

WHITEFISH CITY COUNCIL MINUTES
February 3, 2014
EXECUTIVE SESSION, 5:00 TO 6:15 PM

Mayor Muhlfeld called the meeting to order. Councilors present were Anderson, Hildner, Sweeney, Feury, Barberis and Frandsen. City Staff present were City Manager Stearns, City Attorney VanBuskirk, and Assistant City Manager/Finance Director Swisher. The meeting was closed for the quarterly litigation update with the City Attorney. The meeting adjourned at 6:15 p.m.

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February 3, 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, Assistant City Clerk Woodbeck, Assistant City Manager/Finance Director Swisher, 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 25 people were in attendance.

2. PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Carol Atkinson to lead the audience in the Pledge of Allegiance. Mayor Muhlfeld asked for a moment of silent on behalf of Norm Kurtz, June Munski Feenan and Bob DePratu, all who were pillars in the community and who passed away recently.

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)

Rebecca Norton, 530 Scott Avenue, spoke in support of Chief Dial. She has never seen him be arbitrary and there has to be a good reason for his recommendation to deny the permit for the Beer Barter. She asked if the Council could re-open discussion on the Ethics Policy Committee. She said it is an issue they need to deal with and make sure that not only the people who run for office, but the staff and union people as well, understand the ethics policy. She thanked the new Councilors.

Greg Sandberg, 435 Colorado Avenue, talked about the subdivision on Colorado Avenue. He said he lives south of the proposed subdivision and he and Mr. Bevill are in a legal disagreement about an easement. He asked them to deny approval of the preliminary plat later on the agenda until he and Mr. Bevill can resolve this access issue.

JeanAnne Swope, 1 Fairway Drive, said she has lived in Whitefish over 5 years and has participated in the beer barter contest every year. She said she is a retired Presbyterian Minister and has worked to resolve many conflicts in the past. She spoke in favor of granting the permit to the brewery. She thinks it could be a little arbitrary to deny it today. She said Winter Carnival is a fun winter event she brings her grandchildren to and they haven't seen anything untoward at the Beer Barter. She said if they were all honest and checked out Central Avenue after the parade ends they would find open containers that have nothing to do with the Beer Barter. She didn't think they should deny the permit when it is an opportunity for about 1,000 people to have a great time.

Richard Atkinson, 404 Dakota Avenue, spoke on the Brewery Beer Barter issue. He asked how many people got arrested in past years and Manager Stearns said he did not know. Mr. Atkinson said he understands there was a verbal warning after the Beer Barter last year, but there was nothing in writing. He said he thinks Marcus Duffy has some faults and the City has some faults. He said he doesn't want 1,000 angry people at the Winter Carnival. The press has been blowing it up stating that the City Council has denied it, even though they haven't.

Carol Atkinson, 404 Dakota Avenue, said Winter Carnival is an incredible tourist related bonus for tourism in the town. She said anything they can do to make it work should be done. She said Marcus Duffy has sent out requests for volunteers to provide extra security and she hoped they would work it out.

Cathy Juno, officer of Whitefish Winter Carnival Board, 1780 E. Edgewood Drive, said she has experienced most of 30 winter carnivals. The Beer Barter has become a really fun event and is an important part of the Carnival. She said Great Northern Brewery is a reputable business and Marcus Duffy is trying to do thing right this year. The large crowd sort of disabled the barriers for the beer garden last year and they will work to fix that this year. She asked the Council to approve this permit.

Lisa Jones, 314 Blanchard Hollow, thanked those who were serving on the Council. She said she has a business in the Railway District and they haven't heard what is going on with the Montana DEQ remediation and timeline. She asked them to be sure that that process is completed. She also commented on the beer barter. She owns a marketing firm that promotes Whitefish and works with the Montana Office of Tourism. She is concerned about safety and the reputation of the town so it is not a free for all. She also has a concern about wanting to sustain the Beer Barter. Winter Carnival was written about by a travel journalist and the Beer Barter was listed as a top beer garden. She said that this year they have 9 journalists and 2 video crews who will be visiting Whitefish. She asked the community to make the promise that they won't go beyond the perimeters and to be responsible as they participate in the event.

Doug Simonson, 814 Columbia, said he is with Bevill Limited Partnership and asked that the Council not act as judge and jury on the land dispute. They will litigate the situation. It would cause quite a bit of pain if they were to stop the process of developing the property. He asked the Council not to impose conditions or regulations beyond what will be determined through litigation.

Eric Scheele, 239 W. 7th Street, talked about the reconstruction project. He is very happy with the project but has a public concern about the corner of 7th and O'Brien Avenue. He said O'Brien

Avenue is only 16 feet wide and his property is constantly being driven on. He asked if they could make it a safety concern to fix this intersection before someone dies.

