WHITEFISH CITY COUNCIL MINUTES
January 6, 2014
7:10 P.M.

1. CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Sweeney, Anderson, Hildner, and outgoing Councilors Mitchell, Kahle and Hyatt. Incoming Councilors Barberis and Frandsen were also present. City Staff present were City Manager Stearns, City Clerk Lorang, City Attorney VanBuskirk, Assistant City Manager/Finance Director Swisher, Planning and Building Director Taylor, Senior Planner Compton-Ring, Public Works Director Wilson, Parks and Recreation Director Cozad, Police Chief Dial, and Fire Chief Kennelly. Approximately 30 people were in attendance. Mayor Muhlfeld introduced Assistant City Manager/Finance Director Corey Swisher and welcomed him to Whitefish.

2. PLEDGE OF ALLEGIANCE

Mayor Muhlfeld delegated the task of choosing someone to Councilor Kahle who asked those who live on Creek View Drive to lead the audience in the Pledge of Allegiance.

3. PRESENTATIONS - Presentations of plaques to departing City Council members

Mayor Muhlfeld presented plaques and thanked the out-going Councilors Phil Mitchell, Bill Kahle and Chris Hyatt.

4. CONSENT AGENDA

4a. Minutes from the December 2, 2013 Council special session (p. 15)
4b. Minutes from the December 2, 2013 Council regular meeting and executive session
4c. Ordinance No. 13-11; An Ordinance for a Preliminary Plat and Planned Unit Development for Phase 3 of the Great Northern Heights Subdivision (Second Reading) (p. 34)

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

5. OATHS OF OFFICE AND SEATING OF MAYOR AND COUNCIL

5a. Administration of oath of office to three (3) new City Councilors – Mayor Muhlfeld (p. 40)

Mayor Muhlfeld administered the oath of office to new Councilors Pamela Barberis and Jen Frandsen and they were seated on the Council. He said that Councilor Andy Feury was out of town on a trip, but was sworn in at City Offices last week.

5b. Election of Deputy Mayor

Councilor Sweeney offered a motion, seconded by Councilor Anderson, to appoint Councilor Hildner as Deputy Mayor.

Councilor Sweeney said Councilor Hildner has a long history of service, involvement and attendance at meetings and would do a good job as Deputy Mayor.

The motion passed unanimously.

6. 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)

Steve Thompson, 545 Ramsey Avenue, thanked the outgoing Councilors and the incoming Councilors for their service. He said the process for the new City Hall has been going well and he likes the design by Mosaic. He urged the Council to take a long term view and establish, early in the process, some principles for design that include energy conservation and LEED standards. He said it may cost a little more up front, but it will be offset with lower energy costs in the future. It makes sense for the Council to be firm up front with these standards.

Turner Askew, 3 Ridge Crest Court, told the new Councilors they are in for an interesting ride. He said last week he read a paper about City Hall that is 797 pages long. He encouraged them to go through it. He said Aspen, CO is the only other city this size with a new City Hall and they have a much different tax base. He said they also charge $1.50/hour to park. In the same study it tells you about parking meters and the fact is; Whitefish removed parking meters several years ago. He said he used to be a real estate developer and he worries about the unintended consequences. He wondered if the consultants were stating that they were really going to have to charge for parking.

Joan Vetter Ehrenberg, 744 Hidden Valley Drive, thanked the outgoing Councilors for their service to the community. She asked the Council to consider addressing how they clean the streets in Whitefish. She said there are unpleasant things left on the streets and sidewalks around the bars. She hopes they can do something, perhaps with a private/public partnership, to clean up the streets. She said there is also a great need for a hall that is family friendly. She wondered if the new City Hall could have a room that could be used for double purposes, like an alcohol free location for a high school party as well as City meetings.

