

WHITEFISH CITY COUNCIL MINUTES

November 18, 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, Public Works Director Wilson, Parks and Recreation Director Cozad, Police Chief Dial, and Fire Chief Kennelly. Approximately 20 people were in attendance.

2. PLEDGE OF ALLEGIANCE

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

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

Cheryl Sausen, 310 W. 6th Street, addressed the parking on 6th Street. She said she lives on 6th Street and appreciates the new sidewalk and boulevard. She said she agrees with the idea of no parking on the area that is narrow and curved, but the rest is a straight-way and there is plenty of space for parking. She said this proposal would make a 3-block span where no one would have a place to park. She said the southern side of this could be left open for parking.

Bonnie Hannigan, 341 W. 6th Street, addressed the 6th Street parking. She said she lives at the base of Flint where it meets W. 6th Street. She also opposes this parking restriction. She said the sidewalks were a nice addition, but the City actually lowered the street, so it gave her a driveway with a greater slope. If she parks two cars in front of her home the 2nd one rolls out into the street. She can't park two vehicles because of the change in the street height. The asphalt is 21 feet wide in front of her house. She said Railway Street is 28 feet wide and with parking on both sides it leaves a 14-foot travel lane. If they allowed parking on one side of W. 6th Street it would allow them the same 14 feet of travel space. She said the O'Brien corner is tight and she suggested that W. 6th could be a one way to allow more room for parking.

3. COMMUNICATIONS FROM VOLUNTEER BOARDS

Mayor Muhlfeld reported on the aquatic invasive species plan the City participated in this summer; the total was about \$40,000 to the AIS effort this summer. (\$15,000 to the Whitefish Lake Institute (WLI) and \$25,000 to Flathead Basin Commission).

Beaver Lake Monitoring and Control

In October 2011, EWM was discovered in Beaver Lake. A control/eradication effort began in 2012 via a multiple agency workgroup which the City of Whitefish and WLI participated. Bottom barriers were installed near the boat ramp and a SCUBA dredge operation removed 26 lbs of EWM from the lake. In 2013, this contact removed 6 lbs of EWM in June and 1 lb in August. In addition, fragrant

water lily, introduced as an ornamental, was removed from the dock area where it was introduced to prevent spread. In addition, WLI staff deployed a Flathead Lakers turbidity curtain to prevent EWM fragments from exiting the lake via Beaver Creek. The turbidity curtain will be removed in early November and re-deployed next spring. Additional surveys and eradication efforts are recommended. The project provides cautious optimism that EWM can be eradicated in a small lake provided early detection and mitigation, coupled with continued monitoring and dredging of individual plants.

Early AIS Plant Detection Monitoring

WLI conducted a 395 point aquatic plant survey along the Whitefish Lake shoreline. The survey consisted of determining the composition and relative abundance of plant species at each location, along with characterizing the lake substrate to determine areas suitable for plant colonization. No exotic species were found. The survey was randomly predetermined by gps coordinates and can be easily repeated in the future. Between 2012 and 2013 the NWMTLVMN and FBC AIS consultant surveyed over 30 local lakes. Flowering rush was found in both Flathead Lake and Hungry Horse Reservoir, Curley Leaf Pondweed was found in Flathead Lake, and fragrant waterlily was found in Echo Lake.

eDNA Analysis

33 eDNA samples from 25 local lakes in the NWMTLVMN were sampled and are in the process of being screened for EWM and zebra/quagga mussels by the University of Montana. The contract period with U of M ends November 30. The survey included five samples from Whitefish Lake from three locations and two samples from Blanchard Lake. In addition, 40 plankton tow samples were sent to FWP from the NWMTLVMN for zebra mussel veliger microscopy. No positive findings were found.

Data Summary – Highway 2 at Coram Watercraft Inspection Station

The Flathead Basin Commission worked with City of Whitefish, United States Bureau of Reclamation, Trout Unlimited and DRNC to operate a watercraft inspection station on MT Highway 2 near Coram from May 24 to September 3, 2013. Generally, the station operated from 9:00 a.m. to 7:00 p.m. on weekdays and weekends. Hours were changed from noon to 10:00 p.m. on some weekends to gather data on evening boating habits. In addition to inspecting and cleaning boats, staff collected data on boat movement, fishing, and fees associated with an ongoing aquatic invasive species program in Montana.

Findings: A total of 2096 boats were inspected at the station. Boats from Montana, Idaho, Washington, Oregon, Wyoming, Alberta, and British Columbia were considered “Low Risk” and receive normal inspections. All other states were considered “High Risk” and underwent thorough, longer inspections. 77% of boats were from Montana, 16% were from other low-risk states, and 7% were from high risk states. Native vegetation was found on 6 boats. No invasive species were found. All vegetation was removed on-site and disposed of after alerting the boaters of the dangers posed by transport of aquatic vegetation transported on boats. As is the case with inspection stations throughout Montana, the station experienced drive-bys. Most drive-bys were non-motorized watercraft; however, 811 motorized watercraft drove by the inspection station. The Montana Department of Transportation placed a variable message sign on east of the site on June 26th. Drive-bys decreased by over 10% during the month that the sign was in place. With proper signage and site improvements to increase visibility, it is anticipated that we can dramatically reduce the number of drive-bys, especially if coupled with a modest law enforcement presence.