Dee Blank, 725 W. 7th Street, said she is concerned about the street rebuild and utilities. It is a rural area and they have fought long and hard to keep the rural character. She asked them to give the 7th Street residents more time to learn about this. She said a lot of traffic came down 7th Street during the road construction on the highway. She said they have already born enough construction impact. She said bigger utilities would make for easier access for contractors to build new subdivisions and there would be a major impact on this low density neighborhood. They like the dark skies and quiet neighborhood. She already clears her driveway by hand, she doesn't want to have to shovel the proposed sidewalks, too. Urban street design does not work here. She asked them to give the Resort Tax money to another neighborhood where the rebuild would be more welcome.

Judy Husslender, 786 W. 7th Street, said she bought a house on a ½ acre in the County. Now she has been incorporated and her property taxes went up \$900/year. She said there are no curbs or sidewalks and it is a peaceful setting. She doesn't want to have to shovel the sidewalk. She was on the Growth Policy Committee and there were 16 community meetings and they talked and listened to a lot of people in the community. Street lights were left out because of the night skies. They don't need street lights on every street in the community. She said her property taxes were high enough. She said Grouse Mountain has no street lights or sidewalks and she would like the feel of her neighborhood to remain the same as theirs. She said she agreed with Dee Blank that they need a break after all the road construction on Highway 93.

Dave Streeter, 910 Abby Road, supported Dee Blank's comments about the traffic on 7th Street. He said it might be wise to delay the 7th Street project until they know what is going to happen on Karrow Avenue. He said they also don't know about the jurisdiction on Karrow Avenue yet, so it would be good to wait.

4. COMMUNICATIONS FROM VOLUNTEER BOARDS

4a. Recommendation from Pedestrian and Bicycle Trail Advisory Committee to install a stairway from 2nd Street to the pedestrian trail underneath the 2nd Street Bridge over the Whitefish River (p. 29)

City Engineer Hilding reported that with the new bridge over the river they put in a bike and pedestrian path under the new bridge. She said it dead-ends on the north side of Highway 93. The long term plan, part of the City's Bike/Ped Master Plan for about 15 years, is to construct a path along the river adjacent to the Riverbend Condos. The committee wants to put stairs to connect pedestrians to Miles Avenue. This would create a safe route for locals and visitors traveling towards City Beach from Kay Beller Park. Staff got estimates for a 5-6 foot wide grip strut metal stairs with hand rails. She said signage will be important, too, because of the way the trail dead ends.

Councilor Hildner asked and Karin Hilding said she estimated that to construct and install the entire requested staircase it would cost about \$16,300. This includes concrete pads, sonotubes supports, painting the stairs and signage.

Councilor Anderson asked if other funding sources were considered. Director Cozad said Resort Tax can be considered for this type of construction, but not until 2015. Councilor Frandsen asked and Engineer Hilding said the stairway would be a permanent structure. She said they have an easement along the Riverbend condos and they are working on that for the future. Councilor Frandsen asked about a future plan for bicycles to avoid crossing the highway there. Engineer Hilding said people can carry bikes up the stairs. There is an option some cities have where people can run their bikes up a gutter alongside them as they climb stairs. She didn't get an estimate on that concept. Councilor Frandsen asked if they considered the noise intrusion for the neighbors. Engineer Hilding said it will mostly be people who are trying to get to the beach, so she didn't imagine it would be very busy early in the morning or late at night. Councilor Sweeney said \$16,300 seems like a lot of money for about 10 feet of stairs. She said there are two 19 foot sections that total about \$10,000 and a different contractor will do the cement. She said they always get three bids before they proceed with the project and they will go with the least expensive.

Councilor Hildner offered a motion, seconded by Councilor Feury, to approve installing a stairway from 2nd Street to the pedestrian trail underneath the 2nd Street Bridge over the Whitefish River to connect with Miles Avenue at a cost not to exceed \$16,300.

Councilor Hildner said this has come up more than once at the Bike/Ped Committee and every time they have voted unanimously in support of the stairway. He said people will continue to walk up and down that hill if there is no stairway and may cause significant erosion.

The motion was approved on a 5 to 1 vote, Councilor Frandsen voted against the motion.

Councilor Hildner reported on the Bike/Ped Committee meeting and said DHC presented drawings for the Skye Bridge project. The bridge will be accessible for emergency vehicles and they will bring the bridge up about 10 feet with fill which will also make it ADA compatible. The public hearing will be February 27th. He said Karin Hilding and Bruce Boody are working out the cost of materials on the bike trail between Town Pump and the Rygg property. The Committee said that there should be a line item in the Public Works budget for maintenance. The Committee would like to encourage the City to get an epoxy marking machine to stripe the streets and to get it done early in the year. He said Mr. Cutworth, was supposed to sign an agreement today regarding the stairs between Stumptown Inn and the bike path.

