

WHITEFISH CITY COUNCIL MINUTES

December 2, 2013

7:10 P.M.

1. CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Sweeney, Anderson, Hildner, Kahle and Hyatt. Councilor Mitchell was absent. City Staff present were City Manager Stearns, City Clerk Lorang, City Attorney VanBuskirk, Planning and Building Director Taylor, Senior Planner Compton-Ring, Planner II Minnich, Public Works Director Wilson, Parks and Recreation Director Cozad, Police Chief Dial, and Fire Chief Kennelly. Approximately 18 people were in attendance.

2. PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Brian Wood to lead the audience in the Pledge of Allegiance.

3. PRESENTATIONS-Arbor Day 2014 Proclamation (p. 40)

The Mayor proclaimed Friday, April 25, 2014 as Arbor Day and encouraged citizens to participate in appropriate activities and to take advantage of the benefits of the parks and other natural areas in our community.

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

Turner Askew, 3 Ridge Crest Court, thanked the existing Council, those going off at the next meeting, and those who have been serving. He said the public doesn't understand that it takes a lot of time reading the material, listening and serving on the Council. He said about six months after they've been elected by a certain group of people they learn that they represent **everyone** in the community. They might get criticism for that, but it's the right thing to do. He said he appreciated all that they do and have done.

Dan Vogel, 451 Woodland Place, said he is part of a group of 20-30 year olds who are offering Ted X Whitefish to the world. TED stands for technology, education and design. January 16, 2014 from 9 a.m.-5 p.m. at Central School they will have 14 different speakers looking at defining "The Last Best Place." He said their purpose is to give them an opportunity to speak and offer a clearinghouse of information to the community and to the world. He said the tickets just went on sale and they are already 60% sold out. He asked the public to watch this dynamic exchange. Tickets are available for \$60 and are available at www.tedxwhitefish.com.

5. COMMUNICATIONS FROM VOLUNTEER BOARDS - None.

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

6a. Minutes from the November 18, 2013 Council regular session (p. 42)

6b. Ordinance No. 13-10; An Ordinance 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 (Second Reading) (p. 57)

Councilor Kahle offered a motion, seconded by Councilor Hyatt, to approve the consent agenda. The motion passed unanimously.

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

7a. Consideration of an application from Jeff Lyman on behalf of Richard & Roberta Bennett for a Conditional Use Permit to construct an accessory apartment at 325 Lupfer Avenue on Lots 18 and 19 of Block 54 of Whitefish Subdivision (p. 62)

Planner II Minnich reported that Jeff Lyman with Aspen Ridge Design, on behalf of Richard and Roberta Bennett, is requesting approval of a Conditional Use Permit to allow for an accessory apartment above a new garage at 325 Lupfer Avenue. The property is currently developed with a single family home and an existing garage which will be removed. The property is zoned WR-4 (High Density Multi-Family Residential District). The Whitefish Growth Policy designates this property as "High Density Residential".

The proposed new garage with the accessory apartment will be located in the southeast corner of the property. The new structure will be approximately 31 feet, 6 inches long by 18 feet wide. There will be a small extension on the structure approximately 7 feet 6 inches long by 3 feet 6 inches wide. The structure will be a total of 593.25 square feet, which allows a reduced side and rear setback of 6 feet from the property lines. There are no proposed changes to the existing home. The public was notified, but no comments have been received. The subject property is 6,500 square feet and the zoning setbacks for accessory structures less than 600 square feet will be met.

The subject property is located on two lots that when combined meet both the minimum lot size and lot width requirements. Per Section 11-2-3(B)(3) of the zoning regulations, where several contiguous lots are developed as a single property, the exterior lot lines are used for determining compliance. However, the section specifically states that "*prior to or as a condition of issuance of any building permit, all interior lot lines affected by the structure(s) shall be abandoned.*" Therefore, a condition will be added that prior to building permit approval, the interior lot line must be abandoned.

The maximum permitted lot coverage in this zoning district is 40%. The existing residence and the proposed garage will have a lot coverage of approximately 26%. The proposed lot provides adequate

space to accommodate all parking needs on site and the garage could be used for one space. There is plenty of room for additional parking in the back.

The subject property is currently served by sewer and water, and is within the jurisdiction of the Whitefish Fire Department and the City of Whitefish Police Department. Minimal traffic impact is expected. The proposed structure will be similar to existing adjacent residential uses in the neighborhood, and will not exceed the maximum height of 24-feet for an accessory structure. It will be placed about 30 feet from the existing structure and that allows enough open space. Staff recommends approval subject to seven conditions.

Planner Minnich said the Whitefish City-County Planning Board met on November 21, 2013 and had questions on the reduced setbacks and the stormwater condition, but those issues will be reviewed at the time of the building permit. No one from the public wished to speak and the Planning Board unanimously recommended approval of the above referenced conditional use permit with seven conditions.

Councilor Sweeney said three parking spaces are required. He wondered if they would have to build the parking on site. Planner Minnich said the parking does have to be delineated and constructed. Councilor Hildner said he doesn't see where they will retain stormwater on site, especially with the roof design. Planner Minnich said it is reviewed by Public Works. Mayor Muhlfeld said that is reviewed during the building permit process. Councilor Sweeney said he would like it to say that the parking has to be designated and constructed and Planner Minnich said they could change the wording to add that.

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

Councilor Hildner addressed condition #6 and said he wants to be sure that it is followed. The owners live in Washington and condition #6 said the main home has to be owner occupied. He said he is also concerned that they provide adequate paved parking. He said the pitch of the roof will drop all the snow onto the parking area.

Councilor Sweeney offered a motion, seconded by Councilor Hyatt, to approve the Bennett Conditional Use Permit to construct an accessory apartment at 325 Lupfer Avenue on Lots 18 and 19 of Block 54 of Whitefish Subdivision, along with the Staff Report WCUP 13-14; amending Condition #5 to state that one off-street parking spot will be designated and constructed for the accessory apartment and two off-street parking spots will be designated and constructed for the primary residence. The motion passed unanimously.

