

WHITEFISH CITY COUNCIL MINUTES

March 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, City Clerk Lorang, Assistant City Manager/Finance Director Swisher, City Attorney VanBuskirk, Planning and Building Director Taylor, Senior Planner Compton-Ring, Planner II Minnich and Public Works Director Wilson. Approximately 20 people were in attendance.

2. PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked former Deputy Mayor Bill Kahle 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 attended the Michigan Bioreactor Project meeting with the County Commissioners. She said there are 22,000 septic systems in the Flathead Valley and when they pump those they dump them on farm fields, even when the ground is frozen, and it is a major public health issue. She asked them to research this further because the process they are using in Michigan injects the liquid into the landfill and produces methane. The methane gas production rises and they are able to generate energy from that. She said the Beacon had an article that said the Columbia Falls City Councilors were dismayed by the lack of action by the County Commissioners on the septic systems. She urged the Whitefish City Councilors to look into it. She said there are no places to dump this waste and there is no safe way to deal with this. She said the Michigan Bioreactor Project is a good solution to a bad problem.

Kate Orozco, 690 Woodside Lane, said she was here with Bill Kahle to talk about the new High School project. On February 22, 2014 they had the first learning tour. On March 16, and March 22nd they will hold additional learning tours. She said the public will be able to see the inside of the school and learn about the innovative learning options in the new school. She said they would like to give updates to the Councilors at future City Council meetings.

Bill Kahle, 1037 Creekview Drive, said he is fired up about the new High School. He said that this building is going to buck the stigma of Whitefish as a tourist town. The building is beautiful and the most exciting thing, as a parent, was to talk to the teachers who are motivated and energized by the new building. He said Mr. Spangler has a plan to blend physics and welding with a robotics program. He said his boys can't wait to get to High School. He said parents should be excited and proud that this is taking place in our town.

Mac McCracken said he owns the Pin and Cue and he is here as a member of the Chamber of Commerce Board tonight.

4. COMMUNICATIONS FROM VOLUNTEER BOARDS

Councilor Hildner said the Bike/Ped Path Committee met this morning and said TD & H will be presenting and seeking approval of their final design for the Skye Park Bridge at the next Council meeting. He said Bruce Boody put together plans for an extension of the bike/ped path to the Town Pump and that will really connect a huge piece of the bike trail. Initial cost estimates are about \$30,000 for gravel and about \$60,000 for asphalt, but it is possible that volunteer help will cut costs. They would like to get on this project this summer so they will be coming back to staff to see if there are funds for this project. He said there is interest in a striping machine in the next budget, but in the meantime, the Committee would like the striping down early in the season.

Councilor Feury said the Insurance Committee met on Friday, but the information is in the Manager's Report which they will discuss later.

Councilor Anderson said the Resort Tax Committee met, but no action was taken because there wasn't a quorum. He said collections are healthy.

Mayor Muhlfeld said Whitefish Lake Institute meeting didn't really offer anything new; they have two vacancies to fill on the board.

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

5a. Minutes from the February 18, 2014 Council regular meeting (p. 138)

5b. Ordinance No. 14-01; An Ordinance amending discharge time limits and penalty provisions of the Fireworks Regulations in Whitefish City Code Section 9-1-6(C) and (E) (2nd Reading) (p. 149)

5c. Consideration of approving application from Don Robb of Blackhawk Capital Corporation for Whitefish Lake Lakeshore Permit (#WLP-14-W01) to install a 515.45 square foot 'F' shaped EZ dock, construct approximately 20 feet of dry-set stone stairs, remove an existing pump house, and replace an existing waterline within the Lakeshore Protection Zone at 2072 Houston Drive subject to 27 conditions (p. 153)

5d. Consideration of approving the final plat for Whitefish Lakefront Estates, a two lot subdivision by City Beach (p. 178)

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. Ordinance No. 14-02; An Ordinance amending Zoning Regulations in Whitefish City Code Section 11-3-23 to streamline review standards and length of permits for mobile food vendors not associated with a community event in the Limited Business District (WB-1), Secondary Business District (WB-2) and General Business District (WB-3) Zoning Designations (First Reading) (p. 209)

Planning and Building Director Dave Taylor reported on a request by the City of Whitefish to streamline review standards and length of permits for mobile food vendors not associated with a community event in the WB-1, WB-2 & WB-3 zoning designations.