7. COMMUNICATIONS FROM VOLUNTEER BOARDS

Councilor Hildner said the Bike/Ped Committee met and they will request approval for installation of stairs to Miles Avenue on the NE corner of the bridge near Kay Beller Park. He said they had a tentative bid just over $10,000 but it doesn't include the concrete slab. He said Karin Hilding will start working on this process. He said they are working on the design of the lift station at Skye Park. He said the Building Active Communities Grant will hold a workshop in Bozeman and then visit Whitefish to walk the trails and make recommendations. The grant allows the City to send five people to the workshop.

8. 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)

8a. Resolution No. 14-01; A Resolution amending Resolution No. 13-10 to extend the duration of the Highway 93 West Corridor Plan Steering Committee through June 30, 2014 (p. 42)

8b. Consideration of approving the final plat for Dear TRACS subdivision, a 2-lot subdivision located at 6348 Highway 93 S (p. 43)

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

9. 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)

9a. Consideration of an application from Brendan Whitcomb for a Conditional Use Permit to have an accessory apartment on the 2nd floor of a recently constructed garage at 637 Somers Avenue (p. 73)

Senior Planner Compton-Ring said Brendan Whitcomb is requesting approval of a Conditional Use Permit to have an accessory apartment at 637 Somers Avenue. The property is currently developed with a single family home and recently constructed garage. The property is zoned WR-2 (Two-Family Residential District). It is reviewed according to the Growth Policy which designates this property as "Urban". It is served by all City services and utilities. There are two existing off-street parking spaces and two in the garage. There are already several accessory apartments in the neighborhood, so it is consistent with uses in the neighborhood.

The Whitefish City-County Planning Board met on December 19, 2013 and considered the request. Following the hearing, the Planning Board unanimously recommended approval. She noted that one standard condition states that the accessory apartment cannot be rented out unless the property owner lives in the main residence.

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

Councilor Hildner said at the Planning Board meeting Ken Stein asked about the applicant building the garage with an upstairs without a conditional use permit and he too wondered if that was appropriate. Planner Compton-Ring said this project has evolved as the applicant talked with staff and she thinks it is fine.

Councilor Sweeney offered a motion, seconded by Councilor Anderson, to approve the Whitcomb Conditional Use Permit to construct an accessory apartment on the 2nd floor of a recently constructed garage at 637 Somers Avenue subject to 6 conditions, adopting the Staff Report (WCUP 13-15) with Findings of Fact and Conditions of Approval. The motion passed unanimously.

10. COMMUNICATIONS FROM PLANNING AND BUILDING DIRECTOR

10a. Consideration of application from Colin and Teri Sellwood for a preliminary plat and approval for the Sellwood subdivision, a two lot subdivision at 3930 Highway 40 (p. 95)

Senior Planner Compton-Ring reported that this application is a request for preliminary plat approval of a two-lot subdivision with an existing single family home and existing commercial building.

This is a minor subdivision. This property was included in the rezone for the Whitefish Business Service District in 2009. As part of the rezone, an application for a site plan was required. This site plan is on page 5 of the staff report.

The property is located on the south side of Highway 40 west of Conn Road. The subject property is 2.199-acres in size and the lots are 1.189 and 1.010 acres. Current zoning is WBSD, Business Service District, intended to "create defined areas that are appropriate for non-retail limited commercial services and light industrial uses. This district is restricted to those areas identified as business service center in the growth policy. The property is served by the Columbia Falls Fire District.

A notice was mailed to adjacent land owners within 150-feet of the subject parcel on December 9, 2013. A sign was posted on the property on December 16, 2013. Advisory agencies were noticed on December 9, 2013 and have submitted several comments. The Columbia Falls Fire Chief had some comments on access and asked for a 20-foot all weather access and t-turnaround. Each lot will have access off Montana State Highway 40 via a shared private driveway/easement ending in a suitable emergency turn around. As this access is now changing to a joint use access with two uses, the Montana Department of Transportation requests a new approach permit. This is included as a recommended condition of approval. The existing home and commercial building are served by an on-site well and septic system. Flathead County Environmental Health requires a new Certificate of Subdivision. This will be added as a recommended condition of approval.

