

## WHITEFISH CITY COUNCIL MINUTES

January 21, 2014

7:10 P.M.

### 1. CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Sweeney, Anderson, Hildner, Feury, Barberis and Frandsen. City Staff present were City Manager Stearns, City Clerk Lorang, Assistant City Manager/Finance Director Swisher, City Attorney VanBuskirk, Planning and Building Director Taylor, Planner II Minnich, Public Works Assistant Baccaro, Public Works Director Wilson, Police Chief Dial, and Fire Chief Kennelly. Approximately 12 people were in attendance. Mayor Muhlfeld welcomed Councilor Feury to the Council.

### 2. PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Andy Feury 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)

Jan Metzmaker, 915 Dakota Avenue, said she has been working with the Railroad District regarding the diesel plume and remediation plan with BNSF. She asked if the Council could get Jessica Gutting and Tracy Stone-Manning to come give a report to the Council. She said they haven't been updated lately. The project goes in spurts and then dies out. She is asking the Council to make this request to help it proceed.

Chris Erler, 2855 Rest Haven Drive, said he is Item 8a. on the agenda. He wants to connect to the sewer without having to annex into the City. Mayor Muhlfeld asked him to wait for the agenda item.

Joe Akey, 180 Willowbrook Close, said he was here representing the Chamber Board. He said the Chamber Board wants to know ways to help the City reach its goals. He said a Chamber member will attend each meeting.

Ben Cavin, 2130 Houston Drive, said he lives in the donut. He passed out written comments to the Council. He said he read Mr. Erler's request that he not be required to waive his right to protest annexation in order to connect to City sewer. He is in support of this request. As a member of the Whitefish Wastewater Committee which met in 2012 and 2013, he and the committee addressed various wastewater issues for Whitefish Lake. In order to successfully address lake contamination it is necessary and desirable for the City to take a softer approach than forcing annexation into the City which results in higher property taxes. He suggested this item be tabled until the upcoming City Annexation Work Session scheduled for March 3, 2014.

### 4. COMMUNICATIONS FROM VOLUNTEER BOARDS

- 4a. **Recommendation from Future City Hall Steering Committee to authorize first negotiating a contract with Mosaic Architecture, PC of Helena, MT as the preferred architect for a future City Hall building and parking structure façade (p.40)**

Sherry Baccaro, Chair of the City Hall Steering Committee, said the Committee is recommending approval to negotiate a Design Consultant Agreement with Mosaic Architecture from Helena.

Councilor Sweeney asked and Manager Stearns said the City Manager generally handles the negotiations, followed by City Attorney VanBuskirk's review. Councilor Frandsen said there is no real outline for the project, but they're negotiating a contract. City Manager Stearns explained this negotiation is a pre-construction agreement. Terms have to be agreed upon for design and development of the project based on conceptual work already done with the committee, and future meetings with city departments and the community; all working towards the final design and construction contract. If approved, he will be discussing using a template, versus a City contract, with Ben Titingner from Mosaic, who is currently in town. Manager Stearns said that once they negotiate an agreement it comes back to the Council for approval. In the meantime a work session will be scheduled for staff and Council to work together on the assessment district for the operations and management of the parking structure. For an \$11 million building project the construction contract will be in excess of \$1 million and the prior Council didn't want to encumber the City with that expense until an assessment district was in place.

**Councilor Sweeney offered a motion, seconded by Councilor Hildner, to authorize the City Manager to proceed with first negotiating a contract with Mosaic Architecture, PC of Helena, MT as the preferred architect for a future City Hall building and parking structure façade, as recommended by the City Hall Steering Committee. The motion passed unanimously.**

**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 January 6, 2014 Council regular meeting (p 92)**

**5b. Consideration of approving application from Patrick Montalban for Whitefish Lake and Lakeshore Permit (#WLP-13-W37) at 2520 East Lakeshore Drive to install a 526.88 square foot 'F' shaped dock, construct 24 feet of dry-set stairs and walkway, install a waterline, and place approximately 10.885 cubic yards of fill material within the Lakeshore Protection Zone subject to 34 conditions (p.102)**

**5c. Consideration of approving an application from Rob Pero for the final plat for Murray Meadows subdivision, a 2-lot minor residential subdivision located at 101 Murray Avenue (p. 124)**

**Councilor Anderson offered a motion, seconded by Councilor Frandsen, to approve the consent agenda. The motion passed unanimously.**

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

None.