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Boater Survey Results. 1637 surveys were conducted over the summer. This number is less than number of boats inspected because several boaters had multiple boats. The survey indicated that three inspected boats were last launched in lakes with zebra or quagga mussels. One was a small motorized boat and two were non-motorized (kayaks). The motorized watercraft had been out of the water for several years which was apparent during the inspection. The kayaks were thoroughly inspected and determined to be clean before leaving the inspection station. Boaters were asked if watercraft was used for fishing or recreation. About a quarter (28%) indicated that boats were used for fishing.

The final survey question gauged support of a potential AIS sticker in Montana. An AIS sticker is a decal purchased before launching in state waters. Several western states including Idaho, Oregon, Wyoming and Nevada utilize an AIS sticker to raise funds to assist with costs associated with running inspection stations and educational materials. This question was not on the survey during the first week of operation, so 1596 interviews included the questions. The AIS decal concept was greatly supported; 93% indicated support, 5% did not support it; and 2% were unsure. Unsure boaters were predominantly concerned with increased costs associated with multiple boats. Those that were definitely against a decal were opposed for the following reasons: they already pay a guide fee (if boater is a fishing guide); an AIS sticker sounds like another tax; and boating is already expensive.

Administration: The Coram inspection station was supported through the following contributions:

City of Whitefish: \$20,000 for personnel costs

Flathead Basin Consultant Fund: \$675 est. for inspector training

Trout Unlimited: \$2,500 for personnel costs

Flathead Basin Commission: \$2,500 est. for personnel costs, equipment, supplies, plus in-kind for management

DNRC: \$13,000 est. for personnel costs

U.S. BOR: \$15,000 (funds to be carried over to 2014 was funding was not available until September)

Total: \$53,675

Councilor Kahle asked and Mayor Muhlfeld said that another 10 pounds of Eurasian milfoil were found in Beaver Lake this year and it will take a multi-year effort to eradicate. Councilor Kahle said if it went down the creek it could contaminate Whitefish Lake. Councilor Kahle said he hopes the curtain at the base of the creek will protect Whitefish Lake, but he wonders what else they can do. Mayor Muhlfeld said they need to make sure the Whitefish Lake Institute continues to receive funding so they can monitor this. Councilor Mitchell asked if the boat check station was voluntary and Mayor Muhlfeld said it was voluntary as it was not on a FWP mandatory list. Councilor Mitchell asked if Flathead County participated and Mayor Muhlfeld said they were asked, but he isn't sure why they didn't participate. Councilor Mitchell said he thought this was valuable.

Police Chief Dial said the 9-1-1 Board met and had discussion regarding funding of operations. Manager Stearns said the funding sub-committee met this afternoon and there is fairly wide support for creating a special district assessment like the landfill has. County Commissioner Holmquist was in favor of a flat fee per property regardless of size. He said the goal is to avoid double contributions for those who live in the City. Councilor Sweeney asked if a lot in town paid the same price as a larger landowner and Manager Stearns said yes. Manager Stearns said it is a common good for the community so everyone would pay the same.

4a. Consideration of a request from Whitefish Housing Authority for Tax Increment Fund assistance for renovation of two houses donated by BNSF in the Railway District (p. 23)

Lori Collins, the Whitefish Housing Authority (WHA) Director, said there are two proposals. She said when they met for a work session with the Council in September they discussed the needs for assistance with rehabilitation of two homes as rental units in the Railway District which were donated by BNSF. This will help insure the effort to cure blight and create affordable housing assisting low income and moderate income people to stay in the community. They are asking for TIF funds to improve, clear or prepare the property for redevelopment. They received bids for 126 E. 1st Street, 130 E. 1st Street and some off-street parking. The third home from BNSF has a garage. The total is \$86,695; the builder has said he feels the total project might come in under that amount.

Councilor Hyatt reminded the Councilors that line 54 of the TIF is earmarked for \$50,000 for the WHA. Manager Stearns said they have a healthy contingency in the budget, so that if they want to fund the whole amount they can. Councilor Kahle asked if this is a not-too-exceed number and Lori Collins said it is.

Councilor Hyatt offered a motion, seconded by Councilor Kahle, to approve \$86,695 from TIF funds to rehabilitate two homes and parking in the Railway District donated by BNSF.