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 21, 2014 Council special meeting (p. 33)

5b. Minutes from the January 21, 2014 Council regular meeting (p. 35)

Councilor Sweeney 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)

6a. Consideration of a request by C Holdings on behalf of Goat Haunt LLP to amend an existing site plan at 3905 Highway 40, the site is approximately 4.88 net acres and is zoned WBSD (Business Service District) (p. 43)

Planner Minnich reported that this item is a request by C Holdings on behalf of Goat Haunt LLP to amend an existing site plan approved by the Whitefish City Council on November 2, 2009 in connection with zone change WZC-09-22. The property is located at 3905 Highway 40 and is currently developed with a three sided storage shelter, a wooden barn, and a small shed. The site is approximately 4.88 net acres and is zoned WBSD (Business Service District). The WBSD zoning district was adopted in 2008 as a district intended *'to create defined areas that are appropriate for nonretail limited commercial services and light industrial uses.'* The district requires a site plan outlining potential buildings, parking areas, access locations, utilities, drainage, landscaping, and signage to be submitted and approved when a change to WBSD zoning is requested. The WBSD zoning regulations further state that any desired subsequent changes shall be submitted for approval as an amendment to the site plan, and approved by the City Council if a substantial change or the Zoning Administrator if a minor change. The original property owners applied for the text amendment for this zoning. It is designated as a business service center in the Growth Policy.

The previous site plan, approved with the zone change submittal in 2009, identifies the storage shelter currently built on the subject property to remain at 2520 square feet and a 2520 square feet future supply building to be constructed to the east. Two separate future lease space buildings approximately 5184 square feet each would be constructed south of the existing storage building. Also approved in 2009 were three additional future lease space buildings ranging between 5184 square feet to 6500 square feet, located near the southern and eastern property boundaries.

According to Section 11-2V-4(B)(3) of the WBSD zoning designation, substantial modifications to the approved site plan require review and approval by the Whitefish City Council, whereas minor changes can be approved administratively. Substantial modifications include but are not limited to, an increase in the number of buildings, major changes in access or circulation, major changes to signage and landscaping, or an increase in building size by more than ten percent (10%). The applicants' submitted modified site plan proposes the existing storage shelter to be enlarged to 5040 square feet, a two-story office building approximately 6000 square feet to be constructed instead of the future supply building, and the two future lease space buildings to be combined into one large storage building approximately 9999 square feet. The applicants are proposing the building to be less than 10,000 square feet as the regulations require a structure over that size to be approved through a Conditional Use Permit. The remaining three future lease space buildings are not being modified at this time. If future modifications are proposed for those structures, the site plan would need to be re-evaluated. The submitted amendments to the site plan propose to double the size of the existing storage shelter and more than double the size of the future office building, thereby necessitating review by the Whitefish City Council. No additional changes to parking, access, landscaping, or signage is proposed at this time.

Notification was mailed to adjacent property owners on December 30, 2013. Only one comment regarding the proposal was received, which was in support of the proposed modifications. She received

a few questions from people, but nothing else was received in writing. She said this is the first public hearing because the Planning Board did not meet January 16, 2014 due to a lack of quorum.

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

Councilor Hildner said there is an ingress/egress on Montana Highway 40 and said he counted 22 parking spaces in the new site plan. He wondered if a traffic study had been done as a result of the modifications. He wondered if it could be conditioned to eliminate the driveway to the east of Dillon Road. He said there are 5 accesses into the property and he thought it would be good to eliminate the access that is on Highway 40 and close to Dillon Road. Planner Minnich said she can address the parking issue. She said they haven't determined the exact number of parking spaces until they know the uses the applicant chooses. She said any use that is allowed can be permitted. She said the access off Highway 40 is currently in use. She said the 2nd driveway on Dillon Road has a gate and she doesn't know for sure if the other access points are already constructed. She said that with this site plan they are looking at only Lot 4 right now. Councilor Hildner said there are still 5 entrances and he said it would be safer to eliminate the one entrance off Highway 40. She said if that is a concern then this is the time to recommend changes. Councilor Feury said he assumes the property owners have an existing permit from MDOT and Planner Minnich agreed. Councilor Feury said it would be difficult for them to take it away if there is an existing permit and they are already using this entrance. She said it is easier to take an access away if it has not been built or used yet. She said that the Highway 40 entrance is the only access for the storage units. Councilor Hildner asked the applicant to speak.

Nicolette Covey, the applicant, said she lives in Libby, MT. Councilor Hildner asked and she said that the access off of Highway 40 is an easement and the only access for Mr. Denman's storage units.

Councilor Anderson offered a motion, seconded by Councilor Sweeney, to approve the request by C Holdings on behalf of Goat Haunt LLP to amend an existing site plan at 3905 Highway 40, adopting Staff Report WZC09-22A as findings of fact. The motion passed unanimously.