**7. COMMUNICATIONS FROM CITY MANAGER**

**7a. Written report enclosed with the packet. Questions from Mayor or Council? (p. 152)**

None.

**7b. Other items arising between January 15<sup>th</sup> and January 21<sup>st</sup>**

Manager Stearns said a work session calendar is included in the packet on page 152; he is penciling in the parking assessment district for the March 17, 2014 work session. Mayor Muhlfeld said they talked about the schedule and he will be gone on February 3, 2014; Manager Stearns said he would change the work session schedule to do the False Alarm ordinance and fireworks discussion along with the quarterly litigation update on the 3<sup>rd</sup> and then on the 18<sup>th</sup> they'll do the Planned Resort District zoning.

**7c. Resolution No. 14-03; A Resolution calling for an election on the question of conducting a local government review and establishing a study commission to do so (p. 157)**

Manager Stearns said Article XI, Section 9 of the 1972 Montana Constitution requires that, every ten years, each local government jurisdiction put an election ballot question before its voters on whether or not the voters want to study and review the jurisdiction's form and structure of government. He said every 10 years they have to put this on the ballot. This ballot question needs to be a part of the June, 2014 primary election. If voters pass the ballot question, then local government review commissioners would be elected at the November, 2014 election and those commissioners would do their work during 2015. He said they have had three members for this in the past. The typical number is 3-5 members. The question on the ballot will read, "FOR (or AGAINST) the review of the government of the City of Whitefish and the establishment and funding, not to exceed \$5,000.00, of a local study commission consisting of three (3) members to examine the government of the City of Whitefish and submit recommendations thereon."

Manager Stearns said the City Council does not need to take any policy position on whether or not a review of local government is desirable, but they certainly could take such a position if they were interested. The City will incur a cost for the June ballot question, but it will likely be less than \$5,000 (the cost in 2004 was \$1,015.36). There would be additional costs to help support the efforts of a local government study commission next year if the voters decide to review the form and structure of the City which staff has put in the Resolution as \$5,000.00. The budget for a local government review commission in Whitefish in mid-1990 was \$5,000, but not all of that was spent. In the mid-2000's, \$2,500.00 was budgeted for a study commission and only \$730.82 was spent.

**Councilor Feury offered a motion, seconded by Councilor Barberis, to approve Resolution No. 14-03; A Resolution calling for an election on the question of conducting a local government review and establishing a study commission to do so.**

Councilor Frandsen asked about Section 9 - Voter Review of Local Government, which said a majority vote in the general election is necessary to mandate a study commission. She asked if it was correct to do this in the primary instead of the general election. City Attorney VanBuskirk said if voters approve the study commission at the primary election it gives them the opportunity to vote on participants of the commission at the general election. Councilor Feury said this is a good process and he would encourage the community to get behind it.

**The motion passed unanimously.**

**8. COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS**

**8a. 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. 163)**

Chris Erler, 2855 Rest Haven Drive, said he added three pages to the packet since the December meeting with new information. He said page 3 was an attachment to an email he received from the Public Works Department that states that only seven of the homes of the possible 69 lots have had to sign the annexation waiver of protest. He said he had an email that says most of the properties in Rest Haven that were on sewer were on it due to the County RSID that they have been paying for the last 20 years. He hopes they can get rid of some of the animosity between the City folks and the County folks in Rest Haven.