7b. Ordinance No. 13-11; An Ordinance approving a Preliminary Plat and Planned Unit Development for Phase 3 of the Great Northern Heights Subdivision – an application from Rob Pero on behalf of Hilltop Partners is proposing to subdivide 6.125 acres into 24 single family lots (First Reading) (p. 92)

Senior Planner Compton-Ring reported that this is a request for 24 single family lots on 6.1 acres in Phase 3 of Great Northern Heights Subdivision. In July of this year, the applicant was scheduled for a public hearing before the Planning Board, but withdrew their application for 42 lots (21 townhouses) in

order to provide a revised plan. The revised plan was reviewed by the Planning Board in September, which consisted of 32-lots (20 single family lots and 12 townhouse lots). The Planning Board recommended denial on the project. This matter was scheduled before the City Council in October; however, the applicant pulled the request in order to revise the project and bring it back to the Planning Board. She noted that on March 6, 2006, Hilltop Partners received preliminary plat approval for Great Northern Heights, Phase 3 for 21 single family homes. The applicant received an extension in 2008, but in 2010, the preliminary plat expired. This phase is located within the larger Great Northern Heights neighborhood that includes 49 single family lots and 22 townhouse sublots (PUD overlay.) In 2012 the PUD overlay was amended to allow for increased lot coverage to facilitate single story townhouses. The subject property is located off Highway 93 South to the west of Western Building Center and Midway Rental. The property is undeveloped and the current zoning is WR-1.

The current request no longer contains townhouses and the gross density of the subdivision is 3.92 dwelling units per acre. The street within the project is a standard public street within a 60-foot right-of-way with sidewalks, street trees and boulevards on both sides. This phase of Great Northern Heights will be independent of the other phases and have its own Homeowners' Association. Phase 3 will be responsible for maintaining the open space areas and stormwater facilities within Phase 3. The applicant is no longer proposing a 60-foot public right-of-way to the west in this phase. This future right-of-way was intended to facilitate a future roadway connection to the west and out to Karrow Avenue. This proposed right-of-way was originally proposed in the vicinity of Lot 1. This particular Phase is also proposing open space in the form of the wetland buffer and stormwater facilities. The wetland buffer/open space is 1.458 acres. The site is bounded by pasture land to the west and the drainage/wetland area to the north and east.

In addition to the subdivision, the applicant is proposing a Planned Unit Development (PUD) to overlay all of Phase 3. The PUD is no longer needed for a density bonus, but to accommodate the design of the project due to the wetland buffer. The Water Quality Protection (WQP) regulations permit one to transfer 100% of the density to upland areas, and the lot size, setbacks and lot coverage may be modified to accommodate the density transfer (§11-3-29B(9)). No subdivision variances are being requested.

The following zoning deviation is being requested through the Planned Unit Development and Water Quality Protection regulations:

- Lot sizes/width reduced from the 10,000 square feet standard with a 60-foot width to those depicted on the preliminary plat map. They range in size from 5,285 square feet to 9,651 square feet with the most common lot size being approximately 5,300 square feet, as well as lot widths from 40-feet at the smallest, but averaging of 54-feet.

The property is served by all public services. A notice with the revised plan was mailed to adjacent land owners within 300-feet of the subject parcel on October 25, 2013. A sign was posted on the property on October 26, 2013. Advisory agencies were noticed on October 25, 2013. A notice was published in the Whitefish Pilot on October 30, 2013. As of the writing of this report, 10 letters have been received and identified the following concerns:

- Proposed small lot sizes
- Loss in value for existing lots/homes

- Traffic congestion
- Not compatible with existing neighborhood and detrimental to the residential character
- Too dense
- Concerns with the future design of the homes – narrow lots could force a garage forward design
- Draw for more transient people
- Relationship between Phase 3 and the existing homeowners association
- Lots too narrow
- Too much impervious surface and not enough green space
- Preference for the 2006 21-lot proposal over this current plan
- Design of homes wouldn't be cohesive with existing neighborhood
- Concerns with the lack of backyards for family use
- Single car garage design causes parking problems
- Safety
- Density will have a detrimental effect on the wetland and wildlife

Planner Compton-Ring said one letter was received today and said they don't support any deviations to the lot size and they want this phase to be part of the larger HOA.

According to the Environmental Assessment, the project will generate 240 trips/day. No traffic impact study was included, but it would be expected that a majority of the trips would be directed to the intersection of JP Road and Highway 93 S where a traffic light is located. JP Road was developed and designed to accommodate the traffic from this development and traffic from the future Baker Avenue extension. The developer of the Great Northern Heights neighborhood paid its proportionate share of the stop light at JP Road in anticipation of this neighborhood's build-out.

There is a wetland/drainage area along the east side of the project that bisects the Great Northern Heights neighborhood. The wetland/drainage area was set aside as open space for the neighborhood and a trail was installed along the east side of the wetland. As part of the request, the applicant is proposing to reduce the buffer through restoration and buffer averaging. These buffer options are available to property owners through the Water Quality Protection regulations and are described below.

Buffer Reduction - §11-3-29C(3). The required buffer adjacent to a wetland is 100-feet for single family. A buffer can be reduced by 25% with a restoration plan which would allow a 75-foot buffer. The applicant has submitted a restoration plan along with the application. The restoration plan provides a selection of plant materials, includes a requirement to eradicate the weeds and a 5-year monitoring program to make sure the restoration is successful. Staff will also recommend a condition of approval to obtain a financial guarantee for the 5-year monitoring period. Due to the small lots, staff is concerned these restored buffer areas could be degraded by adjacent homeowners looking to expand their actual yard areas. In order to protect the restoration area, staff will recommend some sort of permanent delineation be installed along the length of the buffer. This could be landscaping, a split rail fence or some other method.

