they could move the meeting for the bear resistant containers and other issues from the Police Department; and with the support of the other Councilors, Manager Stearns said they could. Mayor Muhlfeld said it would be worth it to have either Crandall or Arambula show up at the work session. Councilor Anderson said this update represents a tipping point and it would be good to have the consultants back here. Councilor Anderson said Whitefish is not over-regulated and there is some cohesiveness downtown and that is good. Councilor Kahle said he would like to have one of them there to answer questions, but he would hope they hold the work session anyway. Councilor Mitchell asked and Mayor Muhlfeld said he thought they could have the work session and the vote before the end of the year if there aren't a lot of changes. He said the way they adopt amendments to the Growth Policy is with a preliminary resolution of intention and then they have the final resolution at the second meeting. Councilor Sweeney said he could understand Councilor Mitchell's concerns. The hard work that they do is still worth it and the next Council will surely respect the work done by this Council.

Mayor Muhlfeld said all they can do is put their best foot forward and see if they get it adopted this year or not. Director Taylor said it would be important to let them look at the final version before they adopt it.

The motion to table passed unanimously.

8. COMMUNICATIONS FROM PARKS AND RECREATION DIRECTOR

8a. Resolution No. 13-30; A Resolution authorizing the process to develop an amended Mountain Trail Park Master Plan and establishing the Mountain Trails Park Master Plan ad hoc Steering Committee (p. 316)

Parks and Recreation Programs Coordinator Butts reported that the City of Whitefish acquired the Mountain Trails Park property in 1984 and it includes the Stumptown Ice Den, the Saddle Club, the Warming Hut, an outdoor volleyball court and an outdoor barbecue grill. The need to review and revise the Mountain Trails Park Master Plan is a direct result of a number of varied interests in the future development of this park site.

The challenge facing the Parks and Recreation Department is the ability to facilitate the goals of the interested participants within the current boundaries of the Mountain Trails Park site. In an effort to objectively assess the opportunity to develop any and all expansion of services at Mountain Trails Park and give voice to all parties of concern, staff is requesting that the City Council establish an Ad Hoc Steering Committee to revise the current Mountain Trails Park Master Plan as described within the proposed resolution. Councilor Kahle clarified that the Saddle Club building has been leased out long term by the Flathead Ski Foundation and the lease assumed that they would get some ground around the existing building to expand the ski museum. Councilor Anderson asked if this could be delegated to a Park Board sub-committee instead of creating an 11-member committee. He said they've had trouble filling committees recently and this might be unwieldy. Attorney VanBuskirk said Director Cozad wanted a special planning group and because of the interest he believes there won't be a problem to fill the positions. Councilor Hyatt said every group wants to have a voice in this situation.

Councilor Hyatt offered a motion, seconded by Councilor Kahle, to approve Resolution No. 13-30; A Resolution authorizing the process to develop an amended Mountain Trail Park Master Plan and establishing the Mountain Trails Park Master Plan ad hoc Steering Committee. The motion passed unanimously.

Councilor Anderson offered a motion, seconded by Councilor Hildner, to appoint Councilors Hyatt and Sweeney to this committee. The motion passed unanimously.

9. COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

9a. Authorization to proceed to bidding for East 2nd Street road reconstruction and trail construction project (p. 323) -

See action on this item on Pages 5 and 6 previously in these minutes.

10. COMMUNICATIONS FROM CITY MANAGER

10a. Written report enclosed with the packet. Questions from Mayor or Council? (p. 329)

Councilor Mitchell thanked Mrs. Dial for writing the COPS grant to restore a School Resource Officer Position. He said it was his understanding that after the grant term of 3 years the City picks up half of the fee and the school picks up half. Manager Stearns said Attorney VanBuskirk will write up an MOU to that effect. Councilor Mitchell said if the school can't fund it is the City obligated to keep that

person in that position forever? Manager Stearns said they would look to the legal status of the MOU. If they draw it up that way then the school will be obligated to it. If the MOU expired, then the City would be obligated for one more year beyond the 3-year contract. Council Mitchell commended BNSF and those working on the roundhouse contamination area. Mayor Muhlfeld thanked JoAnn Dial for helping with the COPS grant. Councilor Hildner said he thinks the City will be well served by an SRO in the schools. He thinks they are fortunate to have the grant.

10b. Other items arising between October 2nd and October 7th

Manager Stearns said Richard Hildner commented on the stairway on the Second Street Bridge up to Miles Avenue. The Council never approved it and it is not in the MDT plan. Mayor Muhlfeld said he thought there were constraints with the topography and easements. Manager Stearns said the MDT didn't warm up to the project. Engineer Hilding said they got an estimate from WGM to do the design but they didn't want to pay the price. She thinks it falls back on Public Works to get the stairs. She thought there was some money approved for it, but she might be wrong. Manager Stearns said he thought the Council held off on the stairway so it wasn't in planning right now. Councilor Hildner thought Councilor Sweeney made the motion to make sure they had a stairway under the bike path to bring you back to the sidewalk. He thought it was a done deal. Manager Stearns said MDT was concerned about bringing people up there without a crosswalk to go across the highway. He said he was an advocate of the stairway, but the Council didn't pass it. Councilor Mitchell said they didn't pass it because of the cost, but they can look at in the future. Engineer Hilding said they are talking to contractors who do installations of these metal stairs.

Manager Stearns said they have pared down the applications for the Assistant City Manager/Finance Director position from 48 down to 3 for interviews.