This proposed change amends the current code, which was adopted about 5 years ago, to streamline the permitting process for Mobile Food Vendors. Currently, vendors are approved administratively with a thirty day trial permit, then a 90-day permit, then another 90-day permit in a calendar year, for a total of seven months. He said he wasn't sure why this was proposed except that they wanted to keep down the competition with existing 'brick and mortar' businesses. Also, a food vendor can come in with a new application under a different LLC with a new business license after the previous one expires, enabling them to legally get around the seven month a year limitation anyway. Currently it is difficult to administer; it puts the burden on staff to track the expiration dates three times in a year. Staff is proposing to amend the code so that vending permits are good for one year, and renewable if no issues have arisen. Also, anytime during that year a permit can be revoked by the zoning administrator or City Council if the vendor does not follow all the conditions of approval, so a 30-day trial permit is not necessary. The intent section will also be amended slightly to facilitate this change of policy.

He gave a summary of the proposed changes:

11-3-23-A, Purpose - The Purpose section will need to be slightly amended to remove the part that references the seven month limitation that is being removed. Limitations on hours of operation and the total number of vendors are adequate to encourage vendors to eventually seek a permanent location without discouraging the service they provide to the public: late night quick food to go.

11-3-23-B-4, Vendor Standards - The cart sign section is proposed to be amended to remove reference to permanent building signage. Signs on a temporary vending cart should not make a difference to overall sign area allowed on a property, and we've never enforced that. Each cart is allowed a small affixed sign, and each cart must be removed off-site each night.

22-3-23-D-1, Vendor Permit Process - These proposed changes remove the 30-day trial period and change the two 90-day periods to a one-year approval with a streamlined renewal process. Anytime during the one-year approval a permit may be revoked by the zoning administrator or the City Council if a vendor does not meet the standards and requirements of the code.

The Whitefish City-County Planning Board held a public hearing on February 20, 2014. Following the hearing, the Planning Board unanimously recommended approval of the above referenced text amendments, and adopted the findings of fact contained within the staff report. At the public hearing, there was one public comment received regarding the proposed text amendments. Comments were received from Michael Tigie, who owns a previously approved mobile vending operation. Mr. Tigie was in support of the changes.

Councilor Sweeney asked and Director Taylor said there has been instances of attempts go get around the regulations with name changes. Councilor Hildner said page 212, # 8, addresses County food service permits, and he wondered if they received report cards where grades are listed; i.e. A, A-, B, etc. Director Taylor said the carts are inspected by the County, but he doesn't remember seeing a report card. He said there is a whole list that the vendors have to meet before they are approved.

Mayor Muhlfeld opened the public hearing.

Michael Tigue, 186 2nd Ave. WN, Columbia Falls, said he operates the cart in front of the VFW and is favor of extending the mobile vendor permits. He is able to do this for a few hours on the weekend evenings. He said he has played within the rules in the past and only operated his business seven months per year, but this change would help him have year-around work. He said this would keep him working in the off season. He said he didn't think it would affect the brick and mortar businesses.

Rhonda Fitzgerald, 412 Lupfer Avenue, said quite a few of the mobile vendors participate at the Farmer's Market, but she doesn't think they receive a report card, they just get a license. She said it might not be part of the process for mobile trucks.

Mayor Muhlfeld closed the public hearing.

Councilor Anderson offered a motion, seconded by Councilor Barberis, to approve Ordinance 14-02 amending Zoning Regulations in Whitefish City Code Section 11-3-23 to streamline review standards and length of permits for mobile food vendors not associated with a community event in the Limited Business District (WB-1), Secondary Business District (WB-2) and General Business District (WB-3) Zoning Designations at first reading and approve the staff report as findings of fact (WZTA 14-01), 1st reading.