No park and open space is required. The Whitefish City Growth Policy designates this area as Business Service District. As required in the WBSD zone, a site plan was established showing where future development will take place. The zoning chapter has an administrative process to make minor modifications to the site plan and major changes are reviewed and approved by the City Council.

While the lot area and lot width meet the minimum standards in the zone, staff would like to point out a possible future concern with the side yard setbacks. As indicated in the staff report, the setbacks are increased to 30-feet if the use of the adjacent lot is residential. Currently, Lot 1 will be used for commercial purpose and Lot 2 is both residential and commercial purposes which is permitted according to the WBSD. If Lot 2 were to be only a residential use, the side yard setback to the east would increase to 30-feet. As the lot width of Lot 1 near the structure is 82-feet once the 30-feet side yard setbacks is subtracted from both the east and west sides, the developable area would only be 22-feet wide. The applicants' long-term plan is to completely eliminate the residential use and devote Lot 2 to a commercial enterprise according to the site plan approved in 2009. This isn't a concern with this application, but could pose challenges in the future depending on how Lot 2 ultimately is developed.

Staff recommends approval with 9 conditions and she reviewed the conditions for approval, noting that the two lots will be sharing the driveway so they will need an HOA for maintaining that driveway.

Councilor Frandsen asked about the current septic service and Planner Compton-Ring said an engineer will have to get an updated certificate of subdivision. She noted that there are two septics, one for each building. The staff report incorrectly said there was only one. Councilor Sweeney asked if there is an existing easement for lot two to access the lot and Planner Compton-Ring said there will be an easement with this plat. Councilor Hildner asked about the setback concern and wondered if there should be an added condition addressing it. Planner Compton-Ring said there didn't need to be a condition, staff just wanted to point it out. Councilor Anderson asked if they could have a road user agreement so they don't have to an HOA and Planner Compton-Ring said that was a good idea.

Councilor Anderson offered a motion, seconded by Councilor Frandsen, to amend Condition #8 to state: "A Road Owners' Agreement, signed by all users and recorded with the Flathead County Clerk and Recorders Office, indicating all owners shall be responsible for the long-term maintenance of the shared driveway including snow removal." The amendment passed unanimously.

Councilor Anderson offered a motion, seconded by Councilor Frandsen, to approve the preliminary plat for the Sellwood subdivision, a two lot subdivision at 3930 Highway 40, adopting the Staff Report (WPP 13-11) with Findings of Fact and Conditions of Approval as amended. The motion passed unanimously.

11. COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

11a. Consideration of contract award for an articulated wheel loader for Public Works (p. 109)

Public Works Director Wilson said the Public Works Department has published an Advertisement for Bids for an Articulated Wheel Loader and received bids from two local companies. He recommends that the City Council approve the purchase of a 2014 Case 521F wheel loader from Titan Machinery of Columbia Falls in the amount of $92,775.

Councilor Frandsen asked if this came in well under budget and Director Wilson said it did. Councilor Sweeney asked and Director Wilson said they posted the bid request in the Daily Interlake. Councilor Hildner asked if it was a different size than the City's 20-year old loader and Director Wilson said he did not know, he leaves those details up the his Construction and Maintenance Supervisor. Anderson said the budget was $138,000 and he was pleased that it came in so much lower.

Councilor Sweeney offered a motion, seconded by Councilor Barberis, to approve the contract award for a 2014 Case 521F wheel loader from Titan Machinery of Columbia Falls in the amount of $92,775 and return bid security at the appropriate time. The motion passed unanimously.

