

WHITEFISH CITY COUNCIL MINUTES

February 19, 2013

7:10 P.M.

1. CALL TO ORDER

Deputy Mayor Kahle called the meeting to order. Councilors present were Mitchell, Sweeney, Anderson, Hildner and Hyatt. Mayor Muhlfeld was absent. City Staff present were City Manager Stearns, City Clerk Lorang, City Attorney VanBuskirk, Assistant City Manager/Finance Director Knapp, Planning and Building Director Taylor, Senior Planner Compton-Ring, Public Works Director Wilson, Parks and Recreation Director Cozad, Police Chief Dial, and Fire Chief Kennelley. Approximately 21 people were in attendance.

2. PLEDGE OF ALLEGIANCE

Deputy Mayor Kahle asked the Wolves from Whitefish Cub Scouts 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)

Rick Nelson, 565 Blanchard Lake Road, and the owner of Nelson's Hardware, thanked the City for leasing the lot on First Street and Central Avenue for parking to help make up for lost parking in the BN parking lot. He is concerned about the potential loss of parking on the lot on Central Avenue and Third Street. He is not opposed to a boutique hotel. He said thriving businesses must have good location and good access. There are no empty storefronts in Whitefish. The downtown business model seems to be healthy and there is continued investment in the downtown. Access is vital. He said there is a parking deficit and his customers tell him so every day. He said he looked between Second and Fourth Street and the retail and offices and some upstairs apartments; and according to City standards there are 36 businesses requiring parking. 224 parking spaces are needed to service the existing businesses. Along Central Avenue there is a total of 117 spaces, so they are already at a deficit before they even start talking about giving up the Third and Central lot. That lot was purchased through a BID (Business Improvement District) with the downtown businesses to ensure vitality for the downtown now and in the future. He asked them not to compound the parking problems downtown.

Toni Idol, said they own the Dick Idol Gallery near Third and Central Avenue. She said parking is an issue, but she believes that the benefit of developing a hotel at that corner would actually enhance downtown. They depend heavily on tourism and she thinks there can be alternatives to the parking issue. She is in favor of the hotel, along with addressing the parking considerations.

4. COMMUNICATIONS FROM VOLUNTEER BOARDS

Jan Metzmaker, Whitefish Convention and Visitors Bureau, (WCVB), said they recently received a \$30,000 technology grant so they can upgrade their website and make it responsive so it reformats the pixels; an upgrade for visitors to the website from a variety of electronic devices. They also got a \$5,000 grant to upgrade the Visitor's Information Center with technology enhancements. She

expressed thanks to the Montana Office of Tourism for these grants. She said the Native Eyewear promotion was successful and they continue to work with that company pursuing a contest to win a trip to Whitefish from EMS stores on the east coast. She said the WCVB is proposing a small change in their by-laws. Some business owners do not reside in the jurisdiction and currently aren't allowed to serve on the WCVB. They have asked staff to bring this forward to the Council for their consideration; it will be an ordinance that will require two readings.

Councilor Sweeney said the High School Construction Budget Oversight Committee met and the first bids have come back for improvements to the gym and the committee is pleased with the bids. This represents about a million dollars of the package, which is a small percentage. Councilor Hildner said bid package #2 will be out on February 26th and bid opening is scheduled for March 12th in the District Offices' board meeting room. Deputy Mayor Kahle said he attended the Resort Tax meeting and the numbers are up.

Councilor Anderson said he and Manager Stearns attended the Regional Wastewater Committee meeting and the discussion included how the potential regulations may impact wastewater treatment facilities across the county. He said there seems some movement for those entities to work together. The fiscal issues could be significant. It could be a lot of money. It is a long process, but he was encouraged by the communication.

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 February 4, 2013 Council regular session (p. 41)

Councilor Hildner offered a correction on Minutes page 7 (packet page 47), paragraph 3: "imperious" surfaces should be replaced with "impervious" surfaces.

Councilor Hyatt offered a motion, seconded by Councilor Sweeney, to approve the consent agenda, as amended. 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)

a) 6a. Consideration of a request by Dan Graves on behalf of Winter Sports Inc. for an extension to the Big Mountain Village preliminary plat (p. 51)

Senior Planner Compton-Ring reported that Dan Graves of the Whitefish Mountain Resort is requesting a 24-month extension for the Big Mountain Village preliminary plat. The Big Mountain Village is an 11-lot resort/commercial subdivision on 12.638 acres located at the end of Big Mountain Road. The preliminary plat was approved by the Whitefish City Council on March 5, 2007. Several extensions have been granted and the preliminary plat now expires March 5, 2013.