Mayor Muhlfeld said this provides more certainty for the business owners. He thinks it is a good step in the right direction for the vendors and for staff.

The motion passed unanimously.

6b. Ordinance No. 14 - __; An Ordinance amending Zoning Regulations in Whitefish City Code Section 11-3-14 regarding issuance of a Conditional Use Permit (CUP) for multiple uses on the same lot (First Reading) (p. 235)

Planner II Minnich reported on a request by the City of Whitefish to amend criteria #6 within Section 11-3-14(B) for issuance of a Conditional Use Permit (CUP) for multiple uses on the same lot. This is a zoning text amendment proposed by the City to clarify a section of the regulations regarding the criteria used to issue a conditional use permit for multiple uses on the same lot. Currently a Conditional Use Permit for multiple uses on the same lot can only be denied on the basis that the permit is being sought to avoid subdivision requirements if the proposed multiple uses are unrelated.

The section was originally adopted in October 1997 by Ordinance #97-2. The previous zoning regulations only permitted one primary use per lot. In 1997, the Whitefish City Council adopted the current language found in Section 11-2-3(B)(12) and the special provisions in 11-3-14(B) as additional criteria when reviewing a conditional use permit application for multiple uses. Based on the minutes from the Whitefish City Council meeting on October 6, 1997, the intent of the criteria was to *'address potential problems associated with the development of a site.'* The minutes further state that staff noted *'there are some uses that are compatible with each other and could be approved by conditional use permit as well as there will be some uses that would conflict...however, if it seems the only intent for such an application is to circumvent subdivision then in that case the conditional use permit would be denied and subdivision recommended.'*

Criteria #6 currently reads in the City code of ordinances as:

A conditional use permit shall not be granted in cases where the proposed uses are unrelated and the conditional use permit process is being used as an alternative to subdivision.

The current proposal is based on the result of a previous Zoning Administrator interpretation which identified a potential conflict with the criteria. A previous application for multiple uses on the same lot argued that since the uses were related, the second half of the criteria did not apply in consideration of the conditional use permit, even if it was obvious the application was being used to circumvent subdivision review with its required criteria of parkland dedication, sidewalks, street lights, landscaping, etc. Staff is proposing to modify the existing language slightly in order to close a potential loophole in the review process. The new proposed language would replace 'and' with 'or,' replace 'shall not be granted' with 'may be denied,' and replace 'unrelated' with 'incompatible.' This would allow a CUP the potential of being denied if the uses are related but the proposal can be documented as an evasion of subdivision.

She said that the Whitefish City-County Planning Board held a public hearing on February 20, 2014. Following the hearing, the Planning Board recommended approval of the proposed amendment with the exception of retaining 'shall not be granted' (see packet page 240) instead of 'may be denied' as recommended by staff (see packet page 245) and adopted the supporting findings of fact in the staff report. The motion carried 5-1. At the public hearing, no member of the public wished to speak on the proposed amended draft ordinance. Staff continues to recommend approval of the text amendment as originally proposed in the attached staff report. She has written why staff wants the changes on pages 237-239 of their packet, but based on the discussion which occurred at the Planning Board meeting, staff has decided to explain in more detail the reasoning behind the proposed language amendment.

The change from '*shall not be granted*' to '*may be denied*,' is the modification which the Planning Board ultimately decided not to propose amending because they liked how stringent and predictable this statement made the criteria. However, staff is recommending this amendment because it will allow the flexibility of an application to be approved if the applicant can demonstrate that two uses are compatible with each other on the same lot or that the application is not being utilized as an alternative to subdivision review. This would permit an application to be reviewed and approved with conditions related to subdivision improvements such as roads, utilities, streetlights, parkland dedication etc., in case the property eventually came through for a subdivision. If the Planning Board recommendation is approved, Planning Staff would be required to recommend denial of application or not accept an application at all. If an application is denied by the Whitefish City Council, the applicant's only option would be to appeal the decision to District Court. If the Planning Director denies the proposal through a Zoning Administrator Interpretation, then an appeal would go before the Whitefish Board of Adjustment. Staff considers this as something better reviewed on a case-by-case basis.