10c. Resolution No. 13-31; A Resolution approving the Deed of Trust and other loan documents securing the WAVE financing with Glacier Bank (p. 337)

Manager Stearns said the Council has the updated documents and deed of trust on their desks tonight. Council action will authorize him to sign the deed of trust, the commercial security agreement and the hazardous substances agreement and indemnity agreement. He said that he and Attorney VanBuskirk have looked carefully at these documents. The City is the land owner and owns the building and leases it back to the Wave board. Indemnification was a major issue. The bank has new constraints under the new banking laws. The City is taking the chance that there was no environmental risk when they acquired the property; this lot was not over the old gravel pit. This land was owned by Flathead County and was bare, vacant land. They don't think it had any pre-existing environmental issues. If someone came after the bank for prior environmental issues then the City would indemnify them for as long as the City owned it. He asked and Attorney VanBuskirk said that when they hold the property as owner that indemnity ends for the City.

The City bears no liability for making payments on the loan; if the loan went into default, the City might want to cure the default because the City might not want to lose an \$8,000,000 to \$10,000,000 asset for a loan under \$3,000,000. However, that would be a choice of a future City Council at that point in time; and that City Council could choose to let the property go into foreclosure. However, given the historic success of the WAVE, no one sees foreclosure as being remotely possible. Councilor Mitchell asked if they have first right to go in and buy the loan.

Attorney VanBuskirk said the City would have the opportunity to go in and buy it first unless someone had a super lean on it.

Councilor Hildner offered a motion, seconded by Councilor Anderson, to approve Resolution 13-31, approving the Deed of Trust and other loan documents securing the WAVE financing with Glacier Bank. The motion passed unanimously.

Mayor Muhlfeld thanked Attorney VanBuskirk for all of her work on this project.

11. COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

11a. Standing budget item - None.

11b. Letter from Kate Orozco, Superintendent of Whitefish School District 44 requesting reimbursement of impact fees assessed on the high school project in the amount of \$66,714.69 (p. 368)

Mayor Muhlfeld said they received the letter from Superintendent Kate Orozco requesting reimbursement and she included a legal opinion about the City's right to assess impact fees on the school. She also said if they weren't willing to reimburse those fees she wanted to know if they would seek an opinion from the Attorney General. Manager Stearns said he fully anticipated that they would be here tonight. He said their attorney, Michael Dahlem, did talk with Attorney VanBuskirk who had done a lot of research with attorneys around the state. All the other cities charge impact fees to the school projects. There was one lawsuit where it was found it wasn't a tax or assessment; it was a fee. He said they could vote on the reimbursement issue or table it unless they come back.

Attorney VanBuskirk said there was a 1990 case out of Billings that talked about development fees. The Court said that what Billings had done was a fee and well within the powers of the city. Councilor Mitchell asked and Attorney VanBuskirk said the idea of an Attorney General opinion doesn't seem appropriate because the statute is clear. All development pays, there are no exceptions. Impact fees are regularly paid by other public entities.

Councilor Mitchell said it is sad when the Superintendent of Schools cannot show up for a meeting when they are asking for money. He is disappointed with the management of the School Board and this project. He said they funded this for \$2.5 million and he pushed for it and he regrets it. He will be curious how this ends up. He said he is sad that is where the school is now and the kids are going to be the losers. Councilor Hyatt said when the Council approved the \$2.5 they asked the High School to report to them all along. They have only been here about 6 times. It is disappointing because they might lose some of the IT selling points that helped pass this high school remodel. Mayor Muhlfeld said he thinks they should act on it tonight.

Councilor Mitchell offered a motion, seconded by Councilor Sweeney, to deny the request for reimbursement of impact fees assessed on the high school project in the amount of \$66,714.69 and not to seek an Attorney General opinion on this.

Councilor Hyatt said the City gave them \$750,000 above what the school asked for and the school should have been able to budget the impact fees into it.

The motion passed unanimously.

11c. Consideration of request from Mayor Muhlfeld to replace him as appointee to 911 Board with Chief Bill Dial (p. 380)

Councilor Anderson offered a motion, seconded by Councilor Kahle, to appoint Chief Dial to the 911 Board. The motion passed unanimously.

11d. Letter from Chris Bernat regarding new City Hall (p. 392) No comments.

11d. Letter from Montana Department of Administration regarding acceptance of our FY12 audit responses (p. 394) No comments.

11e. Letter from Kevin McCready regarding parking ticket and barking dogs enforcement (p. 395)

Councilor Kahle said he thought there were noise ordinances. Mayor Muhlfeld said there is a disturbing the peace ordinance. Mr. McCready's letter said he called the police twice and found their response less than satisfactory. Manager Stearns said he called Mr. McCready to tell him about the unlimited parking north of the library.

Councilor Anderson said he was invited to speak on the North Fork Watershed Protection Act and traveled to D.C. at the request of Congressmen Daine and Bishop. The bill was received favorably. He is said the bill is co-sponsored in the Senate by Baucus and Tester.

Councilor Hyatt asked and Chief Kennelly said the annual open house at the Fire Hall will be Saturday and everyone is invited.

Councilor Hildner said he will be out of town for the next meeting, but he will try to get to a telephone. Mayor Muhlfeld re-emphasized that Whitefish does a good job of supporting local businesses, despite some of the obstacles they have to overcome to do business efficiently in Montana. He said web based businesses are a great addition to Whitefish. He is proud to be a business owner in Whitefish and is sure that many of them are, too.

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

Mayor Muhlfeld adjourned the meeting at 10:12 p.m.

Mayor Muhlfeld

Jane Latus Emmert, Recording Secretary

Attest:

Necile Lorang, City Clerk