Buffer Averaging - §11-3-29C(4). The total buffer area can be adjusted provided the overall area (square footage) remains the same, the decreases are generally where the riparian functions may be less sensitive to adjacent land uses and the averaged buffer is no less than 50% of the standard width – in this

case it would be 50-feet. It appears these standards are generally being met, but the detailed information will be provided as a condition of approval.

The previous plans provided an extension of Great Northern Drive to the western property line to provide a future extension of the road to Karrow Avenue. This is an extension the City would still like to see with this proposal. The applicant has proposed to eliminate this connection and points to the connection to the south of this phase and an extension of JP Road to the west. The applicant also points out that the property to the west is currently held within a conservation easement and development of this lot is unlikely; therefore, a road connection is unnecessary.

However, the City is always looking for opportunities to better connect neighborhoods to each other. Having a grid system reduces traffic 'choke points' and provides better opportunities for non-motorized transportation. In addition, the City's Growth Policy and Subdivision regulations also support the connection of roads. Staff has included a condition of approval requiring this connection. This would result in the loss of a lot or two in order to accommodate a 60-foot right-of-way, however, the Planning Board disagreed with staff and eliminated that condition for approval in their recommendation.

As with previous phases of this neighborhood, staff will recommend a condition that will appear on the face of the plat alerting future homeowners that the neighboring agricultural use pre-dates their subdivision and is lawful.

The zoning permits up to 4 dwelling units per acre (DUA) and the applicant is proposing an overall density of 3.92 DUA well within the acceptable density range for the zoning district. This is a reduction from the original plan of 6.86 DUA.

The Water Quality Protection Regulations permit one to transfer 100% of the density out of the required water quality protection area to the upland areas and modify lot size, setbacks and lot coverage provided the following four standards can be met:

- a. The increased density does not significantly harm the water quality protection areas on site or on adjacent properties;

The project is meeting all the required buffer standards and buffer reduction option available to property owners. The buffer enhancement plan will further protect water quality as the project is developed. In addition, all city stormwater standards will continue to be required, as they are for all subdivision projects.

- b. The increased density does not significantly harm wildlife habitat, including migration corridors;

As described above, the area is not mapped as important winter range for big game nor is the area mapped by the Montana Natural Heritage Program as an area containing plant or animal species of concern. However, it is likely that deer and other animals use the site. The project is preserving the wetland area, which has grown since the earlier preliminary plat application in 2004, and they are enhancing the wetland buffer area creating a larger area for animals to use and move through the neighborhood.

- c. The increased density does not significantly harm the character and qualities of the existing neighborhood; and

This has been the most significant concern from the neighbors as it has gone through its previous iterations, including this most current proposal. The June version was 42 townhouse lots (21 townhouses), the September version was 20 single family lots and 12 townhouse lots (6 townhouses) and this most recent version is 24 single family lots. While the neighbors point to the 2006 preliminary plat of 21-lots as the appropriate density (3.43 dwelling units per acre) versus the current proposal of 24-lots (3.92 dwelling units per acre), conditions and standards have changed in this neighborhood. In 2006, there were no Water Quality buffers and setbacks and the stormwater standards were less rigorous than they are currently. The gross density of the project meets the zoning regulations, but due to the requirement for a Water Quality buffer and setback, it necessitates smaller lot sizes.

Concerns have also been raised regarding the small lot widths that may result in a 'garage-forward design'. The City doesn't permit this design for multi-family buildings through the Architectural Review Standards, but the city does not regulate this design for detached single family homes. The City doesn't regulate the design of any single family homes. Some subdivisions have proposed to place detached garages to the rear of lots and have either individual or shared driveways – such as Cougar Ridge and Woodside Meadows. Some subdivisions, such as Creekwood, require the garage to be setback from the front of the home. The developer included photos of previously constructed homes that the developer intends to construct to maintain a pleasing streetscape and both options have been included.

- d. Where applicable, the increased density makes efficient use of infill property.

The project is nearly surrounded by urban-scale development and is served by public sewer and water. While on the edge of town, the property is, for all intent and purpose, an infill project. Infill is a priority for the city's Growth Policy.

The Planned Unit Development is intended to encourage flexible land use development by allowing development based upon a comprehensive, integrated and detailed plan rather than upon specific requirements applicable on a lot by lot basis. The project is using the standards in the Water Quality Protection regulations (11-3-29B(9)) to permit the smaller lot size and transfer the density to the upland area. The tool to request the minimum lot size/width is through the PUD; however, this is not a PUD in the traditional sense. As such, staff has only provided an analysis of the Water Quality Protection criteria, as described above.

The Whitefish City-County Planning Board met on November 21, 2013 and considered the requested preliminary plat. Following the public hearing, the Planning Board unanimously recommended approval.

The Planning Board made two changes to the conditions. They deleted Condition # 6 requiring an extension of a public right-of-way to the west and added the following condition:

20. The number of lots on the west side of Brimstone Drive shall not exceed twelve.

Planner Compton-Ring said this reduces the number of lots from 24 to 21. Neighbors to the project spoke at the public hearing. Comments included: unacceptable lot sizes, confusion about how this phase and its HOA will interface with the existing HOA, change in the character of the neighborhood, loss in value of their homes, safety, traffic, concerned with the quality of the proposed homes, impacts to the conservation district to the west, and maintenance of the wetland buffer. The Planning Board recommended approval with 20 conditions. She said Condition #9 deals with the open space requirements, Condition #12 states that they must provide a financial guarantee for the buffer delineation. Conditions also require uniform fencing along the western boundary, a 10-foot utility easement and reduction of the lots to the west of Brimstone to 12 total lots. Councilor Kahle asked and Planner Compton-Ring said the Planning Board recommended the reduction to 12 lots on the west side of Brimstone. Councilor Hildner asked who reviews the 5-year restoration plan. He said it takes longer than that to restore wetlands and he asked what happens if it fails. Planner Compton-Ring said the regulations are so new that they haven't dealt with this yet, but she thinks the City will ask them to submit a report annually. She said they have the financial guarantee in case restoration work needs to be completed. Councilor Hildner asked and Planner Compton-Ring said they ask for 125% of the value of the project. The City holds those as a letter of credit or in escrow. Councilor Sweeney asked if there was a way to obtain a commitment from a developer to use something other than a garage-forward design. She said they could add that as a condition. She said Cougar Ridge had a requirement that perhaps 50% of the lots had to use something other than a garage-forward design.