Councilor Sweeney said he had a hard time following why they want to say "may be denied." He said "shall not be denied" would offer them the same opportunity. He said there is no reason why they couldn't discuss why it wasn't a harmonious use. Planner II Minnich said "shall not be granted" would mean she wouldn't even have them make the application. She said this puts the burden on staff and if they said "no" then the applicant goes to the Board of Adjustment instead of the City Council. Director Taylor said they could also provide additional conditions that require screening, or other conditions. He said staff would ask the applicant to show that the uses could be made compatible—or the property is set up to be subdivided later. He said people condo stuff all the time. He said with the

“shall not” staff cannot even honor it. Staff felt like the flexibility was important, but they wanted to close the loophole.

Councilor Sweeney said he hears staff say that “may be denied” allows them flexibility if they are not trying to evade subdivision regulations. He said he would like to see how people could comply, philosophically. He thought someone could approach with a proposal and show that it was harmonious with the “shall not” language. Director Taylor said “shall” is hard and fast, where “may” has flexibility and allows them to be heard before the Council. Planner II Minnich said staff would have to recommend denial if it says, “shall not.” Councilor Sweeney said someone has to show that it is compatible and not an evasion of subdivision regulations. He said “shall not” doesn’t compel them not to consider it. Director Taylor said if the uses are incompatible they would have to deny, even if they could be mitigated.

Councilor Frandsen said that in her opinion the language doesn’t prevent a person from applying and they could apply with any combination of uses. Planner II Minnich agreed and added that in these cases staff would have to recommend denial. Frandsen said the CUP permit may not be granted. Planner II Minnich said the new language would give them more flexibility. Councilor Anderson asked and Director Taylor said there could be two permitted uses or two conditional uses or one of each. Director Taylor said they see a lot of multiple use options. Staff doesn’t want to limit the ideas people can come up with. Councilor Anderson asked and Director Taylor said the final decision is made by the City Council. City Attorney VanBuskirk said permissive criteria still leaves the burden of proof on the applicant, and whether to grant a conditional use permit rests in the discretion of the City Council as a matter of grace.

Mayor Muhlfeld opened the public hearing.

Mayre Flowers, Citizens for a Better Flathead, 35 4th Street West, in Kalispell, said she appreciated the discussion. She said it is a very confusing proposal. She asked that this come back to the Council after more work is done. She wondered if it would be helpful to add a definition for incompatible. It seems discretionary. It isn’t clear what criteria defines it. She is confused about how changing the language gives the Council the right to review it instead of the Board of Adjustment. She said the two uses still have to meet the subdivision regulations and she wondered if they could change the language to say the applicant has to meet the subdivision criteria now and not on a later date. She said if they both have to be subdivided then she didn’t see why they couldn’t have the same standards.

Mayor Muhlfeld closed the public hearing.

Councilor Hildner said there is enough confusion that he feels this needs more work for them to make a rational decision.

Councilor Hildner offered a motion, seconded by Councilor Sweeney, to table an Ordinance amending Zoning Regulations in Whitefish City Code Section 11-3-14 regarding issuance of a Conditional Use Permit (CUP) for multiple uses on the same lot. The motion passed 5-1 with Councilor Feury voting in opposition.

6c. Ordinance No. 14-___; An Ordinance amending Zoning Regulations in Whitefish City Code Section 11-2K-2 to identify Business Services as a permitted use in the Secondary Business District (WB-2) and adding the definition of Business Services and amending the

**definitions of Personal Services and Professional Services in Section 11-9-2, (WZTA 14-01)
(First Reading) (p. 251)**

Senior Planner Wendy Compton-Ring reported that the City is proposing to add a new definition, Business Services, to the zoning regulations and make it a permitted use in the WB-2 zone. The zoning regulations have the following two definitions related to service; they are ‘personal services’ and ‘professional services’. The zoning has been silent on the use of business services in the WB-2 and the zoning has not clearly defined the term business services.