Current Subdivision Regulations:

Upon passage of HB 522 in 2011, the Council adopted amendments to the Subdivision Regulations providing two options for extensions – first, a simple 2-year extension is permitted provided the developer can show continued good faith in working toward final plat. Second, if

additional time is needed, a subsequent request may be made along with justification for the request. There are no timeframes identified in the regulations with this type of request, providing maximum flexibility for both the Council and the developer. Such requests are reviewed by the Council during a public hearing.

This subdivision was one part of the implementation plan to redevelop the core village area, as identified in the 2006 Big Mountain Neighborhood Plan adopted by the Council. The lots are proposed to be resort-related uses, new parking is proposed to be under the new buildings and the development is centered around a new skier 'hub' at the base of Chair One and Two. Part of the village redevelopment included 'daylighting' streams previously piped and construction of an overall stormwater management plan to direct sediment laden run-off away from streams to the former sewerage lagoons for treatment. The streams are an integrated amenity to the plan and an improvement to the current conditions.

Change in Standards:

Since 2007, when the Big Mountain Village Preliminary Plat was approved by the Whitefish City Council, certain regulations have been amended including the Water Quality Protection Regulations and the Subdivision Regulations. Below is a summary of items that have changed and are pertinent to this preliminary plat:

- The stream setback of 25-feet met the regulations in place at the time of the plat, but falls short of the 100-foot setback plus 10-foot setback in the current water quality protection regulations (WQPR). The WQPR provides the possibility to reduce buffers through averaging and enhancement, but the buffer could be no less than 50-feet.
- Some of the lots exceed 10% slope, requiring a geotechnical reconnaissance to determine whether or not further geotech review is warranted. A geotechnical investigation report was submitted along with the preliminary plat and focused on the development of Lot 1.
- Some of the lots exceed 30% slope, which isn't permitted in the subdivision regulations. However, these slopes are manmade and it was anticipated that the topography would be re-worked and the proposed design of the future buildings was intended to serve as retaining walls to protect these slopes.
- The private access streets are proposed to be built within a 40-foot right of way versus the city standard of 50-feet. The Big Mountain Fire Department did not have any concerns with the roads.

A notice was mailed to adjacent land owners within 300-feet of the preliminary plat on February 1, 2013. A notice of the public hearing was published in the *Whitefish Pilot* on January 30, 2013. Two comments have been received in opposition to the extension and are attached to the report in the packet.

Staff respectfully recommends the Council **approve** the request to extend the Big Mountain Village for 24 months, expiring on March 5, 2015 based on the findings of fact in the staff report.

Councilor Hildner asked if they were compromising any resource protection if they allow this and Planner Compton-Ring said their knowledge has increased since this plan was put together, so standards are stricter now. Councilor Hildner said if they don't extend this preliminary plat they may have the opportunity to increase water quality protection. Councilor Hildner asked if there is a stability difference in man-made slopes versus natural slopes and Planner Compton-Ring said she did not know. Councilor Mitchell said he thinks that mainly this has come before them because of economic downturns in the real

estate market and that has spurred the request for an extension. Deputy Mayor Kahle asked and Planner Compton-Ring said building setbacks would increase from 25' to an additional 50' to 100' more under the new standards.

Deputy Mayor Kahle opened the public hearing.

Dan Graves, Whitefish Mountain Ski Resort/Winter Sports, said he'd like to address The Village and The Glades preliminary plats together. He said the real estate market crashed and they already had two preliminary plats in motion. He said unless you are a large volume resort the financial stability is tenuous. They have grown 24% in the past 5 years. The forward momentum they've gained could stop if they had to move forward on these plats. In 2006 the unit count went from 178 units to 55 and a large preserve was set aside. The cost of creating one of the phases is about \$700,000 to \$1.5 million because of the distance they have to pull utilities. The Glades will be primarily single family homes and that is the group hardest hit in these economic times. The Village plat is largely high density structures. The time is not right for it now either. He said they are trying to create new terrain, new lifts and expansions to their infrastructure. He said it doesn't mean that real estate development isn't important to the company. The Glades will be developed when the single family market improves. He said the real estate development is extremely important to the company. He said they employ over 500 employees each year. He doesn't want to have to put money into what could be a bad investment due to the real estate market right now.

Councilor Anderson asked and Dan Graves said he didn't participate in the Neighborhood Plan process. It occurred just before he was hired. Councilor Hildner asked about slope stability and Dan Graves said the slope stability will probably be improved in the village areas. The foundations of the new buildings will be strong retaining walls. Deputy Mayor Kahle said this would be the third extension and he wondered if they would be back in two years for another extension. Dan Graves said he wished he knew what would happen with the real estate market. He said Northern Lights has 18 lots and only 10 have sold. Single family lots are hard to sell. Councilor Anderson asked the difference between the Big Mountain Neighborhood Plan and what they are requesting on The Glades. Deputy Mayor Kahle asked that the Council wait and handle The Glades questions in the next public hearing.