Mayor Muhlfeld opened the public hearing.

Eric Mulcahy, Sands Surveying, represented the applicants. He passed out the subdivision approval that was granted in 2006. He said this is what the developers originally wanted—21 lots that were 10,000 square feet. The plat expired because of the real estate recession. The critical areas regulations were adopted after the original preliminary plat was adopted in 2006. Therefore, more land has been aside for the wetland buffer. This is their 3rd revision and it contains all single family homes. He said the extension of Great Northern Drive to the west was not required in the original preliminary plat. There were already three road extensions off property for this site, so they felt this road was redundant since there is a conservation easement to the west. He said they understand staff's reasons for wanting it and respect their opinion. They have proposed 24 single family lots with reduced lot sizes. The streets will be built to public standards with 32 feet curb-back to curb-back and will match the other phases. He said there would be a separate set of CC&Rs for this site because the lot sizes are reduced and the homes will be slightly smaller. He said the restoration plan will be the responsibility of these owners and not the owners in Phases 1 and 2. The CC&Rs can link to the broader CC&Rs for the park maintenance for the development as a whole. He said they concur with the staff's recommended conditions except the extension of the road and they would like the Council to omit condition #20 as proposed by the Planning Board. He said they feel they can build attractive homes on 50 foot wide lots.

Rob Pero, Hilltop Partners, said they completed Phases 1 and 2 and all of the lots have been sold. They are proud of the subdivision. They initially had 21 lots approved, but the CAO took away 25% of their land, so then they would have had to drop 5-6 lots, so it didn't make sense to build 10,000 square foot lots any longer. The Critical Areas Ordinance (CAO) states the developer is not to be penalized for the new CAO standards and it allows developers to transfer the density. He said they tried to meet with the neighbors, but no one would meet with them. He said the neighbors show up and complain, but they

won't meet with him to work on a plan they can all be happy with. He said they are requesting the 24 lots. He said if they reduce it to 21 then they aren't transferring any of the density and it penalizes him as the developer. He said he didn't think the Planning Board made any consideration to the effect of the CAO. He thinks 24 lots is a fair number. He said some of the homes will be garage forward, but he thinks a lot of them won't be and he hopes the neighbors will be happy in the long run.

Susan Robison, 320 Minnesota Avenue, said she owns lot 45 in Phase 2. She appreciates that the project has gone down from 42 homes to where it is now. She asked Rob Pero not to take it personally that they couldn't meet. It has been hard to get all of the homeowners together. She said her concern is that everyone purchased their property based on the Phase 3 proposal which required 1,700 square feet for a single family home and 2,400 for two story homes. With the smaller lot size they can't do 1,700 square feet homes, so it won't match the design of the rest of the neighborhood. The neighbors are concerned that it will devalue their property. The neighbors would like the same CC&Rs and standards in Phase 3.

Roger Sherman, 280 Brimstone, thanked the Council for their service to the community. He said they are a great Council. He thanked Hilltop Partners for developing Phase 1 and Phase 2 as a beautiful neighborhood in Whitefish. He is concerned about Phase 3; they are going to attenuate the other two phases by changing the compatibility into smaller lots. He said he understands Hilltop Partner's desire to do the right thing and to make a profit. He said it is a beautiful 6.1 acres back there and those lots can make a profit if done right. He prefers 21 lots as the Planning Board recommended. He didn't think there should be a separate set of CC&Rs for this part of the development. He said at Monterra they had a similar problem with The Lakes and had to hire a mediator to work it out. He reminded them that there is a PUD to the south for 12 townhouses which will increase the traffic density on Great Northern Heights.

Chad Phillips, 199 Vista Drive, said he is an architect and land use planner and a member of the Whitefish Planning Board and has worked with critical areas a lot. He felt that the CAO is young and a little immature. He said this wetland is really a stormwater wetland area that bleeds off into a pasture area. There is no waterfowl habitat or fishery. He said as Phase 1 and Phase 2 develop they will saturate this more and may flood the neighbor to the northwest. He said the west edge of the wetland needs service, but something on the northwest end needs to be dealt with, too. He said they should review that. He said Phase 1 and Phase 2 abut to this wetland area. To hold the developer back seems inappropriate. This puts financial burdens on the developer because it forces them to make smaller lots, which devalues the property. He said the real problem is the area designated as a critical area. This is not fed by anything and doesn't go into anything, so it isn't a real critical area; it's more of a stormwater area with aspens creating congestion in the area. He said as a Planning Board member he values traffic engineering. Any subdivision that has over 200 trips/day is supposed to have a traffic impact study. He said a traffic engineer would build the necessary right-of-way to accommodate the townhomes that are already approved. He said the lots are less than 100 feet in depth so there is no way to build the garage in the back. He said it won't be very appealing at the streetscape.

Mayor Muhlfeld closed the public hearing.