7. COMMUNICATIONS FROM PLANNING AND BUILDING DIRECTOR

7a. Consideration of approving an application from Bevill Limited Partnership for the Preliminary Plat of Orchard Lane 3, a minor, four lot subdivision located at 467 and 469 Colorado Avenue (p. 62)

Senior Planner Wendy Compton-Ring reported that this is a request for preliminary plat approval by Bevill Limited Partnership for a four-lot subdivision called Orchard Lane 3. This is a minor subdivision so it doesn't go to the Planning Board. She said there is a quicker review for minor subdivisions. The subject property is approximately 0.821 acres. Currently, a townhouse building is under construction. The townhouse received Architectural Review approval in 2012. The property is located on the east side of Colorado Avenue between Aspen Grove Street and Colorado Avenue. The property is addressed as 467 & 469 Colorado Avenue and is zoned WR-2, Two-Family Residential District. It is surrounded by residential properties and is served by City water and sewer.

A notice was mailed to adjacent land owners within 150-feet of the subject parcel on January 10, 2014. A sign was posted on the property on January 10, 2014. Advisory agencies were noticed on January 10, 2014. Staff received a letter in opposition to the subdivision from the neighbor to the south of the proposed subdivision. This neighbor obtains access across the applicant's lot and has concerns about the use of this easement for the two proposed western lots. She said that is the neighbor to the south who spoke earlier tonight.

She said they received a letter from the applicant's attorney who points out that the concerns of the neighbor are irrelevant to this proposal. The Fire Marshal states they have adequate access. The two western lots will have access on an existing easement with shared access. The eastern lots will have access off Aspen Grove, which is a public road. They must submit an engineered stormwater plan. They are required to dedicate parkland of .12 acres as cash in lieu or land, but because of its small size, the Parks Department requests the cash in lieu of land. That amount will be calculated at time of final plat. Staff calculated \$6505 for the parkland dedication cash in lieu amount based on the property estimate submitted by the applicant. This property is designated as urban and meets the zoning and subdivision regulations. Staff recommends approval with 13 conditions. She reviewed the conditions for approval and noted that roads and driveways have to be paved. A drainage plan must be approved by the Public Works Department and they must have a T-turn around for the western lots. A road owner's agreement must be signed for the long term maintenance of that driveway.

Councilor Sweeney asked if the road maintenance agreement would have to include resolution of the other property owner's issue and Planner Compton-Ring agreed that it would. Councilor Hildner said he was concerned about the City taking an estimate of the value of the land for the parkland. He asked if there were comparisons and she said comps were included in the report. She said the City generally does accept the value that the owners state. Councilor Sweeney asked and Planner Compton-Ring said the City determines the value on the unimproved market value. Councilor Hildner asked if the City could get into the easement concern and Attorney VanBuskirk said she doesn't believe they have any concerns.

Councilor Feury offered a motion, seconded by Councilor Barberis, to approve an application from Bevill Limited Partnership for the Preliminary Plat of Orchard Lane 3, a minor, four lot subdivision located at 467 and 469 Colorado Avenue, adopting Staff Report WPP14-01 as findings of fact and subject to 13 conditions.

Councilor Feury said he is confident that the dispute is not the City's concern and Condition #12 addresses this issue. It should be handled before final plat.

The motion passed unanimously.

8. COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

8a. Consideration of awarding the contract for the clearing and grubbing of the East 2nd Street road and trail project (p. 97)

Public Works Director Wilson said staff published an advertisement for bids on the East 2nd Street Reconstruction Project - Phase I. Bids were opened on January 23rd and they received 5

responses. He recommends that the City Council award a construction contract to LHC, Inc. in the amount of \$87,368.76.

The scope of work for Phase I includes clearing brush and trees, excavation, installation of conduits and vaults for private utilities, and related work along the north side of the East 2nd Street right of way between Wild Rose Lane and Dodger Lane. Work is scheduled to begin on March 3rd and be completed by March 24th of this year. The City's Phase I work will enable private utility companies, including electric, phone, cable and natural gas, to relocate their infrastructure starting on March 24th, with a schedule to be finished by June 7th.

The City will open bids for Phase II construction in early March. This work will include street construction, lighting, the bicycle/pedestrian path and City utilities. This second phase of construction is scheduled to start on June 7th and be completed by the end of September. Councilor Hildner complimented the staff because the estimates were within a few percentage points of the estimate and Director Wilson said it is not to his credit, but he would pass it on.

Councilor Anderson offered a motion, seconded by Councilor Sweeney, to award a construction contract for the East 2nd Street Reconstruction Project - Phase I to LHC, Inc. in the amount of \$87,368.76 and return bid security at the appropriate time, adopting the staff report as findings of fact. The motion passed unanimously.

8b. Consideration of authorizing the issuance of Requests for Proposals (RFP) for design engineering consultants for the future West 7th Street reconstruction project (Baker to Karrow) – a 2015 Resort Tax project (Three motions) (p. 103)

Public Works Director Wilson said the City is looking ahead to the street reconstruction projects for 2015 and recommends moving forward with design. This memo is to request the City Council to confirm West 7th Street as the next priority and direct the Public Works Department to begin the engineering selection process.

The Street Reconstruction Priorities were first adopted in 1998 and revisited in 2004. Staff's recommendations were approved by the City Council at that time and priorities number 1, 3, 4 and 5 have since been completed. The Downtown Infrastructure Improvements Project came to life in 2008 and was informally inserted in the priority list and constructed over the next 3 years, prior to the 6th and Geddes Project (priority No 5). That and the following changes had an obvious effect on the intended schedule.