12. COMMUNICATIONS FROM CITY MANAGER

12a. Written report enclosed with the packet. Questions from Mayor or Council? (p. 113)

Councilor Sweeney appreciated the update of the City Hall design and asked about the next step. City Manager Stearns said the design team will work with Kimley-Horn Engineering. He said the initial action will be to select the firm and give authority for contract negotiations. However, before the contract, staff will bring information back to the Council regarding projected assessments for Operations and Maintenance of the parking structure. Councilor Sweeney said the recommendation of a design firm should include input from the Council about the parking structure. Manager Stearns said the design competition didn't lock in any design—it was conceptual and allowed them to gather ideas from all four firms. He said the Mosaic firm will be recommended by the committee. The final design may be much different than the design competition presentations. The design team will work with staff, the committee, the public and the Council to gather ideas for the final design.

12b. Other items arising between January 1st and January 6th

Manager Stearns pointed out the map on page 52 of the packet for the Deer Tracks subdivision picturing a conceptual street system in the South Whitefish Neighborhood that was approved back in 2000. He said staff proposed the idea of the need for an east-west connector over to Karrow Avenue several years ago. This is an issue that needs to be addressed by the City and he wanted to point it out to the Council.

12c. Resolution No. 14-02; A Resolution approving a Definite Term Lease Agreement with BNSF Railway Company, for the Whitefish landing, a non-motorized boat launch, located along the Whitefish River, south of the BNSF Roundhouse, Line Segment 0036, Mile Post 1219.55, Whitefish, Montana (p. 122)

Manager Stearns said he and Mayor Muhlfeld met this past summer in June with Allen Stegman, General Director Environmental for BNSF, Barbara Ranf, State Governmental Affairs for BNSF, and Rob Hagler of Kennedy/Jenks Consultants, BNSF environmental consulting firm regarding BNSF's offer of a lease of land on the Whitefish River for use as a public river access point. BNSF wanted to offer the lease of this land, at no cost to the City, as a thank you to the community for enduring three plus years of river closures and river clean-up. Then a public dedication and ribbon cutting for the access point and celebration of the end of the river cleanup was held on August 1st. This is a non-motorized access and there is no boat ramp, so it will be used primarily by kayaks, canoes and paddle boards.

Manager Stearns said that he and Attorney VanBuskirk have worked with BNSF representatives and attorneys on a lease of the land. There were many issues to work through because this lease was different than a normal BNSF lease where the City typically has to accept all of the legal conditions that BNSF requires. Most of these issues deal with insurance, liability, and indemnification. Staff was finally able to work through all of those issues to find a lease acceptable to the staff of both BNSF and the City of Whitefish.

The packet includes a lease agreement for 20 years, although it does allow BNSF to terminate the lease with 30 day's notice. There are some other less than desirable conditions in the lease, mostly dealing with insurance, liability, and indemnification, but staff got BNSF to move on many of those issues as far as they can. He said they would not indemnify BNSF for any environmental issues down there. He said they think that the City can live with the current lease proposal which is Exhibit 1 of the subject resolution. BNSF does reserve the right to use the river landing for their necessary launches of motorized boats and barges associated with any cleanup work.

Councilor Frandsen asked about Section 3a. which says it is a picnic area and allows launching for only canoes and kayaks. Manager Stearns said use of other non-motorized vehicles like paddle boards is implied. He would rather not go back to BNSF with any changes. He thinks paddleboards are within that sort of definition. Councilor Frandsen asked about the insurance and asked if there would be a cost to the City. Manager Stearns said the City has an umbrella insurance policy on land and buildings. He said there are no structures here so they are just insuring vacant land. On liability, they probably assume a little liability. He said governmental immunity statutes protect the City. City Attorney VanBuskirk said it is $750,000 or $1.5 million and the contract includes the limit of their liability.