Councilor Mitchell asked and Lori Collins said the builder proposes to re-grade and gravel the third lot for off-street parking. Councilor Mitchell asked and Director Taylor said this lot would likely need to be paved. Councilor Mitchell asked and Lori Collins said this amount will allow both homes to be renovated and rented. Councilor Anderson asked and Lori Collins said they cannot be rented for more than \$650/month and they will probably rent them in the high \$500's. Councilor Anderson asked and Lori Collins said they are approximately 600-650 square feet in size. Councilor Mitchell asked and Lori Collins said the rent goes into the Homeownership and Development budget to pay operating costs of the affordable housing programs.

Councilor Sweeney said the paved parking spot will add a higher cost and he wondered how they would deal with that. Lori Collins said per zoning they don't have to provide parking, they just thought it would be good for the neighborhood. Councilor Sweeney said City Standards require paved parking. She said if they get these funds they can work on getting donations for pavement. Manager Stearns said each of the bids have a high contingency in them (about 14% each) and he thinks the Council could move forward on the \$86,695 and WHA can try to get it done. Manager Stearns said the City has some millings and perhaps the City could help fill that lot in. Councilor Hyatt said the \$11,000 in the contingency fund and the fact that the WHA wants to provide off street parking, even when it isn't required, is valuable. Councilor Mitchell said all he is saying is that if they are going to create parking then it has to be paved. Director Taylor said it just has to be a dust-controlled surface, so milling is allowed. Manager Stearns said it is a small lot. He said a good pavement job looks better than millings, but it could help the WHA.

Councilor Hyatt offered an amendment, seconded by Councilor Kahle, to ask the City to donate the millings they have as a contribution to the project if WHA exceeds the \$86,695. The amendment passed unanimously.

The original motion, as amended, passed unanimously.

Lori said the contractor will apply for building permits and should get started in a couple weeks.

4b. Consideration of a request from Whitefish Housing Authority to return Payment In Lieu of Taxes (PILOT) payments to the Whitefish Housing Authority to help support their programs (p. 39)

Lori Collins said this proposal is to ask for redistribution of their payment in lieu of taxes. She said they aren't asking for direct subsidies, but they are looking for ways that they can support themselves without always asking for funds. She said they realize their obligation to pay their taxes, but they would like them to be placed into the General Fund Appropriations, so they could be earmarked and allocated back to the WHA towards sustainability of their mission and programs. They could use them for their other programs like rental, home ownerships and rehab opportunities in the City. That would give them a guaranteed fund that they could use for those allowable costs. WHA took on a large task in 2004 by providing opportunities for affordable housing. They have not had any direct funding from the City for operations. They would ask that the PILOT funds could be reallocated back to them for rental, rehab and home ownership expenses.

Mayor Muhlfeld asked and Manager Stearns reported that the WHA tax contribution was about \$6,900 per year and noted that there is some money that is owed in arrears. Manager Stearns said his first thought was that it didn't make sense for them to write a check to the City and then have the City write it back; and it could be handled with an agreement. Now he realizes if WHA pays the taxes and the City appropriates it back to WHA, it gives their Board more flexibility when it comes back to them. Lori Collins said funds aren't received from HUD; they are an allocation of the percentage of the rent of units at Mountain View Manor. Councilor Mitchell said it really means that they aren't paying taxes. Lori Collins said they have a rehabilitation fund they draw from in the City for approved costs. Councilor Mitchell asked and Lori Collins said they owe \$16,000 in arrears and Sue Ann Carlson worked out a payment plan with the City. Councilor Anderson asked and Lori Collins said the current fund is for rehabilitation and the funds come from homes that sell or from past grants. Councilor Anderson thanked her for the details on the first proposal. He said he is a little concerned with tying up the funds and the hands of future Councilors. Councilor Hildner said a future Council could rescind that action. Councilor Mitchell asked and Councilor Anderson said he would rather look at it each year as part of the budget process instead of making it an annual expectation for the City. Councilor Hildner said he doesn't see the tax base growing much for the WHA.

Councilor Hildner made a motion, seconded by Councilor Hyatt, to approve a request from Whitefish Housing Authority that Payments In Lieu of Taxes (PILOT) are collected by the City and allocated back to the Whitefish Housing Authority to help support their programs.

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

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

5a. Minutes from the November 4, 2013 Council regular session (p. 42)

5b. Consideration of a request to extend the preliminary plat for 93 LLC subdivision for 24 months (p. 65)

5c. Resolution No. 13-35; A Resolution adopting the Whitefish Parks and Recreation Master Plan September 2013 as an amendment to the 2007 Whitefish City-County Master Plan (2007 Growth Policy) (p. 75)

Councilor Hildner offered an amendment to page 16, paragraph 2, which should read “lawn mower” not “lawn motor.” Councilor Anderson offered a motion, seconded by Councilor Hyatt, to approve the amended consent agenda. The motion passed unanimously.