Rebecca Norton, 530 Scott Avenue, said she appreciates that the ski resort is a major employer in the community. However, she would like to keep strict water protection principles in place when they are deciding this issue, as this is near the water supply.

Ben Cavin, 2130 Houston Drive, said he is a retired civil engineer who worked on water protection in his career. He agreed with Councilor Hildner on the opportunity to require better water quality protection. He thinks they should deny this extension and upgrade the standards for this plat. He said the City has water rights on First Creek which is right where these developments are. They need to think about the future growth in Whitefish, which is predicted to be 15,000 people and they need to think about providing water for them.

Doug Adams, 214 Rusty Spur Trail, said he was on the Council when these plats came to them all those years ago, and they were in compliance with the current regulations at that time. He said if this was already built out they wouldn't have regretted that they had passed it. You can't arbitrarily go in and add new conditions. They are an asset to the community and if it is built to high standards, which he believes it will be, it would be a good addition to the community.

Deputy Mayor Kahle closed the public hearing.

Councilor Mitchell offered a motion, seconded by Councilor Hyatt, to approve the request to extend the Big Mountain Village for 24 months, expiring on March 5, 2015, based on the findings of fact in the staff report.

Councilor Sweeney said he doesn't think the applicant would necessarily try to build according to the preliminary plat design if they were to build today. He asked if the goal of the extension request was to avoid the expense and cost of a new preliminary plat application sometime in the future when they are ready to develop the lots. Dan Graves said he arrived in November 2006 and the village planning was well underway. He said they've realized they should develop the building at Ed & Mully's Restaurant, the core of Chairs 1 and 2. They've learned that development without a rock solid understanding of the marketplace is fraught with danger. In 2007 the company was \$10 million in debt. They've paid back \$9 million of it. He said they've been good stewards of the land and protect the water. He said the extension request is a real estate decision and it is bad timing to build right now. Councilor Sweeney appreciated the response and he thinks WSI is a good steward up there. He said when they decide it is time to develop something they will probably come back with a different plan anyway. Dan Graves said he thinks the different phases are still good plans, but their buildings concepts have changes since 2007. Deputy Mayor Kahle asked and Director Taylor said city building permits are not required on the mountain because it is not in the city limits.

The motion passed unanimously.

6b. Consideration of a request by Dan Graves on behalf of Winter Sports Inc. for an extension to the Glades preliminary plat, phases 3-13 (p. 65)

Planner Compton-Ring reported that Dan Graves of the Whitefish Mountain Resort is requesting a 24-month extension for The Glades, Phases 3-13 preliminary plat. Phase 1 was platted in 2003 and Phase 2 was platted in 2008. Phase 2 was subsequently vacated, at the request of the owner, in 2011. Phases 3-13 are still remaining.

The preliminary plat now contains 21 single-family residential lots, 135 townhomes and 22 cabins on 55.73 acres located south of the Base Lodge on Big Mountain. The preliminary plat was approved by the Flathead County Commissioners on March 22, 2005, and expires August 18, 2013.

This development is a residential subdivision with a combination of single family dwellings, townhouse and cabin-style units. The development stretches from the east near the Easy Rider chair (also known as Chair 9) and existing Glades subdivision, phase 1 to the west and south of the Base Lodge. Over 23 acres of the subdivision is maintained in open space along the stream and pond. Several new private roadways are proposed within the project including a loop road to the south of the Base Lodge and several cul-de-sacs. All roadways meet the city's private road standards; the project is served by the Big Mountain Water Company and the Big Mountain Sewer District.

Change in Standards:

This subdivision was approved prior to the 2006 Big Mountain Neighborhood Plan, Water Quality Protection regulations and current subdivision regulations. Planner Compton-Ring gave a summary of phases and their relationship to the 2006 Neighborhood Plan.

Below is a summary of other pertinent items that have changed related to this preliminary plat:

- Most of the development is setback from the stream. The buffer of 125-feet with a 10-foot setback is generally being met with the project. The regulations provide the possibility to reduce buffers through averaging and enhancement, but the buffer could be no less than 50-feet.
- There are a series of wetlands in this subdivision. Again the buffer of 125-feet with a 10-foot setback is being met in some areas of the preliminary plat, but large portions of Phases 3, 4 and 7 are located within the buffer. Similar to streams, wetland buffers could be averaged provided buffers are no less than 50-feet.
- Some of the lots exceed 10%, requiring a geotechnical reconnaissance to determine whether or not further geotech review is warranted. Staff could not locate any geotechnical reports associated with the preliminary plat.