Councilor Feury asked Chris Erler what his fear was of waiving a protest for annexation. Mr. Erler said it isn't fear, he just isn't sure it is necessary. He said if they look objectively at everything a builder/homeowner has to go through he doesn't think it is an appropriate requirement. Councilor Feury said it isn't saying the City wants to annex the property, but it sets the City up if the growth of the City happens out in that area in the future. He said the intent is that when the orderly growth of the City takes them in a certain direction the City extends infrastructure. Mr. Erler said he understands the City's point of view. He said this subdivision was here many years ago. He said he would like to stay many years. Some people have been here since the 1960's and a lot of the raw sewage used to go into the lake. Then, there were septic systems, but now there is the interest to improve water quality and extend the sewer lines. He said they have already paid for that sewer line through the RSID. He said there seems to be an attitude that the county residents are a burden to the City. He hopes that they can change that.

Councilor Barberis asked if there is a common lake access and Mr. Erler said there is a homeowner's beach. Manager Stearns said he told Mr. Erler that Montana Law recognizes that the City can require annexation for providing water or sewer service. It is a long held policy and has been in affect since 1925 and was updated in 1971. Most cities in Montana rely on that authority to say that if you want City services you have to join the club. He said the Rest Haven RSID was done in the early 1990's and Public Works Director Wilson found a memo from former City Manager Dale Ennor which said each owner must sign an agreement to waive future annexation when the property becomes contiguous to the City; at the time of the RSID and for future connections. He said in 1998 the City pursued annexation over on the Seventh Street area under the method of annexation with sufficient petitions and perhaps wholly surrounded or contiguous properties. He said the City was sued but the City's position was upheld in 2004. Since then, Council has tightened up procedures and requires a waiver of a protest and a petition for annexation to hook up to services. He said the most efficient way to annex property is with a petition for annexation; and the City wanted to annex people immediately to avoid lawsuits. At the work session last year the Councilors listed annexation as an important issue. He said the history is important. The City has been doing this for a long time and it is standard policy in cities around Montana. In 1998 they adopted new resolutions requiring a property owner's consent to annexation as a condition of continued water or sewer service. If they didn't want to annex they could be asked to get off the sewer.

Mr. Erler said if they are getting sued over annexations maybe they shouldn't be annexing. He said he heard Manager Stearns say that if someone wants sewer service then they have to do this and that. He said there is no choice for residents in Rest Haven. He said the DEQ won't allow him to have a septic because there is a sewer line in the area. He said if it was a City line, he could see the City's

argument, but it was paid for by the residents. He said he didn't think it was fair or the right thing to be doing. Mayor Muhlfeld said there will be an annexation workshop on March 3, 2014 and there will be a time for public input. Mayor Muhlfeld said this is a tool the City uses for down the road; it doesn't mean they intend to annex this property in the near future. He encouraged Mr. Erler to attend the work session. Mr. Erler said if they looked at this objectively he doesn't think they can come to the conclusion that this is the right thing for the City to do. He asked them to ignore some of the early emails because he didn't know they would be made public. Mayor Muhlfeld said if the City receives any emails on agenda items they have a policy to publish them. He agreed that they should all commit to respectful dialogue.

Manager Stearns said the Council's decision is needed tonight, because if Chris Erler doesn't sign his petition then he doesn't get connected. Manager Stearns said when people face a 20% increase in taxes they aren't eager to connect. He said City residents subsidize county residents for Sheriff/Deputy expenses and for Fire. A county resident pays a \$90 assessment for Fire, but City residents pay \$270. It really becomes a matter of equity for City and County residents.

Councilor Anderson asked and Manager Stearns said if there is no motion then the scenario is unchanged, the signed forms are required for connection. Councilor Hildner said he is sympathetic, but if they granted Mr. Erler relief then they would put themselves in a difficult position in the future regarding annexation.