Councilor Kahle asked if the lot sizes changed when they went from 24 to 21 lots. Eric Mulcahy said he did some quick math and it would add about 1300 square feet to the 12 lots on the west size so

they would be about 6800 square feet each. Councilor Hyatt asked and Planner Compton-Ring said this has come before the Planning Board twice. Councilor Hildner said he is concerned about the garage-forward design. He would like to have some assurance that they can eliminate the garage forward design and said that it might be more possible with the reduced number of lots. He asked and Rob Pero said they haven't designed any houses yet. Mr. Pero said some of the pictures he gave them of homes he built on smaller lots didn't have garage forward designs. Those homes were built on 60x130 foot lots, so some of the garages were in the back. He said some of the Phase 3 lots are 9,000 square feet so there won't be any problem with those lots. He said they will build good looking homes and keep the garages back where they can. Some will require a garage forward design due to the lot size.

Councilor Kahle asked and Director Taylor said that according to Code single family homes are allowed to have garage forward designs. Councilor Kahle asked and Eric Mulcahy said garage forward designs are not forbidden in the HOA regulations. Councilor Hildner said he has concerns about the HOA relationships within the subdivision. He wouldn't want them to have to pay for a mediator to get around their issues. He asked and Rob Pero said he doesn't think they'll have a problem being part of the HOA, but they'll need their own covenants because they can't be bound by the minimum home sizes from the other phases. This phase can be part of the HOA, but they'll need their own covenants. Councilor Anderson asked about the traffic study requirement for vehicle trips over 200 trips/day and Planner Compton-Ring said it is in the engineering standards, but Public Works Director Wilson said it wasn't necessary because there are two points of exit and there is a light at JP Road designed to handle the full development of this project. Councilor Anderson asked and Planner Compton-Ring said a traffic study wouldn't likely change the design of the roads. Eric Mulcahy said a Traffic Impact Study was completed for the entire neighborhood as planned for build-out. Councilor Sweeney said the density for this phase has not changed from the original approval in 2006 and Planner Compton-Ring agreed that if they approved 21 lots it would be the same.

Councilor Hildner offered a motion, seconded by Councilor Sweeney, to approve Ordinance 13-11 approving a Preliminary Plat and Planned Unit Development for Phase 3 of the Great Northern Heights Subdivision – an application from Rob Pero on behalf of Hilltop Partners is proposing to subdivide 6.125 acres into 21 single family lots at First Reading, adding Condition #21 which would eliminate garage forward design, subject to the findings of fact (Staff Report WPP 13-01/WPUD 13-03).

Councilor Hyatt said if garage forward designs were allowed in Phase 1 and Phase 2 then why would they restrict it in Phase 3 and Councilor Hildner said garage forward designs discourage neighborhoods. He said the houses in Phase 1 and 2 don't have that design.

Councilor Hyatt said there is nothing in the conditions about the CC&Rs which require the larger lot sizes. He would like to see the HOAs working together and maybe the only change is the size of the buildings in that phase. Mayor Muhlfeld said Condition #18 already deals with the HOA and CC&Rs and already addressed the stormwater and parkland maintenance.

City Manager Stearns said the motion as read has Condition #18 already included. He said they need their own CC&Rs due to the home size issue. He didn't know if the condition speaks to a separate HOA versus the different CC&Rs. Planner Compton-Ring said standard CC&Rs deal with maintenance for the property. She said staff doesn't get into minimum home sizes. She recommended that Phase 3

be part of the larger HOA for Great Northern Heights. She said she didn't think the Council needed to be concerned about the details. Councilor Anderson said CC&Rs encompass including how an HOA operates and the architectural standards which can be site specific. He said Condition #18 probably needs to be written to have the current CC&Rs address some of their concerns.

Rob Pero said Phase 3 will have to have their own covenants. If they tried to change the CC&Rs for all units then they would have to get approval from the other 49 homeowners. He said they need their own covenants, but they must be part of the HOA. Councilor Anderson said they will have to modify the HOA. Rob Pero said the current HOA can vote to accept them. If they choose not to accept them then they will create their own HOA for Phase 3. Councilor Anderson said typically when they get a preliminary plat they have all the lots delineated. He said it seems problematic to change the lot lines. He didn't think an amendment was the best way to handle it. He said maybe they need to get a drawing in front of them that shows the lots.

Councilor Kahle said the garage forward discussion should be a conversation that they would have community wide. He said as a developer of O'Brien Bluffs they chose to not have garage forward designs. He said in this case though, it was allowed in Phases 1 and 2, so it didn't seem right to restrict it in Phase 3. He said the reduction to 21 lots seems like a knee-jerk reaction from the Planning Board. He would support going with the design as proposed. Manager Stearns talked about the road extension to the west. He said staff wanted to press for the road extension; however, seeing that it wasn't in the original subdivision approval makes him pause. He said sooner or later the City needs to connect out to Karrow Avenue. He said that because there is a light at JP Road and Highway 93 S that may be a more logical western connection if they could make that happen. He said that the conservation easement could be changed if they need that road extension in the future, so he wouldn't normally forego on such a possibility. It was in the original condition and he thought they should discuss it further. Public Works Director Wilson said after they looked at the pattern of houses built to the west he thinks it is a good idea to let the idea of an extension pass. He noted that they do, however, need an extension to Karrow Avenue for the future traffic plan.

Councilor Sweeney said he agreed with Councilor Kahle about the garage forward design. He wants to respect the neighbor's concerns. He said they aren't increasing the density, but it will appear that they are because of the smaller lot sizes. He said he wants the developer to be able to take advantage of the WQP laws, so that the developer is not penalized. He said he thinks it is important to discuss the garage forward design issue for this phase. He said the developer would have to use the garage forward design on a few lots because of their size. Councilor Kahle asked about Chad Phillips' comments about this not being a critical area anymore. Director Wilson said it is the head end of a stream all the way to W. 6th called the Karrow Avenue conveyance. It is a natural conveyance. Mayor Muhlfeld said it is mapped in the wetland master plan.