Of the eleven remaining phases of this preliminary plat, Phase 4 is the location of the current North Valley Clinic, Phases 2, 11 and 13 were removed from the neighborhood plan and Phases 8, 9, 10 and 12 are located wholly within the area designated as Haskill Creek Preserve. The Big Mountain Neighborhood Plan describes the Haskill Creek area:

“The Haskill Creek drainage below the Day Lodge is designated open space on the master plan. It is anticipated that this drainage will be utilized for hiking, walking, biking and ski trails. Structures other than resort related facilities supporting recreational activities or utilities are not anticipated within this green belt. The green belt varies from approximately 250-feet to 900-feet from either side of the streambed.”

Only Phases 3, 6 and 7 are located within the Neighborhood Plan as Development Pods ‘P’ and ‘R’.

Finally, this development lies in the upper reaches of 1st Creek, which is effectively the main channel of Haskill Creek. The confluences with 2nd Creek and 3rd Creek are a short distance downstream. The City of Whitefish has water rights on 1st, 2nd and 3rd Creeks and municipal water is currently drawn from 2nd and 3rd Creeks. The 1st Creek water right has been utilized in the past and continues to be available for municipal water supply. It is therefore important to protect the water quality of 1st Creek from degradation by human activities.

A notice was mailed to adjacent land owners within 300-feet of the preliminary plat on February 1, 2013. A notice of the public hearing was published in the *Whitefish Pilot* on January 30, 2013. No comments have been received.

Staff has concerns with extending the entirety of The Glades preliminary plat since conditions have changed considerably since the plat was approved. Careful thought and consideration was put into the Neighborhood Plan, where development would be best located, the appropriate density and traffic circulation patterns. As the Neighborhood Plan was adopted as a part of the City’s Growth Policy, it makes sense to honor the planning work and approval the Council gave in 2006 with this extension request.

Staff recommends the Council approve extension of portions of the preliminary plat consistent with the Big Mountain Neighborhood Plan (phases 3, 6, and 7) for 24 months, expiring on March 5, 2015, based on the findings of fact in the staff report.

Councilor Anderson asked about the development of the Neighborhood Plan. Planner Compton-Ring said she started working for the City in 2005 and at that time the applicant had just proposed a plan to build a hotel in the vicinity of The Bierstube; and that plan complied with the Overall Development Plan (ODP) that had been approved by the County. Then the community decided ODP developed in the early 1990s wasn't adequate for the community, and that is when they created the Neighborhood Plan. Councilor Anderson asked and Planner Compton-Ring said WSI was the applicant and created the Neighborhood Plan. Councilor Anderson asked if the applicant was now asking to scrap the Neighborhood Plan and Planner Compton-Ring said no. Staff is recommending that the portions that are consistent with the Neighborhood Plan get extended and she believes the applicant is in favor of it. Deputy Mayor Kahle asked if the Council had the discretion to extend certain phases and not others and Attorney VanBuskirk said they do. Councilor Hildner asked about Phase 6 which most closely impacts First Creek and doesn't have the setbacks which would protect the water. Planner Compton-Ring said Phase 6 predates 2004 and any water protection regulations.

Deputy Mayor Kahle opened the public hearing.

Dan Graves said they were agreeing with staff's recommendation to utilize phases 3, 6 and 7 in the plat. There is water along the Chair 9 area and along Haskill Preserve so it isn't appropriate to build structures there. He said they would agree to the three Phases and that is what he would like to formally request the extension on. Councilor Mitchell asked and Planner Compton-Ring said staff agrees. Councilor Anderson asked and Planner Compton-Ring said staff is recommending approval of Phase 3, which is now called Phase 4, and Phases 6 and 7.

Ben Cavin, Houston Point Drive, said the water on the mountain is very important. He knows Mr. Graves is not ready to move on it now. He proposed that they deny the request and when Mr. Graves is ready to proceed he can submit new documentation with what he really wants to do.

Deputy Mayor Kahle closed the public hearing.

Councilor Mitchell offered a motion, seconded by Councilor Hyatt, to approve an extension to the Glades preliminary plat, phases 3, 6 and 7, of approximately 40-60 units, adopting the findings of fact in the staff report.

Councilor Hildner said Phase 6 of the Glades concerns him most because the creek runs through here. He said that the water source is fragile and important and needs to be protected. This is the opportunity to provide a sufficient buffer along Haskill Creek. Councilor Mitchell said everything but lots 56 and 57 seem pretty well setback from the creek and Planner Compton-Ring agreed. Councilor Hyatt asked if they could just remove those two lots which are two condos. Dan Graves said he would be happy with that. Deputy Mayor Kahle said he fears on-the-fly re-design. He didn't know if they had options. He noted that there is a substantial cost to a preliminary plat application and that would be cumbersome. Attorney VanBuskirk said this plat doesn't expire until August so they could continue the hearing and sit down with the applicant to develop a specific proposal for consideration by the Council. She said they can't place additional conditions or standards on an existing preliminary plat that has already been approved.