Councilor Sweeney noted that 2b. says if BNSF withdraws the contract the City must remove anything they have on the property within 30 days. Manager Stearns said they aren't planning a lot of improvements and probably will only take picnic benches down there. He said they had an issue with a 20-year lease that BNSF can terminate in 30 days, but they think they can work with this agreement. Councilor Sweeney asked if there will be any improvements they'll need to perform to make the property usable and Manager Stearns said the existing concrete landing may take a little work. He said BNSF language requires that if they do any capitol improvements they have to obtain a special insurance policy. Section 18E lists the insurance requirement. They've had to purchase the insurance before when they wanted to do a Public Works project and the only place you can get it is through BNSF and it was expensive. The City incurs no direct cost for this lease unless they initiate any improvements to the property. Also, the BNSF Foundation has pledged $25,000 for improvements at the landing (however, much of this grant may be required for a special BNSF insurance policy covering any improvements). Any costs the City incurs will be approved by the City Council in a budget or as approved by the Park Board and/or the City Council.

He said it is a great new riverfront access and that is good, even though the contract isn't perfect. Councilor Sweeney asked about 10b. and Manager Stearns said it is standard language in the BNSF contracts. If the County or anyone imposed special assessments on them then the City agrees to pay that new assessment. Councilor Frandsen asked for clarification for Section 31 regarding public record. Manager Stearns said it means the City won't record it, they just keep it in the City records. Mayor Muhlfeld said he acknowledged and thanked the BNSF team and Manager Stearns and Attorney VanBuskirk for their work on this project.

Councilor Frandsen offered a motion, seconded by Councilor Sweeney, to enact a Resolution 14-02 approving a Definite Term Lease Agreement with BNSF Railway Company, for the Whitefish landing, a non-motorized boat launch, located along the Whitefish River, south of the BNSF Roundhouse, Line Segment 0036, Mile Post 1219.55, Whitefish, Montana. The motion passed unanimously.

13. COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

13a. Appointments of City Council Members to Various Boards, Commissions, and Committees (p. 144)

i) Park Board – Mayor or Mayor's Designee – Chris Hyatt was previous designee; (p. 152)

Councilor Anderson offered a motion, seconded by Councilor Hildner, to appoint Councilor Sweeney to this position. The motion passed unanimously.

ii) Resort Tax Monitoring Committee – Mayor or Councilor – Bill Kahle was previous appointee (p. 156)

Councilor Sweeney offered a motion, seconded by Councilor Frandsen, to appoint Councilor Anderson to this position. The motion passed unanimously.

iii) Montana West Economic Development Board – Previously was Bill Kahle and Turner Askew was Alternate (p. 160)

Councilor Sweeney offered a motion, seconded by Councilor Hildner, to appoint Councilor Frandsen to this position. The motion passed with Councilor Anderson abstaining.

Councilor Hildner offered a motion, seconded by Councilor Sweeney, to appoint Councilor Feury as the alternate. The motion passed with Councilor Anderson abstaining.

iv) Architectural Review Committee – Ex-officio member was Phil Mitchell; ex-officio member not provided for in ordinance nor required (p. 162)

The Council agreed to eliminate this position at the recommendation of City Attorney VanBuskirk.

v) Pedestrian & Bicycle Path Advisory Committee – Mayor or Councilor; currently Richard Hildner (p. 166)

Councilor Sweeney offered a motion, seconded by Councilor Frandsen, to appoint Councilor Hildner to this position. The motion passed unanimously.

vi) Whitefish Tree Advisory Committee - Mayor or Councilor; previously was Phil Mitchell (p. 172)

Councilor Sweeney offered a motion, seconded by Councilor Anderson, to appoint Councilor Barberis to this position. The motion passed unanimously.

vii) Ice Rink Advisory Committee – Mayor or Councilor; currently Frank Sweeney (p. 176)

Councilor Hildner offered a motion, seconded by Councilor Anderson, to appoint Councilor Sweeney to this position. The motion passed unanimously.

viii) Weed Control Advisory Committee – City Councilor; currently Richard Hildner (p. 179)

Councilor Anderson offered a motion, seconded by Councilor Sweeney, to appoint Councilor Barberis to this position. The motion passed unanimously.

ix) Impact Fee Advisory Committee – City Councilor; previously was Chris Hyatt (p. 182)

Councilor Sweeney offered a motion, seconded by Councilor Anderson, to appoint Councilor Frandsen to this position. The motion passed unanimously.

x) Flathead County Regional Wastewater Study Committee –currently John Anderson with Chuck Stearns as staff/alternate (p. 185)

Manager Stearns said Joe Brenneman got a grant in the past to work on regionalization on wastewater systems. They will meet in February to determine if the committee will continue or not. It is has been a good way to improve communication in the valley.