City Manager Stearns said the WQP says developers are not to be penalized. He is imagining that it was for vested developments that had a final plat. He said the City can't impair vested property rights, but since this one is expired, the vested property rights were let go. Planner Compton-Ring said the term, "shall not penalize a developer" is not verbatim out of the regulations. She agreed with Manager Stearns. Mayor Muhlfeld said when they mapped the critical areas they were sensitive to those with preliminary plats. Councilor Anderson asked if this is requiring a zone change and Planner Compton-Ring said the PUD is an overlay over the zoning and it allows the smaller lot sizes.

The motion passed 3-2 with Councilors Hyatt and Kahle voting in opposition.

Later on in the meeting Planner Compton-Ring noted that an ordinance takes four votes to pass. Between Agenda Items 8a and 8b; Attorney VanBuskirk suggested that the Mayor redirect the Council back to their decision for additional action or discussion because four votes are required to pass an ordinance.

Councilor Hyatt said if they remove the garage forward design condition then he would vote for it.

Councilor Hyatt offered a motion, seconded by Councilor Kahle, to approve Ordinance 13-11 approving a Preliminary Plat and Planned Unit Development for Phase 3 of the Great Northern Heights Subdivision – an application from Rob Pero on behalf of Hilltop Partners to subdivide 6.125 acres into 21 single family lots at First Reading, subject to the findings of fact and with 20 conditions (Staff Report WPP 13-01/WPUD 13-03), as amended by the Planning Board.

Councilor Kahle said the only change is that they aren't forbidding a garage forward design. Mayor Muhlfeld said he tended to agree with Councilor Kahle and Hyatt. He said Rob Pero has built a lot of homes that are affordable and allow working families a chance to have a home. He said to get hung up on this particular phase mandating eliminating any garage forward design is a little short-sighted.

The motion passed 4-1 with Councilor Hildner voting in opposition.

7c. Ordinance No. 13-___; An Ordinance approving text amendments to the Whitefish Zoning Jurisdiction Regulations to create a new Zoning District entitled "Whitefish Planned Resort District", and adopting corresponding amendments regarding architectural standards, signage and landscaping (First Reading) (p. 189)

Planning and Building Director Taylor reported on a request by the City of Whitefish to amend the zoning regulations to create a new zoning district called Whitefish Planned Resort (WPR) in Section 11-2W, Zoning Districts, as called for in the 2007 Whitefish City-County Growth Policy. He said that the Planned Resort zoning district is set up to be similar to a Planned Unit Development (PUD) in that there is flexibility built in to deviate from some development requirements provided that the development offers up significant public benefit of some sort. A neighborhood plan for the area is required prior to adoption of any WPR zoning, and a binding site plan consistent with the neighborhood plan as well as any conditions imposed become part of the development requirements of the final zoning district. All development in the district must follow the basic outline of the approved final binding site plan.

The Growth Policy outlines a Planned Resort land use designation, and states that a zoning district called Planned Resort be implemented there. The only area currently with a Planned Resort designation on the Future Land Use Map is Whitefish Mountain Resort. The Growth Policy defines the Planned Resort Future Land Use as follows:

Planned Resort: This designation is for a master planned, dense, mixed and multi-use destination resort complex. The Planned Resort center is highly walkable and is pedestrian and bicycle oriented. Architecture and streetscapes are of very high quality. Parking is generally in on-site structures or lots that do not interfere with trails, paths, and walkways. Land uses include accommodations of all kinds, resort retail, eating and drinking establishments, and spas and fitness centers. Residential uses are generally medium to high density and are clustered around open space and other resort amenities. Zoning is generally WPR (Whitefish Planned Resort). The Growth Policy will eventually need to be amended in the last sentence of that section to include Big Mountain Resort Residential (WBMRR) and Big Mountain Village Districts (WBMV).

Staff held a work session with the Whitefish City-County Planning Board on October 17, where the Board reviewed this draft and consented to have a final version sent to them for review and approval. The only change from that draft is under 11-2-X-2-C-2(i) below. As was suggested by the board, we added a provision that green building practices and minimizing impervious surfaces can qualify as a public benefit. He said the intent is for resort type development. The Idaho Timber site is a site they will look at in a visioning session in December. This proposed zone provides more flexible approval for different types of development. The neighborhood plan would be a refinement and would provide benefits for community. He highlighted some of the proposed changes for this ordinance.

Proposed Text Amendment: (changes are in red)

11-2X WPR PLANNED RESORT DISTRICT

11-2X-1: INTENT AND PURPOSE:

The WPR district is intended for destination resort purposes and to provide for the development of high density resort uses, including lodges, hotels, motels, resort condominiums and townhouses, indoor and outdoor recreation uses, and other similar uses oriented toward recreation and resort businesses. This district may also provide meeting rooms, convention and/or conference facilities, bars, lounges, restaurants, and retail and commercial service uses intended primarily for the guests and residents of the resort facilities.

It is further the purpose of the WPR district to provide a mechanism to allow the developer and design professionals the flexibility to respond to the physical and environmental characteristics of a site, the character of the surrounding neighborhood, and the changing market demands and needs of the Whitefish community. In return for this increased flexibility, it is the intent of the WPR that the proposed planned resort provides extraordinary community benefits toward the stated goals of the Growth Policy and includes such things as affordable housing and employee housing, preservation of community/neighborhood character, preservation and/or enhancement of natural resources, provision of open space, or essential and/or desirable community infrastructure.

11-2X-2: REVIEW PROCEDURE

Planning Director Taylor reviewed the procedure for review and for the neighborhood plan.

Review Process. Review and approval of a Planned Resort shall consist of the follow steps:

1. A pre-submission conference with staff prior to submitting any applications.

2. A neighborhood meeting with those property owners likely to be affected by the Planned Resort development.
3. Adoption of a neighborhood plan consistent with the Whitefish Growth Policy and Montana State Law.
4. Approval of a zoning map amendment to WPR, along with a binding Site Plan for the site.
5. Approval of necessary land divisions.
6. Approval of necessary conditional use permits.
7. Approval of necessary architectural review.
8. Obtain building permits, as necessary.