- The Waverly Place Pedestrian Path (priority No 2) was moved to the back burner and forgotten,
- East 7th Street between Kalispell and Columbia Avenue (priority No. 7) was postponed to better coordinate with Highway 93 improvements, and
- The City Council switched priorities No. 6 and 8 (the West 7th Street and East 2nd Street Projects, respectively), in November 2011 at the recommendation of the Bicycle and Pedestrian Path Committee.

The Resort Tax Monitoring Committee (RTMC) reviewed the current priorities at their January 15th meeting and recommended, by motion and unanimous vote, to move forward with the West 7th

Street Reconstruction Project. He said the requested action is to confirm West 7th Street as the next reconstruction project and authorize staff to begin the consultant selection process. There is no financial requirement at this time, but the project is scheduled to cost \$2,150,000 plus any costs to put utilities underground if that decision is made in the future. He said they received a note from Jim Trout in support of the project and he ran into Judy Husslander in the coffee shop and she expressed her opinions before them tonight.

Councilor Anderson asked if the Waverly project could be funded with Resort Tax Funds and Director Wilson said the Resort Tax would cover the trails. Director Wilson said the Resort Tax Committee is considering the street project as a whole. He said it would have to fall under the Parks fund priority. Councilor Anderson said he thinks they can only make part of the project on Waverly Place work with those funds. Director Wilson said he doesn't think it will apply for the infrastructure portion and Councilor Anderson said it should come off the Resort Tax priorities and Director Wilson agreed.

Councilor Sweeney asked why W. 7th Street should be a high priority for street improvements. Director Wilson said it was originally priority 15 or 18 and they have worked down the list to it. At one point Geddes and 6th was after this project, but they flipped it. He said the Resort Tax Committee would like to move forward in 2015. Councilor Sweeney said he thinks they are confirming re-ordering the priority list, but they don't know what the other projects are. He doesn't see this as their greatest need on the priority list. The neighbors aren't clamoring for a new City street.

Public Works Director Wilson said he is not asking them to re-order any priorities. This is the next item on the priority list. Councilor Feury asked Director Wilson about the utilities on W. 7th Street. He wondered if when they go through the design process they can rebuild and get the utilities they need with a reasonable, functioning street. Director Wilson said they start with curbs, gutters, street lights and sidewalks. He said there is a safety issue for pedestrians here and they need to improve the corner on 7th Street and O'Brien Avenue. Councilor Sweeney asked if they have done another project without City standards for curbs and sidewalks. Director Wilson said on Geddes Avenue and Colorado Avenue they lacked enough right-of-way to have sidewalks on both sides. Councilor Anderson asked Dave Streeter to explain his concerns again.

Dave Streeter, 910 Abby Road, said the concern he has is that the development on W. 7th will be determined by what happens on Karrow Avenue. He said they don't know who is going to control the jurisdiction and what is going to happen on Karrow Avenue. He suggested they hold off until they know what was going on up Karrow Avenue. Councilor Anderson asked and Director Wilson said they can plan for these things. He said the road needs to carry more traffic than a rural street. He said 7th Street is the only street that runs East and West in town besides 2nd Street. It needs to be designed to carry traffic. They need to upgrade the water main on that street. Director Wilson said they have to plan for the future growth with every road they improve.

Councilor Anderson said he would be inclined to defer this decision until they get more input from the people on West 7th Street. Councilor Sweeney said he is giving representation to the people in his neighborhood. He said the other neighbors should have the right to speak before the Council makes a commitment. He said he would be less uncomfortable with moving forward if the character of the

street and neighborhood could be maintained, even if they added a bike path. He said City standards don't seem to accommodate the rural feel and crowned roads that exist in this neighborhood now.

Councilor Feury offered a motion, seconded by Councilor Sweeney, to table this decision to the February 18, 2014 meeting. The motion passed unanimously.

Councilor Feury offered a motion, seconded by Councilor Sweeney, to direct staff to come back with an alternate street construction project. The motion passed unanimously.

Director Wilson said he welcomes comments from the public. He clarified that they are not asking the Council to reorder priorities; this was the next project on the priority list.

9. COMMUNICATIONS FROM CITY MANAGER

9a. Written report enclosed with the packet. Questions from Mayor or Council? (p. 117)
None.

9b. Other items arising between January 29th and February 3rd
None.

9c. Consideration of contract amendment #2 with Crandall Arambula PC for the Downtown Master Plan Update (p. 129)

Manager Stearns said the City Council adopted the Downtown Master Plan on April 3, 2006 via Resolution No. 06-21. At a March 12, 2012 work session on Tax Increment Priorities, the City Council members present determined that an update of the Downtown Master Plan was desired and asked staff to contact the consultant, Crandall Arambula for an estimated cost and scope of work for an update.