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

6a. Ordinance No. 13-10; An Ordinance of the City Council of the City of Whitefish, Montana, granting to NorthWestern Corporation d/b/a/ NorthWestern Energy a non-exclusive franchise and fixing the terms thereof under which said company may construct, equip, lay, maintain and operate natural gas delivery facilities in, under, upon, over and across streets, avenues, alleys, highways, bridges, easements and other public places in the City of Whitefish, Montana, and may deliver and sell natural gas (First Reading) (p. 200)

Manager Stearns said City staff was contacted by Rick Burt of NorthWestern Energy in September of 2012 letting us know that a fifty (50) year franchise ordinance adopted in 1961 which NorthWestern Energy had inherited from the Montana Power Company expired in 2011. He was going around the state working with local governments to revise and renew many of those franchise ordinances. In two work sessions the Council reviewed various aspects of a proposed franchise ordinance, including a question of whether or not the City should use its Self-Government Powers and try to impose a franchise fee on NorthWestern Energy. Franchise fees are commonly imposed on utilities in other states in return for their use of the public right-of-way. The City Council asked City Attorney Mary VanBuskirk to do some legal research on imposing a franchise fee.

In the second worksession, City Attorney Mary VanBuskirk advised that she thought it was doubtful the City’s unilateral imposition of a franchise fee would be upheld by the Montana Supreme Court, based on an earlier case from the City of Billings’ attempt to enact a franchise fee. While the City’s fee would have been designed differently, City Attorney Mary VanBuskirk still felt that the chances of the City being successful if litigation were pursued were less than 50-50. The City Council directed staff at that work session to work on a franchise ordinance that would not impose franchise fees, but would leave open the door if Montana law changed or if another City successfully implemented a franchise fee with NorthWestern Energy.

Manager Stearns said he and Attorney VanBuskirk have worked with Rick Burt of NorthWestern Energy and their staff attorney on revised language. The staff of both parties has agreed to the language in the Ordinance attached in the packet. The Ordinance would have first reading on November 18th and second reading on December 2nd.

Councilor Mitchell asked and Manager Stearns said the last half of Section 12 addresses the ability to negotiate changes in the future. He said this is only a 10-year agreement, not a 50-year agreement. Councilor Mitchell said there is no agreement in Polson and there are no gas lines, so there is no choice. He thinks it benefits Whitefish to offer gas as an option.

Mayor Muhlfeld opened the public hearing.

Rick Burt with NorthWestern Energy, 2511 Raymond Place, Billings, MT, thanked the Council for considering the changes. He thanked the staff for all of their work with this project.

Mayor Muhlfeld closed the public hearing.

Councilor Kahle offered a motion, seconded by Councilor Anderson, to approve Ordinance No. 13-10; An Ordinance of the City Council of the City of Whitefish, Montana, granting to NorthWestern Corporation d/b/a/ NorthWestern Energy a non-exclusive franchise and fixing the terms thereof under which said company may construct, equip, lay, maintain and operate natural gas delivery facilities in, under, upon, over and across streets, avenues, alleys, highways, bridges, easements and other public places in the City of Whitefish, Montana, and may deliver and sell natural gas (First Reading). The motion passed unanimously.

6b. Resolution No. 13-36; A Resolution to revise fees currently charged and establish new fees for various services provided by the Whitefish Planning and Building Department (p. 207)

Planning and Building Director Taylor said several items on the current planning and zoning fee schedule need to be revised. The items staff is requesting fee changes for include a reduced fee for commercial building paint color review by the ARC, a new short term rental application review fee, a new fee for Planning Board and City Council projects that are voluntarily pulled off the agenda by the applicant before or during the public hearing, and a fee for new applications for an expired CUP. He said there are frequently major changes that take a lot of staff time because it is essentially a new project. When CUP permits expire it seems unfair to charge the whole fee, so they would like to reduce it by 50% if they come back again in 24 months. The City proposes to amend several fees required for various services provided by the Planning Department. If not listed, then the current fees remain the same. Proposed new fees are as follows:

Fee	Current	Proposed
Architectural Review		
Minor Façade Changes	\$265	\$200
Changing paint colors	\$265	\$75
Short Term Rental Application	n/a	\$25
Voluntary pulling of an agenda item to postpone to a later date when re-noticing is required	n/a	\$200
Voluntary pulling of an agenda to postpone to a later date when re-noticing is required and the project is undergoing major revision	n/a	\$500
Conditional Use Permit		
Renewal of expired permit	n/a	50% of original fee

Councilor Anderson asked about the definition of major changes and Director Taylor said it is mostly a judgment call by staff. He said it involves anything they have to re-do. Councilor Kahle said

he would like to see it defined. Director Taylor said they could define it to say any revision other than clerical errors or insignificant changes could trigger the fee. He said if they have to re-evaluate the whole project and re-notice the public then it becomes an issue of staff time. Councilor Anderson said he thinks folks ought to be able to know what a major revision is when they read the Code. Director Taylor said fees aren't listed in the Code, but they could make a definition that defines a major from a minor revision. Councilor Anderson said he would like the applicants to know what a major revision is. Councilor Mitchell agreed with Councilor Anderson. He also asked and Director Taylor said people are required to get paperwork for resort taxes with their short term rental applications. Councilor Hildner said if a commercial application was \$1900, then it goes beyond 18 months then it would require a 50% additional fee. Director Taylor said there is some allowance for the zoning administrator to extend it if the applicants are diligently working on the project.