Councilor Hildner asked and Councilor Mitchell and the second agreed to withdraw their motion.

Councilor Mitchell offered a motion, seconded by Councilor Hyatt, to continue the public hearing and have Dan Graves and the City get together to work on a proposal for Council's consideration. The motion passed unanimously.

Manager Stearns clarified that they are talking about lots 55 and 56 in the buffer area; and the road that serves them, in addition, is well within the buffer area. He recommended that all should be considered in their alternate proposal. Council clarified with staff that the proposal will come back to the Council at their second meeting in March.

7. COMMUNICATIONS FROM CITY MANAGER

7a. Written report enclosed with the packet. Questions from Mayor or Council? (p. 82)

Councilor Mitchell said he would be open to a 5th Monday meeting in April with Columbia Falls and the County. Manager Stearns said he'll give them more details as he gets them. Councilor Mitchell asked about the Whitefish Housing Authority houses and Manager Stearns said he doesn't think the consultant gave a specific recommendation on the two small houses; the Housing Authority is still deciding on how to proceed with them. Councilor Hyatt said the new pharmaceutical drop box is at the Emergency Services Building and he wondered if there was going to be advertising. Manager Stearns said Mayre Flowers is working with the City's utility billing to see about an insert.

7b. Other items arising between February 13th and February 19th

City Manager Stearns said at the March 4th meeting the work session will be with Kimerly-Horn, the parking consultants. Councilor Mitchell asked when it will come to Council and Manager Stearns said once the consultants complete their final report he thinks the next step would be to schedule a public hearing when the Council will make their determination of whether to proceed with either surface parking or a parking structure along with the new city hall. He said subsequent decisions will follow, but in his mind, Council's first decision will be to make that parking decision.

Manager Stearns said HB483 would allow local health boards to require inspections of septic systems prior to property transfers. The County Health Board would make that decision. He said they were asked to write a letter of support for this bill. He sent a copy of the bill to the Councilors. The letter of support would have to go out tomorrow, so he would like their input. Councilor Mitchell asked about the Flathead County Septic Board and Manager Stearns said they didn't show up at the hearing, so he doesn't know what they think. Manager Stearns said that if Flathead County chose to enact the regulations it would primarily affect the people in the donut areas. Councilor Mitchell said he isn't opposed to it, but without support or input from the County he couldn't support it. Councilor Sweeney said the proposed legislation only applies to counties that choose to utilize it. It doesn't require them to do anything. He thinks they ought to support it. Deputy Mayor Kahle said he sits on the Wastewater Committee and they face a septic leachate issue in Whitefish Lake. He said if they could deal with it during a transfer of ownership then it would be a good time to inspect and analyze septic systems. Councilor Hildner said he is in support of this because if the County chooses they can use this opportunity to help protect water quality. Councilor Anderson agreed that it would give the County a tool if they choose to adopt it. Councilor Hyatt supported the idea of sending a letter.

Manager Stearns said the WCVB request would require an ordinance and asked if there was Council consensus to add it as an agenda item. The number of appointed positions would not increase, but could include those who live beyond the donut. A lot of people who own businesses live beyond the donut. Councilor Anderson asked and Manager Stearns said the members have to be owners or managers of businesses in good standing with the WCVB. The Council indicated consensus to add this as an agenda item with the caveat that only people who live in Flathead County could serve as committee members.

7c. Resolution No. 13-03; A Resolution approving Amendment No. 4 to the City's Flexible Benefit Plan (Cafeteria Plan) (p. 86)

Manager Stearns said Section 125 of the Internal Revenue Code allows governmental units to enact an employee benefit often called Cafeteria Plans whereby the employees are allowed to set aside some of their income from the City for specified uses such as known medical expenses, dependent care (e.g. day care), and health savings accounts using pre-tax dollars. Thus, the employee reduces his or her out of pocket costs for such expenses by the amount of income tax dollars saved in reducing his or her Adjusted Gross Income (AGI).

Cafeteria Plans involve contributions only from the employee; the City of Whitefish does not contribute any funds to the plan. The third party administrator for the Flexible Benefits Plan, Peak1 Administrators of Idaho, has forwarded an amendment to the City's plan document related to reducing the maximum amount of employee contribution from \$3,000.00 per year in the past to \$2,500.00 beginning in 2013 to comply with new federal health care regulations.

Councilor Hildner offered a motion, seconded by Councilor Hyatt, to approve Resolution No. 13-03; A Resolution approving Amendment No. 4 to the City's Flexible Benefit Plan (Cafeteria Plan). The motion passed unanimously.