On April 16, 2012, the City Council approved only Phase I of the proposed work program suggested by the consultants, Crandall Arambula. See attached minutes from the meeting and the contract scope of work for Phase I. The City Council at that time eliminated Phases 2-3 pending further review and approved a contract for \$13,558.

On November 5, 2012, the City Council approved Amendment #1 to the contract for items #1, 2, 6, and 7 in the amount of \$56,096 for a total contract cost of \$69,654. He said there is an attachment in the packet.

That work was completed and an open house was held on the Downtown Master Plan update on May 2, 2013. Following that open house, the Downtown Master Plan Update was completed and the Whitefish City-County Planning Board held a public hearing on it on September 19, 2013 and the City Council held a public hearing on October 7, 2013. Subsequent to that public hearing, the City Council requested a work session on the Downtown Master Plan update and that work session was held on November 4th. At that work session, the City Council requested that Crandall Arambula PC do some additional work to change and complete the Downtown Master Plan Update. Thereafter, Crandall Arambula submitted some proposed work items that Mayor Muhlfeld and Manager Stearns reviewed.

Crandall Arambula have submitted a proposed Amendment #2 for \$30,120 of work and an option of travel expenses for 1 staff person for two meetings at \$7,180 or two staff people for \$13,960.

Mayor Muhlfeld and Manager Stearns are recommending Amendment #2 be for the \$37,300 option with only one staff person from Crandall Arambula coming for two meetings – one at the O’Shaughnessy Center and then one at the final City Council public hearing.

The cost of amendment #2 as staff recommends would be \$37,300. These costs will be paid from the Tax Increment Fund which has sufficient funds for this project. This amendment would bring the total contract cost to \$106,954.

Manager Stearns said there were primarily text changes to the proposal and some of the additional work can be done by staff in the future, so that is the proposal that has the staff and Mayor’s recommendation to finish the Downtown Master Plan update. Councilor Anderson said what they have proposed makes sense. He thought they need text amendments and a few extra definitions. They would then consider feedback from public comments, so he thinks this is the right set of work for the Master Plan update.

Councilor Frandsen said she feels an obligation to finish the work the previous Council started, but it appears that they have a contract cost over and above what they originally proposed. She said there is room for public input at the public outreach meeting and if they got comments there that exceed the list for refinements and updates, then they were looking at another possible amendment to the contract. Mayor Muhlfeld said the original proposed budget was in excess of \$200,000 and they have kept it to about \$110,000. Councilor Hildner asked Director Taylor if he was comfortable with this amendment as far as protecting any grant proposals they might have in the future. Director Taylor said there is enough detail in there, especially for bike path proposals, to help them get grants for things like that. Councilor Hildner asked if it would prepare them for grants like the Tiger Grant they got in the past and Director Taylor said he thought it was possible. Councilor Hildner said the connectivity should be on O’Brien and not Lupfer as stated in the report. Mayor Muhlfeld said they are asking for schematics along the highway to make it work with the construction of the highway.

Councilor Sweeney offered a motion, seconded by Councilor Hildner, to approve contract Amendment #2 with Crandall Arambula for \$37,300 and authorize the City Manager to approve a contract amendment for those items. The motion passed unanimously.

10. COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

10a. Consideration of appeal of City Manager decision to deny a Special Event Permit for the Great Northern Brewery to close Central Avenue for a Beer Barter on February 8th (p. 145)

Mayor Muhlfeld asked the audience to avoid any outbursts. Manager Stearns said he put a lot of information in his letter on page 146 in the packet. He said at the inaugural event on Railway Street two years ago the Police Chief was dismayed at the lack of control and the open containers. For open containers outside a building during special events, there must be strict control of boundaries. Last year, even after talking with Marcus Duffy about their concerns, they saw that the second year wasn’t any better. At the Department Directors meeting the permit was discussed, and Manager Stearns asked Chief Dial to contact Marcus Duffy regarding the recommendation against approval so Marcus didn’t advertise for it. Chief Dial had talked to Marcus after last year’s event and told him there would be no

permit this year. Manager Stearns said Marcus Duffy submitted the permit for 2014 on January 21, 2014 and Manager Stearns said his letter denying it was written two days later. Marcus Duffy asked for an opportunity to talk to Chief Dial, but the two men didn't connect before the packet went out. Manager Stearns said he also emailed the denial to Marcus Duffy to make sure he received it. Manager Stearns said Chief Dial called him down to witness the lack of control of the event last year. He said Marcus Duffy had plenty of warning about the lack of control at the event in the past, so that is why he denied the permit.

Chief Dial said this wasn't an arbitrary decision. He said it was a difficult decision to make. It is a great event, but his job is to protect the public. When it first started it was totally out of control. People offered him beers from the Great Northern Brewery as he lead the parade. He made it clear that ingress and egress must be controlled so people who are not of age are not drinking. He said they have to make sure they are not over-serving, either. After the first year he and Marcus talked about controlling it, but the second year wasn't better. He said of his 15 officers, 12 are working Winter Carnival. He said the organizer, Marcus Duffy, has not taken the steps he needs to control the event. He said they don't have a problem with the BrewFest or Octoberfest. He said if they approve this they could open the City to tort liability because this would be the 3rd time Mr. Duffy has discounted what the City staff has said. Marcus Duffy has not taken the steps he has been asked to take. Chief Dial said he wishes it could be different.