Personal Services are defined as:

A use that provides a service to an individual customer designed to accommodate a specialized need, provide a convenience, or cater to a particular lifestyle. Such services shall be those types that require mechanical skill or manual dexterity, as differentiated from mental disciplines generally requiring licensing or certification such as those listed under professional services (see definition of Professional Services). Examples of personal services would include, but are not limited to: delivery and pick up, catering, event planning, recreational guiding and outfitting, personal training, tattoo, and personal spa and grooming services such as manicure, facial, hairstylists, and makeup consulting. Personal services should not involve retail sales except on an incidental basis such as the selling of hair products at a salon.

Professional Services are defined as:

Conduct of a service business which is commonly identified as a profession and which may be licensed by the state. Such services include engineers, architects, planners, surveyors, designers, lawyers, accountants, real estate brokers, insurance agents, dentists, physical therapists, massage therapists, chiropractors, or physicians. Additionally, accounting, journalism, research, editing, administration or analysis; the conduct of a business by salespersons, sales representatives or manufacturer's representatives, or the conduct of business by professionals is included. Professional services do not include veterinarians, showrooms, manufacturing, repair, testing, retail sales, the storage, sale or delivery of goods located on the premises, or other occupations requiring physical skill such as those found under personal services (see definition of Personal Services).

There is not a definition for ‘business services’ in the zoning. Business Services is a distinct and different use from both ‘professional services’ and ‘personal services’. Staff reviewed the US Department of Labor *Standard Industrial Classification* (<https://www.osha.gov/pls/imis/sicsearch.html>) which is a system used to classify industry in a uniform manner. Some municipalities use it as a way to identify use categories in zones, while it isn’t always a practical tool, it can be a good starting point for discussion. Staff found a separate listing for Business Services (Division I Services; Major Group 73) from Personal Services (Division I Services; Major Group 72). Business services are those uses that provide a service for businesses – such as advertising, credit reporting, graphic design, copying, building maintenance, equipment/computer rental, leasing and repair, computer programming, etc. Personal services are specifically geared toward the support of an individual and professional services are services provided by individuals that may be licensed by the state. Professional offices are allowed in the WB-2 zone, whereas personal services, with the exception of hair salons, are not. Business services may have a need for larger parking areas to service the delivery and pick-up of larger items, which makes it a compatible use within the WB-2 zone and the stated intent.

Over the years the City has allowed ‘business service’ types of uses to go into the WB-2 as staff has considered them professional services, but they technically were a business service. There may be some concerns that adding business services to the list of permitted uses in the WB-2 zone may pull business from the downtown, but these types of uses are already permitted in the WB-1 and the WBSD. The WB-1 permits all services less than 4,000 square feet and the Business Service District (Highway 40 and Dillon/Conn Road) permits certain business services such as ‘private postal and shipping’ and ‘printing, publishing, etc’. The WB-4 south of the Wave, and the WI allows some parcel delivery services and Big Mountain Village allows all sorts of uses.

An example of this type of use is the UPS store. This business has been in the WB-2 zoning district since the 1980s in various locations. It has most recently moved to a new building adjacent to the Walgreens from the Mountain Mall. The UPS store provides shipping, packaging, mailing and copying services. This particular use does not neatly fit within the personal services or professional services. In addition, there are a number of other existing uses within the WB-2 district that also provide similar services to businesses so it made some sense to create a ‘business service’ use in this district to capture these various uses. She said there are sign business and computer software businesses out there.

Staff proposes the following amendments: a definition for ‘Business Services’, an amendment to both Personal and Professional Services, and identifying Business Services as a permitted use in the WB-2.

Amendment #1 – add BUSINESS SERVICES to §11-9-2 and amend PERSONAL SERVICES and PROFESSIONAL SERVICES:

BUSINESS SERVICES: Uses that are primarily engaged in rendering services to business establishments on a contract or fee basis. Such uses include advertising, bookkeeping, building service, credit reporting, collection of claims, computer services, data processing, graphic design, mailing, photocopying, publishing, reproduction, security, shipping, sign making, office equipment rental, lease and repair services, and other similar services. This is differentiated from uses that provide services to an individual (see definition of Personal Services) or services provided by a professional (see definition of Professional Services). Business services should not include retail sales except on an incidental basis. Plus additional language in Personal and Professional Services regarding Business Services.