Councilor Kahle asked and Director Taylor said staff has to re-notice if there are major changes so the neighbors know what is coming. Councilor Kahle said re-noticing could trigger the fee. Manager Stearns said the difference between the \$200 and \$500 fees is that the first is for re-noticing, the 2nd is if there are major changes. He said his concern on the voluntary pulling of items is that it should apply at the Planning Board level only. If they withdraw at the Council meeting then it goes back to the beginning of the process. He wouldn't want someone to withdraw for \$200 because they didn't like the line-up of the Council; the Agenda should be in the control of the City and not the applicant. Councilor Hyatt agreed. He asked and Director Taylor said he figured \$500 to cover staff time to review the new application and to take it to the other departments. Councilor Hyatt said the 2nd nomenclature should say, "the project is undergoing revision" (omitting "major.")

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

Councilor Hildner wondered if this belonged at the Planning Board level as Manager Stearns said. He thought maybe they should wait and discuss this more. Councilor Sweeney said any time a project is pulled and it costs money for the City to re-publish then they should be able to recoup that money from the developer. Manager Stearns said when a protested application requires four votes then an applicant might want to pick and choose which Council meeting they attend, when they know which Councilors will be there. Manager Stearns said the Council always has the option to continue an application, but that is also in the authority of the Council, not the applicant. Councilor Anderson said that also encourages the vetting process at the Planning Board level. That means that applications have been well vetted by the time they come to the Council. He thinks it is a point well taken. He also said it might be appropriate to wait on this. Manager Stearns said they could say the voluntary pulling was allowed at the Planning Board level only and Director Taylor said that was the original intent of this proposal. Councilor Hildner asked and Manager Stearns said that if an item has to be re-noticed then it is \$200, but if there is a revision then it is a \$500 fee, but it is not the same as starting over.

Councilor Sweeney offered a motion, seconded by Councilor Kahle, to approve Resolution No. 13-36; A Resolution to revise fees currently charged and establish new fees for various services provided by the Whitefish Planning and Building Department, amending the fees charged for voluntary pulling at the Planning Board level and not at the Council level. (p. 207)

Councilor Hildner offered an amendment, seconded by Councilor Sweeney, to state that the 2nd item under voluntary pulling will say "revision" instead of "major revision."

Councilor Sweeney said “revision” means anything that requires a major review by staff, not just a simple or clerical revision.

The amendment passed 5-1 with Councilor Mitchell voting in opposition.

The original motion, as amended, passed 4-2 with Councilors Mitchell and Hyatt voting in opposition.

7. COMMUNICATIONS FROM PLANNING AND BUILDING DIRECTOR

7a. 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. 213)

Senior Planner Compton-Ring reported that Taylor Horst of Whitefish Credit Union on behalf of Lookout Ridge Investors llc has requested a 2-year extension to the Lookout Ridge preliminary plat. They are looking for the remainder of their extension. (Council granted a partial extension of 6 months at their June 17, 2013 meeting).

Councilor Anderson said the attorney for Lookout Ridge contacted him and he didn’t listen to the phone message, but he wanted to disclose that he received the call.

Sean Frampton, an attorney representing the Whitefish Credit Union (WCU), said this is a significant issue because of the amount of money at stake (about \$10 million) and there is a huge difference in the property if it is an entitled property.

He said he doesn’t think it is proper to impose any new conditions on this application. He said he has read the minutes, talked with staff and he still doesn’t know what the Council wants to know. He said Taylor Horst, WCU, Brad Bennett, Applied Water Consultants, and Bruce Boody were all here to answer their questions as well.

He updated the status of the case and their due diligence. It started out as a foreclosure lien and then there were lien priority claims. The court ruled that the construction lien claimants had priority. The Credit Union then cross-claimed to foreclose against Lookout Ridge. This led to a second deposition of Brian Fimian. They did a settlement with the construction lien claims. They had a second settlement with the Fimians and Lookout Ridge who confessed judgment to the WCU saying they could foreclose and get the property back. The WCU cannot get a final judgment of foreclosure until all issues are closed. They have to go back to the beginning because Stoltze suddenly showed up as a lien holder but wasn’t included in the first part of the process. The WCU wears two hats; as a lien holder and a mortgage holder on two properties involved; one 196-acre parcel and a 30-acre parcel. Stoltze has a holding on the 30-acre parcel and on the trees on the 196-acre parcel. He said they have tried hard to settle, but now they have applied with the court to start all over again, because of Stoltze. He recently got an email from Stoltze saying they want to meet to settle.