8. COMMUNICATIONS FROM CITY ATTORNEY

8a. Consideration of letting the prosecution contract with Hedman, Hileman, and Lacosta extend for two more years or giving notice to terminate the contract after June 30, 2013 (p. 109)

City Attorney VanBuskirk gave the staff report. Since 1991, the law firm of Hedman, Hileman & Lacosta, PLLP (Law Firm) has provided prosecutorial services on behalf of the City primarily before the Whitefish Municipal Court. In 2007 the City of Whitefish contracted with the Law Firm on an hourly basis for legal services, based on their 2007 hourly rates, with a term of four years. The Whitefish Police Department expressed its satisfaction for the professional nature of the Law Firm's prosecutorial services and desire to continue the Law Firm's Contract.

City staff respectfully recommends that the City Council approve the two-year renewal of the Contract for Prosecution Services by the Law Firm for FY 2014 and FY 2015, at the same annual flat fee of \$90,000 for legal services and \$3,600 for costs and expenses, with the Council's authorization for City staff to negotiate the terms for the renewal and Chuck Stearns, City Manager, to execute the two-year renewal on behalf of the City.

Councilor Mitchell asked and Attorney VanBuskirk said the flat fee will remain the same. He asked and Chief Dial said he works with the prosecution and they are pleased with the relationship even though there are pros and cons to every relationship.

Councilor Anderson offered a motion, seconded by Councilor Hyatt, to approve the two-year renewal of the Contract for Prosecution Services by the Law Firm for FY 2014 and FY 2015, at the same annual flat fee of \$90,000 for legal services and \$3,600 for costs and expenses, with the Council's authorization for City staff to negotiate the terms for the renewal and Chuck Stearns, City Manager, to execute the two-year renewal on behalf of the City. The motion passed unanimously.

9. COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

9a. Standing budget item - None.

9b. Discuss negotiations with Averill Hospitality on the possibility of constructing a boutique hotel on City owned land at 3rd Street and Central Avenue and designate City negotiators (p. 137)

Manager Stearns said Averill Hospitality and Brian Averill sent a letter requesting consideration of building a boutique hotel. Attorney VanBuskirk felt that any committee they appoint by resolution becomes subject to the open meetings law and this is a proprietary situation. The negotiations can be in private, but any agreement has to be open to the public. Instead, they could treat the process through an informal group, similar to the real estate committee, and invite a couple Councilors, selected by the Council, to meet with staff on private real estate matters. He suggested they add one member to the current real estate committee which currently is Frank Sweeney, Mayor John Muhlfeld, Manger Stearns and Finance Director Knapp for negotiations with Averill Hospitality. He said it was anticipated that these would be private negotiations coming forward with some type of proposal to the Council. The second issue is why they would negotiate only with Averill Hospitality or should they consider putting it out for a bid for proposals. State law addresses disposal of municipal property in urban renewal areas in Section 7-15-4263, MCA, and those details are in the packet on page 139 and 140. It says property may be disposed only under certain procedures or through the RFP process. He said that Missoula usually does the RFP process and Billings goes both ways. Manager Stearns said the loss of parking is important as they heard expressed tonight. He said the Averills propose providing parking where the Calvary Church and JCCS properties are across from the Post Office. If that went into surface parking it still doesn't replace the parking on Central Avenue. He said the City would still need additional parking; possibly a structure at the new City Hall site or the lot on Spokane Avenue and 2nd Street. He said on any small site it is difficult to build a hotel if you have to deal with the parking, laundry, marketing and sales. A lot of the Averill hotel infrastructure could be offsite at the Lodge at Whitefish Lake.

Councilor Hyatt said if they were going to add another individual he would recommend Deputy Mayor Kahle. Councilor Mitchell said he thinks they need to listen to the Averills and see what they have to offer. Deputy Mayor Kahle said he thinks there is a reason why they are considering a sale of the parking lot only to Averill Hospitality—and that is because they have off-site service ability. Attorney VanBuskirk said according to state law the Council has two options; they can establish reasonable procedures as the City Council shall prescribe to negotiate with Averill Hospitality, or follow procedures regarding public notice to invite other proposals. Councilor Anderson asked what reasonable procedure they could apply and Manager Stearns said that will be determined by Council; but could

include items like having the city property appraised and agree not to sell it below fair market value as determined by the appraisal. The committee would work on other items that would come back before the Council; it is possible that the committee and Council decides that those best be heard during a public hearing. He thinks it would work best for the procedures to start in committee and brought back for final determination from the Council. Councilor Hildner said they need to listen to proposals, but they need absolute transparency in any kind of proposal. Councilor Mitchell said they should see if the real estate committee and parties involved can come to a minor agreement before they start a public process.