The Neighborhood Plan shall comply with and help implement the Growth Policy. The plan shall also demonstrate the following:

1. That the proposed plan is a refinement and implementation of the Growth Policy; and,
2. That the proposed plan provides extraordinary community benefits toward the stated goals of the Growth Policy, including the following items where possible:
 - a. Preservation and/or enhancement of environmentally sensitive areas of the site.
 - b. b. Preservation of crucial wildlife habitat and/or daily or seasonal migration corridors.
 - c. Provision of usable open space.
 - d. Preservation and protection of the character and qualities of existing neighborhoods.
 - e. Making efficient use of infill property.
 - f. Provision of effective buffers or transitions between potentially incompatible uses of land.
 - g. Facilitation of street continuity and connectivity, and attractive high quality streetscapes.
 - h. Provision of pedestrian and bicycle facilities and transportation alternatives.
 - i. Provision of green building practices, energy efficiency, and sustainable design, including minimizing impervious surfaces.
 - j. Provision of affordable housing and employee housing.
 - k. Provision of recreational opportunities to the local community as well as to the visiting public.
 - l. Implementation of essential or desirable community infrastructure.

11-2X-4 CONDITIONAL USES

These apply if they come in with these ideas after the original plan.

1. Amusement parks and water parks
2. Bars, lounges and taverns

3. Boat launching ramps and docks (subject to the standards of Title 13 Lake and Lakeshore Protection Provisions).
4. Cellular towers
5. Churches and other places of worship
6. Convention/conference centers and facilities.
7. Dwellings: nine-plex or greater multi-family dwelling units
8. Golf courses
9. Marinas (subject to the standards of Title 13 Lake and Lakeshore Protection Provisions).
10. Microbreweries and distilleries.
11. Parking structures, commercial.
12. Recreational vehicle parks and campgrounds
13. Ski areas (downhill) and facilities

The Whitefish City-County Planning Board held a work session on this item on October 17, 2013, and then a public hearing on November 21, 2013. Following this hearing, the Planning Board unanimously recommended approval of the above referenced zoning text change with two amendments and adopted the supporting findings of fact in the staff report (Anderson and Vail were absent). The amendments, which passed unanimously, were: 1) to amend 11-2W-2, A-2, to add notifying property owners with 1,500 feet for a neighborhood plan update; and, 2) to move Conference Centers from Conditional Uses to Permitted Uses. He expanded it to include a press release and notification in the newspaper.

At the public hearing, Chris Hyatt, 611 Somers, spoke. He approved of the new district but wanted to see more of the conditional uses moved into the permitted uses. The Planning Board discussed it and added the conference centers as a permitted use.

Councilor Kahle asked and Director Taylor said they've been approached with ideas about some large developments. He said the Idaho Timber site is one likely location, and someone asked about property at the base of Big Mountain Road. Councilor Kahle asked how this is different than a PUD and Director Taylor said a PUD is an overlay over existing zoning. That process isn't designed for a resort. This ordinance would require a lot of public input, if it was a large project, but it could also be a small 5 acre project like a water park. This doesn't affect Big Mountain at all because their Resort Plan is already in place. Councilor Kahle said this new zoning designation could be used anywhere. Director Taylor said it could, but the applicants would have to amend the Growth Policy. Councilor Anderson said he appreciated all of the work that went into this by Director Taylor. He said he would appreciate a work session on this because there is so much information.

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

Councilor Anderson offered a motion, seconded by Councilor Sweeney, to table an Ordinance approving text amendments to the Whitefish Zoning Jurisdiction Regulations to create a new Zoning District entitled "Whitefish Planned Resort District," continuing the public hearing until after a work session.

Councilor Hildner asked if they want to keep the public hearing open. City Attorney VanBuskirk said they could just continue this hearing until after the work session. Councilor Kahle said something about this scares him. He said it seems like a slippery slope. He isn't sure they are a resort town—they are a family town. He urged them to proceed cautiously.

The motion to table passed unanimously.

8. COMMUNICATIONS FROM CITY MANAGER

8a. Written report enclosed with the packet. Questions from Mayor or Council? (p. 251)

This is the point in the meeting that Attorney VanBuskirk suggested that the Mayor redirect the Council back to their decision under 7b for additional action or discussion because four votes are required to pass an ordinance. Council action is recorded at the end of section for Item 7b, above.

8b. Other items arising between November 27th and December 2nd

City Manager Stearns said the City Hall Steering Committee will hold a design competition and interviews with the four finalist architectural firms as part of the process for recommending an architectural firm for the new City Hall building. This design competition will occur all day on Wednesday, December 11th. The schedule for the architectural firms' presentations and interviews is below. Each presentation will begin with a half hour presentation by the firm on their conceptual ideas and proposal for how a new City Hall could look. After that half hour, the Committee will ask questions about their presentation and also ask interview questions about the firm's experience and skills.

The schedule of presentations on Wednesday, December 11th is:

8:30 a.m.	Mosaic Architecture
10:15	MMW Architects
1:00 p.m.	CTA Architects/Engineers
2:45 p.m.	OZ Architects/John Constenius

He said it should be an interesting day in the evolution of City Hall and he hopes the public will attend.

8c. Resolution No. 13-___; A Resolution approving a real estate Buy-Sell Agreement with respect to 1 Lakeside Boulevard, Lots 7, 8 and 9, of Block 16, City of Whitefish (p. 257)

City Manager Stearns said the buy-sell agreement he signed expired last week without two of the three owners signing it. Three people own the property and all three must sign it. He said Attorney VanBuskirk wrote the resolution that will allow him to keep negotiating. It is important to get a reading on whether the Council will support this proposal. He said any subsequent buy-sell would come back to the Council for approval.