He said through the whole process Lookout Ridge has been trying to find investors to continue the development. During this process, the WCU hired Roger Noble, Applied Water Consulting, to look at the landslide issue up there. And, WCU has secured the property against vandalism and trespassers.

He said the relationship between Lookout Ridge and Stoltze is that Lookout Ridge is a debtor and Stoltze is the creditor so they have a lien on 30 acres and a UCC agreement on the trees on the 196 acre parcel. The agreement between WCU and Lookout Ridge is in limbo. Lookout Ridge has consented to judgment to say the WCU wins. He said WCU can't do that because all of the properties have to be adjudicated and Stoltze still remains unresolved. He said they understand the Council's wish for information and have gone to Jim Cossett to ask the Fimians to assign the WCU as responsible for any actions on the property. He said the difference between Roger Noble and Tom Cowen's report on the slide can be answered by Brad Bennett who is in the audience. He said the area that slid was identified in the original plat as a wetland area with special conditions, and it is subject to the more stringent CAO standards.

Brad Bennett, 712 5th Avenue East, said he works for Roger Noble and the area of concern was the natural drainage. Saturated conditions during June with rain on snow caused instability in that area that caused the ground to slide.

Councilor Anderson asked and Taylor Horst, 555 Park Avenue, said this asset has not been charged off their books at WCU yet. Taylor Horst said they have done a partial charge-off as an in substance foreclosure because they are paying the taxes and maintaining the property. They don't officially own it because the title has not been transferred yet. Councilor Anderson asked and Mr. Horst said they have charged off \$3 million.

Sean Frampton said what is at stake is \$10 million; it doesn't affect the value of the property nor is it based on appraisal. Councilor Hildner said the requirement for a plat extension requires the developer to make an effort toward final plat. Sean Frampton said Lookout Ridge is the developer until the WCU gets the property. He said the developer can consent to the foreclosure then the WCU will sell it within 30 days. The value of the property is in its entitlement. Lookout Ridge has given it back to the WCU. Councilor Hyatt asked about the loss of value on the property without the plat. Horst said the cost would be about \$5 million without the development rights.

Councilor Anderson said folks below this property had water in their homes when the slide happened. He said he understands trying to recoup the investment. Sean Frampton said the slide happened when Fimians were the owners. Since WCU took over in December 2012 they have been responsible and that is why they are waiting for a note from Fimians. Councilor Anderson asked how enforceable it is. He has a hard time thinking about what would happen if they had another big event on this property. He asked if the WCU would be responsible for that event. Sean Frampton said that question is too broad, but WCU has addressed every problem the Council has raised with the property. Councilor Anderson asked if WCU would be willing to bind themselves as the developers tonight. Sean Frampton said the WCU has offered to do but he hasn't heard back from Cossett or Fimian. Councilor Anderson said he is having a problem knowing who is in the chair when an event occurs again. He realizes their willingness, but if it becomes several million dollars, then will they be responsible. Sean Frampton said the WCU wants to be noticed for actions that need to happen. Councilor Anderson said if there is another slide and it is caused by a road cut and it wipes out a home is WCU willing to take responsibility. Sean Frampton said he isn't willing to say they are liable, but they would be the person the homeowner would talk to about their concerns. He said they are the equitable holders of this property. Councilor Anderson said there is still no answer for the folks who live below this property. The WCU is not willing to step into the shoes of the developer and that doesn't look equitable to him. Taylor Horst said the WCU is a co-op and he has to make a risk assessment for his members. If it was a \$10 million fix he would probably walk away from it because he has to decide if it would break the

WCU. Councilor Hildner said if they get Stoltze to agree, then they would have 30 days to sell it. If they don't sell it then the WCU would buy it and then they would become the developer. Councilor Hildner said they would then have to make good faith efforts toward final plat. Taylor Horst said they have considered finishing the road and selling the lots.

Councilor Mitchell offered a motion, seconded by Councilor Hyatt, to approve the application from Whitefish Credit Union, on behalf of Lookout Ridge Investors, LLC, for the remainder of a two year extension of the Lookout Ridge Preliminary Plat for an additional 18-months until June 21, 2015.

Councilor Mitchell said the WCU is doing everything to protect the property and are showing due diligence even though the owner is not cooperating. He thinks the WCU wants to make something good out of this. Councilor Anderson said he would be interested in a 6-month extension. He agrees that the WCU has made a good faith effort. He said they aren't willing to step into it to the degree that a developer would. Councilor Hyatt asked and Planner Compton-Ring said the Council has extended 10 to 15 requests like this in the past four years. He said this falls into everything they have been doing for other applicants and Planner Compton-Ring agreed. Councilor Hildner said they are close to working with Stoltze, which is good, but he is hung up on the language that the developer has to be making a good faith effort.

Councilor Hildner offered an amendment, seconded by Councilor Anderson, to extend the preliminary plat for an additional 6 months.