Councilor Sweeney offered a motion, seconded by Councilor Barberis, to appoint Councilor Anderson to this position. The motion passed unanimously.

xi) 9-1-1 Administration Board – Currently Chief Dial; alternate is Turner Askew; has to be elected officials or designees (p. 187)

Mayor Muhlfeld recommended that they keep Chief Dial is this position.

Councilor Hildner offered a motion, seconded by Councilor Sweeney, to appoint Chief Dial to this position. The motion passed unanimously.

Councilor Frandsen offered a motion, seconded by Councilor Sweeney, to appoint Councilor Anderson as the alternate to this position. The motion passed unanimously.

xii)Insurance (Medical) Committee – Two City Councilors as Ex-Officio members; currently is John Anderson and Frank Sweeney (p. 199)

Councilor Anderson offered a motion, seconded by Councilor Sweeney, to appoint Councilor Feury to this position. The motion passed unanimously.

Councilor Anderson offered a motion, seconded by Councilor Barberis, to appoint Councilor Sweeney to this position. The motion passed unanimously.

xiii) Whitefish Arts Council – was Bill Kahle

Councilor Sweeney offered a motion, seconded by Councilor Anderson, to appoint Councilor Frandsen to this position. The motion passed unanimously.

xiv) Real Estate Advisors – Mayor and One Councilor; currently is Mayor Muhlfeld and Frank Sweeney;

Councilor Hildner offered a motion, seconded by Councilor Frandsen, to appoint Mayor Muhlfeld and Councilor Feury to this position. The motion passed unanimously.

xv) Legacy Lands Advisory Committee – Mayor and one Councilor or two Councilors; currently John Anderson, and Frank Sweeney (p. 205)

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

xvi) City Hall Steering Ad-Hoc Committee – Mayor and One City Councilor; currently is Mayor Muhlfeld and Councilor was Phil Mitchell (p. 211)

Councilor Frandsen offered a motion, seconded by Councilor Barberis, to appoint Councilor Hildner to this position. The motion passed unanimously.

xvii) Whitefish Lake Institute Board – one City elected official; currently is Frank Sweeney;

Councilor Anderson offered a motion, seconded by Councilor Sweeney, to appoint Councilor Barberis to this position. The motion passed unanimously.

xviii) Mountain Trails Park Master Plan Committee – two City Councilors; (p. 214)

Councilor Anderson offered a motion, seconded by Councilor Barberis, to appoint Councilor Frandsen to this position. The motion passed unanimously.

Councilor Anderson offered a motion, seconded by Councilor Sweeney, to appoint Councilor Hildner to this position. The motion passed unanimously.

Manager Stearns said Director Taylor reminded him that they will also need to add to the Highway 93 committee Council representative, but they can do that at the next meeting.

Councilor Comments:

Councilor Barberis said she was in Kalispell talking with someone who said Whitefish always gets a lot done, so she is excited to be part of the Council.

Councilor Anderson welcomed the new Councilors.

Councilor Frandsen thanked everyone. She is excited to be on the Council and she hopes they get a lot done and build a good relationship with good community involvement.

Councilor Hildner welcomed the new Councilors. Councilor Sweeney echoed those sentiments and thanked the outgoing Councilors—they did a great job for the City.

Mayor Muhlfeld thanked the Parks Department for keeping the trails plowed and available for the public.

14. 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 8:30 p.m.

Mayor Muhlfeld

Jane Latus Emmert, Recording Secretary
Attest:

Necile Lorang, City Clerk