Marcus Duffy, General Manager of Great Northern Brewery, 326 Somers Avenue, passed a handout to the Council. He thanked them for allowing him to speak. He respects Manager Stearns' and Chief Dial's concerns. He said the Beer Barter reappeared in 2011 after an 11 year hiatus. They moved it to Central Avenue last year. He said this is the 4th year of the Beer Barter. They believe it has fit the mold of what Whitefish Winter Carnival is all about. They don't believe that Great Northern Brewery is above the law. They have taken measures to abide by the permit. He said specific incidences have never been brought to his attention. He said they want to see the Beer Barter continue and are more than willing to take the measures they need to. They want to work in tandem with the City. That comes down to communication. He said follow-up has been minimal; he wants to communicate better. He proposed the following conditions:

1. Eliminate all open container permitting prior to 4:00 p.m.(as requested and granted in 2013).
2. Permitting for street closure following the Grand Parade beginning at 4:00 p.m. (ish) and ending at 7:00p.m. (ish) (the exact timing of the end of the Grand Parade is unknown).
3. Open container permitting to begin in conjunction with the special event permit at 4:00 (ish)
 - a. Conclude all alcohol serving 30 minutes prior to the conclusion of the Beer Barter (6:30p.m.)
4. Clearly labeled barriers will define the borders of the open-container permitted area (mobile chain link fencing), and ingress and egress will be limited to two locations on each end of the block.
 - a. Volunteers will ID and wristband all entering the area. Those 21 years of age and up will receive a wristband. This wristband will allow the individual to purchase beer.

5. Each ingress and egress will also be accompanied by a professional security officer (4 officers), hired by Great Northern Brewery.
6. At the conclusion of the Beer Barter, all barriers will stay in place through 7:30 p.m. and security officers will assume positions at each exit and screen for open containers of alcohol attempting to leave the permitted area.
7. I propose to sit with Chief Dial and City Manager Stearns tomorrow afternoon (2/4/2014) to review the details of our operations plan for the 2014 Great Northern Beer Barter.

Mr. Duffy proposed to sit with Chief Dial and Manager Stearns to make sure they understand the standards of performance and his intent to adhere to them. He said Great Northern Brewery and the City will be on the same team if they communicate well. He said they want to be accountable, but they need to know the standards they will be held accountable for.

Councilor Hildner said the permit states that there will be 500 people and depending on the weather they may end up with only 200 or end up with almost 1,000 people. Councilor Hildner asked and Duffy said he believes their operations plan can accommodate up to 1,200 people. Councilor Hildner asked why they waited so long to apply for the permit. Marcus Duffy said they thought they gave themselves plenty of opportunity to get the permit, they didn't expect to be before City Council. Councilor Frandsen asked why they promoted the event before they applied for the special events permit. Duffy said he thought they could work the problems out with the City. Councilor Frandsen said she has heard tonight that Duffy heard Chief Dial say he wasn't going to approve the permit this year, yet he didn't sit down with Chief Dial to discuss it and ease his concerns. She said with the success comes continuing responsibility. She said future permits need to acknowledge there may be 1,000 people and they need to have a plan to handle the crowd. Duffy said communication should have gone two ways.

Councilor Anderson asked and Attorney VanBuskirk said the City is named as an additional insured. The City is the certificate holder. General liability is \$1,200,000 and the umbrella liability is \$5,000,000. Councilor Sweeney said he is uncomfortable in this position. He said they've put the City in a terrible position by their failures in the past. He said Duffy proposes to sit down tomorrow to work on an agreement with Chief Dial and Manager Stearns to make this work. If they make any condition on him is he willing to comply with it? Duffy said if there are stipulations that make the event physically or financially impossible he couldn't agree to that, but otherwise, he is willing. Manager Stearns said any conditions should be clarified and clearly understood tonight. The Council would be overtuning Manager Stearns conditions, so they would have to be comfortable with what the Council decides. They should go forward with the denial or agree to conditions with the Chief of Police and City Manager.

Councilor Anderson asked Manager Stearns and Chief Dial if there were additional conditions that would prompt them to issue the permit. Manager Stearns said his decision has been made and it is in their court now. He said he would want some sort of performance bond. He said it is too late to get it from an insurance company at this point. He said if he has a cash bond and they hold it in the vault it is easier to cash, but they don't have to prove the case quite as much as they would with a performance bond. Chief Dial said they will abide by what the Council decides. Councilor Sweeney said he is uncomfortable with relying on volunteers. He said volunteers didn't do it last year, so why would they think they would have the experience of someone who works in a bar. He is also concerned that having

four security officers is not going to cut it. He said these are the expectations of this community, not just Manager Stearns or Chief Dial. Marcus Duffy said his version of the performance bond was sitting down with Manager Stearns and Chief Dial to understand the parameters. He said this City and this event are built on the efforts of volunteers. He clarified that they offered four officers on the ingress/egress based on previous year's traffic. He said he is now clearer than he has been in the past and he thinks they can have a successful event.