Councilor Kahle said everyone has the same goal to make sure Lookout Ridge is safe, whether or not it is the WCU or a third party owner. He said they can facilitate that sale or free them up to work. He thinks requiring them to come back every six months for an extension would be counter productive.

The amendment failed 4-2 with only Councilors Hildner and Anderson voting for the amendment.

Councilor Sweeney asked and Sean Frampton said this is not in bankruptcy court. Councilor Sweeney said all of the lien holders except Stoltze have been dealt with and Mr. Frampton agreed. Sean Frampton said they have been dealing with this over a year. Councilor Sweeney said their concern is about what happens if there are problems on Lookout Ridge. If they don't approve the extension then they do nothing that gives them any reassurance that someone will be there to act appropriately if there is a problem. He said he wants the right thing to happen and he wants the project to go forward in a safe manner. He said denying the extension doesn't gain them anything. He said a six month extension isn't good enough, but 18 months is fair and the minimum they should do. Mayor Muhlfeld agreed. He said six months ago when this came to the Council they wanted to address concerns about the prior landslide. The Council wanted Iron Horse, the City and Lookout Ridge to deal with this problem but it isn't resolved. He said the conditions of approval for preliminary plat have not been met, but to sell this property will put them in a better position to handle the situation. He said Tom Cowan's report provides specific recommendations to handle best management practices for folks down slope. He encouraged them to look strongly at this issue from the City's perspective on liability.

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

8. COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR**8a. Resolution No. 13-37; A Resolution establishing "No Parking" Zones on portions of West Sixth Street, O'Brien Avenue and Flint Street (6th and Geddes reconstruction project) (p. 251)**

Public Works Director Wilson said he worked with the Lookout Ridge developer quite a bit and Brian Fimian is a good man and it bothers to hear him insulted. Director Wilson said he would like to hear the Council's concerns or recommendations for modifications on the no parking zones.

Councilor Mitchell said the major concern he heard from the neighbors is their loss of parking. Director Wilson said Bonnie Hannigan made a comment on Railway Street, which is also a narrow street. Councilor Mitchell said from O'Brien east on W. 6th they should allow parking on both sides and on Flint they could take out one side. That would address the neighbors' issues. Councilor Sweeney said he agrees that the streets are narrow. He said on Railway he knows the streets are narrow and yet there is parking on both sides. He asked and Director Wilson said W. 6th is 21 feet and Railway is 28 feet according to Bonnie Hannigan's measurements. Councilor Sweeney said if they allowed parking on one side then they would have the same driving width they have on Railway Street. Councilor Hildner said Chief Kennelley talked about access for fire apparatus. Chief Kennelley said they can't make the narrow turn with the fire equipment so any parking in the turn area prevents the emergency vehicle from turning. Snow adds to the concern. He said they wouldn't have an issue if there was parking on the south side as long as it was back from the intersection at the bottom of the hill. Director Wilson said if the Council wants to change things he has some suggestions. He said the resolution is written with 3 restrictions. If they change the 2nd one regarding the south side it could read, "Staff recommends no parking on the south side of West 6th Street within 50 feet of the intersection at O'Brien and Flint and 185 feet from the intersection at Lupfer Avenue." Councilor Mitchell asked and Director Wilson said 185 feet would be required on Lupfer Avenue because of the steep hill, especially during winter conditions. Councilor Sweeney said he has a hard time visualizing the need for 185 feet. Director Wilson said allowing parking on one side on the narrow hill would be dangerous.

Cheryl Sausen, 310 W. 6th Street, said there is a steep hill down W. 6th from Lupfer, but no one parks there. She said the changes would make sense.

Julia Olivares, 333 W. 6th Street, said plowing has been a problem on their road. She is concerned about parking because the plow leaves a big berm as they come off Flint Street. She said they are going to have more problems with just snow this year because of the narrowed street. She said the plow needs to get all of the snow out so it doesn't narrow the road more.

Director Wilson said he could minimize the impact to the neighborhood and allow more parking except near the intersections, and he drew a map to show the Councilors. He said the snowplow crews will need to take more care here since the road is narrow. Manager Stearns said they can pass the resolution modified to the map that was presented by Director Wilson tonight.

Councilor Mitchell offered a motion, seconded by Councilor Hyatt, to approve Resolution No. 13-37; A Resolution establishing "No Parking" Zones on portions of West Sixth Street, O'Brien Avenue and Flint Street (6th and Geddes reconstruction project) with the resolution modified to the map that was presented by Director Wilson tonight so there is no parking on the

south side of West 6th Street within 50 feet of the intersection at O'Brien and Flint and 185 feet from the intersection at Lupfer Avenue."

The motion passed unanimously.