Mr. Erler said he has a small family and doesn't use a lot of water and more than half of those houses are part time homes. He said they might use tanks that get pumped out each year because they don't want the cost of the monthly sewer fees. Manager Stearns said the county wouldn't let them have a septic in if they are within 200 feet of a sewer line. Mr. Erler said it is a holding tank, not a septic system. Manager Stearns said he wasn't sure if the county would allow that either. Councilor Feury said he appreciated Mr. Erler's concerns; as Councilor Feury himself is a property owner who is paying \$20,000 over 20 years for an SID. Councilor Feury said the residents in Rest Haven didn't pay for the whole line alone. He said about 75% of the RSID was covered by an EPA grant for Rest Haven. Councilor Feury said they have looked at trying to get people to hook up to sewer who are on the lake. He said water quality is important to everyone in the community. He thinks the Council needs to look at potential changes to sewer issues around the lake and other areas. He said he is uncomfortable making compensation for Mr. Erler as an individual property owner. They have a lot of people they need to take into consideration.

The Council took no action on this item.

**8b. Email from Fred Frost regarding excessive use of liquid de-icer on roads (p. 186)**

Councilor Sweeney said he is against excessive use. Director Wilson said that he and the Public Works Superintendent want to use resources effectively, and they will try to stay on top of this issue. Manager Stearns said bridges freeze before the road, so the drivers need to be selective on where they apply the de-icer. They may not need it on all of the roads, but they may need it on the bridges.

**8c. Appointments of City Council Members to Highway 93 West Corridor Plan Steering Committee – Frank Sweeney is incumbent member and Phil Mitchell was formerly a member (p. 187)**

**Councilor Sweeney will remain on the Committee; and Councilor Feury volunteered to also serve on this steering committee; the Council showed unanimous support.**

**Councilor Comments:**

Councilor Sweeney said he thinks they need a work session for the Ice Den as they consider looking at remaining open year-round. The business plan timing would require them to make a decision on this by the first part of March if this goes forward for the summer of 2014.

Councilor Feury apologized for missing the first meeting of the year. He had a business commitment. He is glad to be back on the Council and thinks they will serve the City well. He thanked the Councilors who just completed their terms and welcomed the new Councilors.

Councilor Frandsen said Whitefish is full of talented people and congratulated the following:

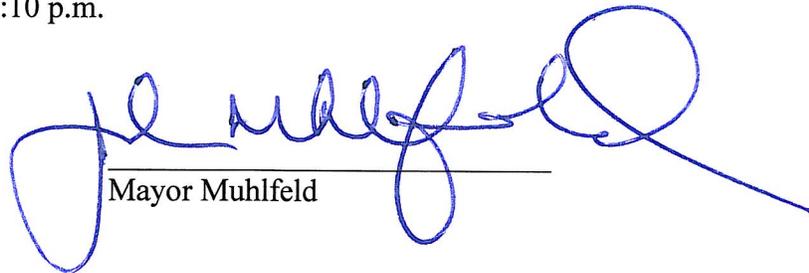
- Ethan Thompson for being selected for American Idol,
- Parker Costain, who placed 4<sup>th</sup> in ski competition
- Maggie Voison, who is competing in the X games this week and was selected as the youngest Olympic competitor on the ski team.

Councilor Anderson said the Resort Tax Monitoring Committee met and collections are up about 5.4%, which is good, but there was a low dip during the federal government shut down.

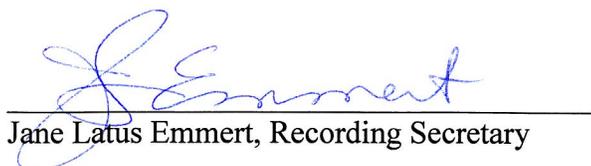
**8d. Any appointments to Boards and Committees not made during the special session preceding tonight's meeting. None.**

**9. 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 8:10 p.m.



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Mayor Muhlfeld



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Jane Latus Emmert, Recording Secretary

Attest:



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Neile Lorang, City Clerk