Manager Stearns, for the benefit of the public, reviewed how they were contacted by a realtor who is representing the owners of a property at 1 Lakeside Blvd (Jacqueline Creon et al) which is at the

corner of Lakeside Blvd and Oregon Avenue, right by City Beach. The legal description is Lots 7, 8, and 9 of Block 16 of the Original Whitefish Townsite. Ms. Creon is in assisted living and would like to sell it. He said staff talked with the real estate committee and then the rest of the Councilors who support the idea. He said Councilor Mitchell thought he could support it but wanted to think about it further.

The realtor representing Ms Creon's conservator believes that a price of \$450,000.00 is a fair price for this piece of land (17,705 sq. ft. or .407 acres) which equals \$25.35 per sq. ft. The realtor points to Rob Pero's recent purchase of the lakefront property next to City Beach as indicative of pricing, but that really is a different type of property with beachfront. However, for another piece of property in the vicinity, Manager Stearns asked Joe Basirico to do a CMA (Comparative Market Appraisal – a realtor's valuation) and he said that property was probably worth \$175,000 to \$200,000 for 6,500 sq. ft. which is \$26.92 to \$30.77 per sq. ft.

If the City were to develop the lot as parking, they would also incur demolition costs (unless the Fire Dept did a test burn, but even then there are some costs) and construction costs. If they were to assume 40 spaces at \$5,000 per space, that would be construction costs of \$200,000 and engineering costs of \$30,000 on top of the purchase and demolition costs. These costs are just estimates for decision making purposes and they wouldn't know better costs until the City hired an engineering firm to design a parking lot. During his site inspection, Manager Stearns noticed that there is about a ten foot grade difference from the north end of the lot to the south end, so there may be a need for some retaining walls, which the costs above do not include. There may be uses other than a parking lot, but parking has seemed to be the biggest problem at City Beach. Parks and Recreation Director Cozad agreed that this is a high priority for the City for parking near the beach. He said Resort Tax could be used for this project, but they are proposing TIF funds because there are limits on the parks and recreation Resort Tax money.

Councilor Kahle asked and Manager Stearns said they can pass the resolution even if the attached buy-sell isn't part of the package. He wouldn't want turning down the resolution to be misconstrued. Attorney VanBuskirk advised they could also consider a simple motion to authorize City Manager Stearns to continue negotiations.

Councilor Kahle offered a motion, seconded by Councilor Hyatt, to authorize Manager Stearns to negotiate for this property. The motion passed unanimously.

9. COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

9a. Standing budget item - None.

9b. Email from Chris Erler requesting that he not be required to submit a petition to annex his property in Rest Haven and sign a waiver of protest of annexation as a condition of being allowed to connect to the sewer system (p. 281)

City Manager Stearns said Mr. Erler was out of town and got waylaid by the weather so he couldn't attend the meeting tonight, and requested this item be continued to a later meeting.

9c. Appointments to committees not made during the special session preceding the meeting.
None.

COUNCILOR COMMENTS:

Councilor Hildner said the lighting on Veteran's Memorial Bridge is beautiful and worth a stroll. He said he noticed that there are more and more oil cars heading through Whitefish on the rails. He wondered if it was time for the City to look at their safety plans to make sure they have enough emergency equipment for potential spills. He thanked Councilors Kahle, Hyatt and Mitchell for their time of service on the Council and said that the City is better for their service. Councilor Hyatt said his term has been an enlightening and growing experience. He appreciates all of the Councilors. He said they might not see eye-to-eye, but they've had good dialogue. He thanked the staff and said he was impressed with all the work they do.

Councilor Anderson thanked the departing Councilors. Councilor Kahle thanked the staff. He said he sees how hard they work to keep the town what it is. He said the community benefits from their efforts. He thanked the recording secretary and videographer. He thanked former Councilors Ryan Friel and Turner Askew and all of the Councilors and the Mayor. He said he saw the two Councilor-elects in the audience and knows they will enjoy their time on the Council. He said Whitefish seems to be at a crossroads. He said they are a hometown with a unique blending of industry and resort town. When he hears things about pedestrian loops and resort zoning it concerns him and he would urge them to proceed cautiously because first and foremost they are a hometown. Councilor Sweeney thanked them for their service and said it has been a pleasure working with them. Mayor Muhlfeld echoed their comments. Manager Stearns reminded the out-going Councilors that they need a quorum on January 6, 2014 to approve the minutes.

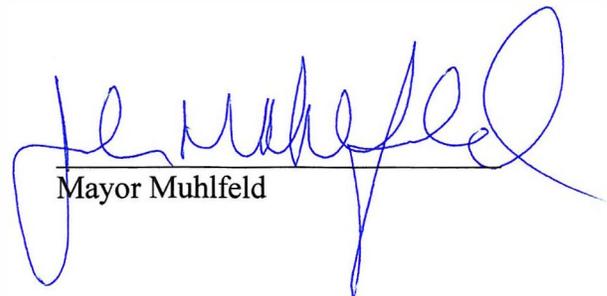
10. ADJOURNMENT (Resolution 08-10 establishes 11:00 p.m. as end of meeting unless extended to 11:30 by majority)

Mayor Muhlfeld adjourned the meeting at 9:37 p.m.

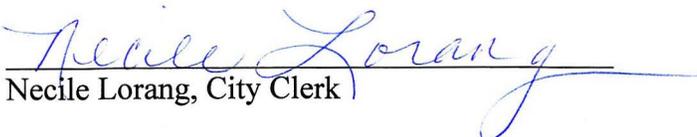


Jane Latus Emmert, Recording Secretary

Attest:



Mayor Muhlfeld



Necile Lorang, City Clerk