8b. Consideration of Amendment #3 to engineering consulting and design contract with Anderson-Montgomery Consulting Engineers for the Wastewater System Improvements Project (p. 260)

Director Wilson said the City entered in to a consultant contract with Anderson-Montgomery Consulting Engineers in October 2012 for the Wastewater System Improvements Project. This long term contract will involve several amendments over the coming years as staff works through optimization of existing facilities, application and negotiation for a new wastewater discharge permit, long range planning and ultimately design and construction of major wastewater treatment plant upgrades to comply with new nutrient removal standards.

They need to address an influent issue and recommend an amendment to that consultant contract in the amount of \$62,499 for survey, engineering design and construction phase services, as necessary to extend the sewer force main serving the JP Road lift station.

The sewer force main in question is the discharge line for the JP Road sewer pump station, which serves all properties within the City limits south of the Pizza Hut. The JP Road force main discharges directly into Cell No. 1 near the southwest corner of the wastewater lagoon system, while all other sewage enters the plant by means of the River Interceptor and flows through the screening facility at the northwest corner of the plant.

The City has experienced significant maintenance problems in our current operations due to rags, hair and debris entering the lagoons from the JP Road force main. This project will redirect flow from the JP Road sewer force main to the headworks and screening facility, where they can capture rags and debris before they enter the lagoons and also set the stage for continuing improvements. Staff proposes to design the force main extension over the winter months, advertise for bids in June and construct the project in the summer of 2014.

The proposed amendment will increase the amount of the consultant contract for the Wastewater System Improvements Project by \$62,499, for a total contract amount of \$428,210. Funds for this amendment are included in the adopted FY14 Wastewater Budget.

Councilor Hildner asked and Director Wilson said rags come through and clog up the system and there are several businesses that could cause it including the senior living area, the hospital and every business south of Pizza Hut. They will talk to the businesses out there to see if they can help with this issue, too.

Councilor Kahle offered a motion, seconded by Councilor Anderson, to approve Amendment #3 to the engineering consulting and design contract with Anderson-Montgomery Consulting Engineers for the Wastewater System Improvements Project in the amount of \$62,499.

Councilor Mitchell asked if it would be cheaper to do a screening facility down by the sewer ponds. Director Wilson said it wouldn't be much cheaper because the screens are significant mechanical

devices. It is best to have one screening facility to maintain. He said they went through an alternatives analysis and felt this was the best option.

The motion passed unanimously.

9. COMMUNICATIONS FROM CITY MANAGER

9a. Written report enclosed with the packet. Questions from Mayor or Council? (p. 264)

Councilor Sweeney asked why resort tax collections were off and Manager Stearns said it ebbs and flows. He doesn't think a 5% decrease is a significant issue. He said lodging had the major difference, but noted that he didn't think there are any large delinquencies.

9b. Other items arising between November 13th and November 18th

Manager Stearns said the City Hall Steering Committee met and addressed questions from the four architectural firms before they begin their design competition. There will be more information coming out in the next week, but he wanted the Councilors and the public to know there will be a day-long architectural competition where each of the four firms will bring in their concepts. The Committee will interview the four in a meeting open to the public on Wednesday December 11th in the Council Chambers. Each applicant will have a half hour to present their concept followed by the interviews. The firms will leave visual boards so the public can view the design concepts.

10. COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

10a. Standing budget item - None.

10b. Letter from John Goodrich regarding parking tickets and the placement of them on windshields (p. 268)

Councilor Mitchell said he didn't know how else they could handle tickets without putting them under wipers on windshields. He said they can't do anything if a ticket gets lost. He thinks Judge Johnson handled it well. Councilor Sweeney wondered if there was a procedure that wouldn't allow it to lag for 2 years. Manager Stearns said that is in the court's hands. Councilor Sweeney said they could send direction to the Court to follow up within a 3-month time frame. Manager Stearns said he didn't know that they could direct the court. Chief Dial said parking tickets are a low priority to the courts. He said the Police Department is going to talk to them about the unserved warrants and issues with lack of room in the county jail. He said Judge Johnson's staff is burdened with cases that can't be heard because there is no place to put people because the jail is full. Councilor Sweeney said the City doesn't control the process in the courts so if there is an issue they need to know about it.

Councilor Kahle said Friday will be the first induction into the Ski Museum's Hall of Fame at The Lodge at Whitefish Lake on Friday night. It is the Show Case for the Chefs and the induction will happen at 7 p.m. Councilor Anderson echoed what Director Wilson said about people who come before the Council. He said Whitefish deserves a higher standard in terms of decorum, and insults weren't appropriate. Councilor Hyatt said the Daily Interlake ran a wonderful story today on the Ski Heritage Museum. Councilor Hildner said there is a football game on Saturday and he is wearing maroon. Mayor Muhlfeld said the Salvation Army Kettle Drive is December 19th and the Councilors and staff are on board.

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 9:52 p.m.

Mayor Muhlfeld

Jane Latus Emmert, Recording Secretary

Attest:

Necile Lorang, City Clerk