Councilor Feury offered a motion, seconded by Councilor Sweeney, to overrule the denial, based on Marcus Duffy meeting the attached conditions he proposed, along with the following amendments: six paid professional security individuals, issuance of a \$5000 performance bond by a check, held in the vault. A mandatory follow-up meeting with Chief Dial, Manager Stearns and Marcus Duffy to determine if the expectations were met and then the \$5000 bond would be returned or cashed.

Councilor Frandsen offered an amendment, seconded by Councilor Feury, to state that the beer barter may begin no earlier than 4 pm and to conclude sales no later than 6:30 p.m. for items 1, 2, 3 and to end the permit no later than 7 p.m.

Councilor Sweeney said 6:30 may be a little hard based on when the parade ends. Councilor Frandsen said she didn't know how they would know when it was "30 minutes before the end of the event." Duffy said fencing can come down at 7:30, then the barter needs to end at 7:00 and they need to quit serving at 6:30 p.m. Councilor Hildner said the set time leaves no ambiguity and that is a good thing.

The vote on the amendment passed 5-1 with Barberis abstaining due to conflict of interest.

Councilor Feury said he doesn't feel that Duffy applied "in plenty of time," but he isn't going to beat Marcus Duffy up over it. He doesn't go against the recommendation of the Police Chief lightly. He said they have very few problems with other events, but it can only work if the manager does a good job. If Duffy doesn't do it like he is supposed to, then he will pay.

Councilor Anderson said he would like to make a clear identification provision for any claims. He said the performance bond needs to be \$10,000 to cover the deductible. He would like to keep that for 30 days in case there are any incidences. He said he thinks the \$5000 cash bond is fine.

Manager Stearns said the liability deductible is \$5,000. Mayor Muhlfeld reviewed the amendments for the Council. Councilor Hildner said he will vote in opposition. He has loved the Carnival for as long as he has lived in Whitefish, but when someone makes an agreement and fails, there has to be a consequence. He said there was sufficient time to avoid the consequence they find themselves in currently. He said he hopes the press doesn't say it was the fault of the City of Whitefish. He said the responsibility falls squarely on Marcus Duffy and the Great Northern Brewery. He can't go against the recommendationis of the City Manager and Chief of Police who laid this out fairly.

The motion passed 4-1 with Councilor Hildner voting in opposition and Councilor Barberis abstaining due to a conflict of interest.

Councilor Anderson said that if the Winter Carnival wants to make this happen maybe they should be in line for liability, too. He said he is not proposing it; he would leave that to Marcus Duffy. He said it would include a defensive indemnification. He asked and Attroney VanBuskirk said the deductible is \$10,000.

Councilor Feury noted that Bob Pilot also passed away this week and said he was a long time Whitefish resident who has done a lot for the community. He offered his condolences to the family.

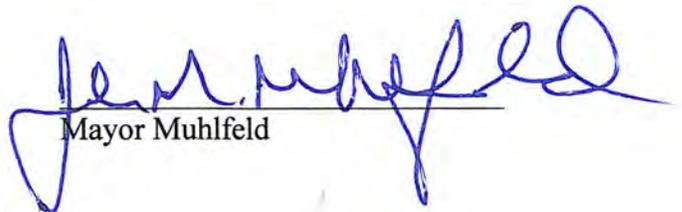
Councilor Frandsen asked if they could get a Manager's update on what is happening with the DEQ timeline. Manager Stearns said he can send the DEQ a request for an update and ask them to schedule a time to come over. Councilor Anderson said that with the Beer Barter issue if someone gets hurt it isn't the brewery who pays for it and it is the taxpayers who would pay for it. He said they tried to put some protections in place, but the burden doesn't fall on the brewery, it falls on the taxpayer. He said he hopes it doesn't happen, but they need to be aware where the burden falls.

He said a friend emailed him about how little news breaks out of Whitefish, but now there is an Olympian and a musician making news these days. It is a great town and he can't wait to see what happens this month.

Mayor Muhlfeld said he and Councilor Anderson met with Matt Jones and Zak Andersen with BNSF and it was a good, open discussion. He told the Councilors that on Thursday there is a meeting with Jim Satterfield with Fish, Wildlife and Parks, regarding the request for non-motorized vehicles on the Whitefish River, Tuesday at 2:00 p.m. in the Council Chambers.

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

Mayor Muhlfeld adjourned the meeting at 9:38 p.m.



Mayor Muhlfeld



Jane Latus Emmert, Recording Secretary

Attest:



Vanice Woodbeck, Assistant City Clerk