Councilor Sweeney offered a motion, seconded by Councilor Anderson, to appoint Deputy Mayor Kahle to the real estate committee to negotiate on this project with Averill Hospitality, and to proceed with adoption of reasonable procedures according to Section 7-15-4263, MCA. The motion passed unanimously.

Councilor Anderson said transparency is going to be very important. The downtown merchants have a business interest in this property, too. Manager Stearns said after they come up with reasonable procedures they could have a public hearing on it. Councilor Hildner asked if they would move into quasi-judicial territory. Attorney VanBuskirk said if individuals wish to approach the real estate committee it can be vetted by the real estate committee. She noted that a sale or leased of City property takes a 2/3 vote of the Council.

9c. Letter from Bayard Dominick representing Whitefish School District #44 requesting that two hour parking on Pine Avenue near the high school be changed to faculty parking during the term of the high school construction (p. 143)

Manager Stearns said as they get under construction of the high school there will be constrained circulation and traffic issues and the high school is requesting the parking change. The school will pay for the replacement of the parking signs.

Councilor Hyatt offered a motion, seconded by Councilor Sweeney, to approve two hour parking on Pine Avenue near the high school be changed to faculty parking during the term of the high school construction, with the high school paying for the new parking signs. The motion passed unanimously.

9d. Reconsider decision not to place the overhead utilities on the East 2nd Street reconstruction project underground (p. 147)

Deputy Mayor Kahle said he is a member of the Resort Tax Monitoring committee and this is an issue they will continue to face. The City is doing a major reconstruction of East 2nd Street and undergrounding of the power was not required due to cost. He felt it should be a policy discussion on undergrounding utilities. Private developers are required to underground their utilities. He thought the City should live by the same guidelines. Councilor Mitchell asked about Sixth Street and Director Wilson said it wasn't undergrounded when they reconstructed that street; the Council decided that it was too expensive. Director Wilson said on First and Third Street they did put some of the utilities underground in conjunction with the downtown infrastructure project.

Doug Reed, 520 Somers Avenue, represented the Resort Tax Monitoring Committee. He said they had estimates on what it would cost to bury the power and it would be \$330,000 to bury power

underground to each house. Councilor Mitchell asked and Director Wilson said he didn't have it in front of him but the entire project is over \$2 million. The project uses resort tax dollars except for \$140,000 of CTEP funds that can be used on the trail. Doug Reed said they talked about it and understand the benefits of burying the power, but decided not to because of the cost. Councilor Hyatt asked if they are using Resort Tax on the Highway 93 W. project and Director Wilson said it is only used for lighting and trees. Councilor Anderson asked what the policy is and Manager Stearns said this is reconstruction, not raw development. Historically, the policy has been not to put the utilities underground; he was in favor of and encouraged staff to consider putting the utilities underground on Central Avenue. He said if they are going to require underground utilities there will be additional costs and Resort Tax projects will get delayed because of doing this also. Deputy Mayor Kahle said a lot of the projects he has been involved with, even if they were already involved with utilities, required him to underground the utilities. The development community was given a litany of reasons why this was required. If the policy is good for private development, then it is good for the City. He thought it should at least be looked at on a case by case process.

Director Wilson said there is not a written policy. Their first resort tax reconstruction process goes back to 1996 and the original committee was frugal and didn't even want to do sidewalks or trees. Councilor Anderson said if the policy is that the City abides by the Subdivision Regulations Section 12-4-29A, then perhaps requirements on developments have been more than this statute prescribes. The question is whether they want the City to spend more money or not. He said perhaps what should really happen is when a developer comes in they can refer to this statute and put more thought into it. Councilor Sweeney asked and Director Wilson said there will be underground utilities down to Karrow Avenue on Highway 93 West. He said the City expressed a sentiment to underground utilities and Senator Zinke helped get construction funds. Deputy Mayor Kahle asked why all new utilities should be placed underground; what is the benefit? Are they going to stand behind it or not? Councilor Sweeney said there is no better time to do it than when they are doing these big projects. It is important for safety and long term planning. Councilor Hildner asked the committee's take on future undergrounding of utilities. Doug Reed listed esthetics, safety and dependability as benefits of underground utilities; he would like to do it if the cost is right.

Chris Schustrom, 504 Spokane Avenue, who also serves on the Resort Tax Monitoring Committee, agreed with Doug Reed. The Second Street project is too far along to make it a requirement, but he agrees that utilities should be placed underground. Director Wilson said \$300,000 is the cost of a typical 2-block length of a standard street. A cost like that has an affect. Every street in town needs reconstruction or needs chip sealing and overlay. Councilor Hyatt asked and Deputy Mayor Kahle said they need to move forward with the East Second Street project because it is already in process. Director Wilson said the engineers have been focused on other things so they could move forward with a re-design for underground utilities for only about \$10-12,000. Councilor Sweeney asked if there was any support from the utility companies and Director Wilson said it is not the typical case. Deputy Mayor Kahle said he would like to see undergrounding considered for all future City projects. Director Wilson said when they bring new proposals to the Council they could bring a proposal with both costs broken down. Manager Stearns said there is a difference between raw land development and the retro-fit of existing utilities.

Councilor Hildner said they should continue with East Second Street as it is, but should include the undergrounding option in all future City reconstruction and construction projects. Councilor Mitchell said he wants the City to be held to the same standards as developers. Deputy Mayor Kahle asked and Director Wilson said they wouldn't be able to put utilities underground on the east edge of the

project for technical reasons or along Cow Creek. Councilor Sweeney said they should have a public hearing and policy decision on whether the community thinks it is worth spending the extra 15-20% to underground utilities. Councilor Anderson said he is okay with the project moving forward as it is. Councilor Hyatt said they need to review it as a Council. He is in favor of putting them underground. Councilor Hildner said Second Street should go as designed and then, as a matter of course, they should consider the first priority to be undergrounding of utilities.

Councilor Hyatt offered a motion, seconded by Deputy Mayor Kahle, to underground the utilities on E. Second Street excluding the individual services, with Option 1 plus engineering, as shown on packet page 147.

Councilor Hildner said if they do that there will still be the same number of power poles, so he isn't sure it solves a whole lot of problems. Deputy Mayor Kahle said if someone builds on Second Street then they would have that opportunity to underground their utilities. Councilor Mitchell asked and Director Wilson said the price stands with the exceptions he mentioned. Councilor Sweeney asked what would look different on Second Street and Director Wilson said there wouldn't be power lines running parallel to the road. He said he lives in that neighborhood, but doesn't see any benefit for the \$300,000. He said safety and dependability are advantages of running utilities underground. Councilor Hyatt said he is looking at the 50 year plan.

The motion failed on a tied vote with Councilors Mitchell, Kahle and Hyatt voting in favor and Councilors Anderson, Hildner and Sweeney voting in opposition.

9e. Select one elected official member to participate on the selection committee for the Highway 93 West Corridor Plan consultant.

9f. Select one or two elected officials to participate on the Hwy 93 West Corridor Plan steering committee

Deputy Mayor Kahle said items 9e and 9f could be combined. Director Taylor said March 18-22 will be the week they interview the consultants. Manager Stearns said Mayor Muhlfeld told him that he would serve on this committee, but not on the steering committee. Councilor Mitchell said he would be willing to serve on either.

Councilor Anderson offered a motion, seconded by Councilor Hyatt, to appoint Mayor Muhlfeld to the consultant selection committee and Councilors Sweeney and Mitchell to the Steering Committee. The motion passed unanimously.

9g. Email and notice from Garrick Hansen regarding his property at the corner of 6th Street and Baker Avenue (p. 159)

Manager Stearns said they have submitted this to the Montana Municipal Interlocal Agency for adjudication and we are waiting for their response. Councilor Sweeney said he felt like the property owner will have a full opportunity to develop his lots. Councilor Mitchell asked and Director Taylor said every lot is allowed up to 5,000 square feet per lot or 15%, whichever is greater, by the reasonable use exemption. City Attorney VanBuskirk said the City prepared copies of the documents he requested but he has not been in to pick those up.

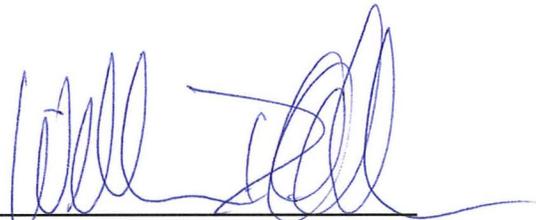
9h. Letter from Sandra Alessi regarding City Cemetery and cremations (p. 162)

Councilor Mitchell asked if this would be sent to the cemetery committee and Manager Stearns said it would; and noted any new expenditure will have to go through the budget process. Deputy Mayor Kahle said all options are being considered by the Cemetery Committee.

Councilor Mitchell said he is very sad that DePratu Ford is leaving Whitefish. That is 40 jobs we are losing in Whitefish. Councilor Sweeney said he isn't sure the City was ever given the opportunity to work with them about leaving. He thinks that needs to be really clear.

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

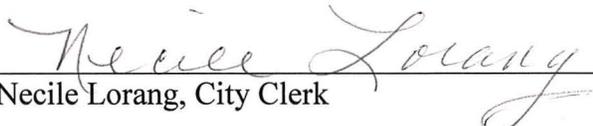
Deputy Mayor Kahle adjourned the meeting at 10:20 p.m.



Deputy Mayor Kahle



Jane Latus Emmert, Recording Secretary
Attest:



Necile Lorang, City Clerk