Amendment #2 – add the following permitted use to §11-2K-2:

- Business Services.

She said they received nine emails as of 4:30 p.m. She said there were concerns that they were going to allow small retail or rezoning the whole area and those are not true. There was a suggestion to revisit a corridor study with this process.

The Whitefish City-County Planning Board held a public hearing on February 20, 2014. Following this hearing, the Planning Board unanimously recommended approval of the amendments and adopted the supporting findings of fact in the staff report.

Councilor Feury asked and Planning Director Taylor said this issue came up because it wasn’t in their definitions. It didn’t come up in the discussions of the WB-2 committee work. This is part of a

staff work list, an ongoing list of things staff would like to address, and items can come to the forefront when there is a problem. He said the UPS was a conforming use because it was in the mall. Councilor Feury asked and Director Taylor said the UPS store move was the impetus for bringing this forward. Councilor Frandsen said they are trying to add business services. Councilor Frandsen said she thought the public was against adding this in 2010 and 2011. Director Taylor said the concern in the past was about personal services, not business services.

Mayor Muhlfeld said the City has allowed business services in this zone in the past and Planner Compton-Ring agreed and said there are some computer businesses, graphic design folks and the Summit Signs business in this district.

Mayor Muhlfeld opened the public hearing.

Lin Akey, 1000 E 9th Street, spoke in favor of the proposed amendment. He said he runs Glacier Bank and he has been involved in the community for years. He spoke in favor of the UPS Store. He said it is convenient to be able to park in front of a store when you want to haul packages. He said the builder of this building is a man of high integrity and they have invested well in the community. He finds this proposal favorable.

Bill Halama, 235 Good Medicine Drive, said they wouldn't have pulled a building permit without being confident this was allowed. He said business services exist elsewhere and he doesn't think it has had a negative impact downtown. He said the UPS store wouldn't be appropriate downtown. He said it is a compatible use in the WB-2 zone as the other business services are. He said the distinction between business services and professional services is hair-splitting. He said professional services require a license from the state. An accounting service could exist, but a bookkeeper could not, so that seems illogical to him. He said State licensing is required as a form of protection for consumers—that is different from land use and zoning issues. He said if a contractor wanted to open a business office, but they don't have to be licensed in Montana, then they wouldn't qualify. He didn't think this was a drastic change, it was just a cleanup.

Patty Olson, 215 Spencer Trail, is the owner of the UPS store and said they recently moved from the Mall and they were out on Highway 93 before. She said they have worked hard to make this a successful business in Whitefish. She said they have 300 mailbox holders. There are small business owners who need a mail box and physical address. She said they are there for small business owners. She would love to have them support this request.

Sallie LaPan, 81 Wagonwheel Road, spoke in behalf of the UPS store. She said they provide an important service to the community. It cannot be provided in the downtown. It would not be feasible with the parking situation. She said the UPS is a good business and they have chosen to relocate which has increased their ability to serve the community. They can do this best in their new location.

Mayre Flowers, Citizens for a Better Flathead (CBF), passed out a letter to the Councilors. She said this zone text amendment violates procedures and regulations under the Whitefish Statutes and therefore, should be denied on this basis alone. The ordinance states that the City initiated the zone change, but it was directed by the Planning Director without the direction or authorization that should have been given by the City Council under Whitefish Zoning Regulations. This zone was initiated by the Planning Director based on the fact that the UPS store had moved to the Walgreen's building. She said violations like this should be brought to the Council, but Planning Staff proposed this amendment

instead of enforcing the regulations about the types of uses that are appropriate in the W-2 zone. The Zoning Administrator is supposed to update the regulations and map as directed by the Council and report recommended changes to the Council. The changes are supposed to be directed by the City Council. It was advertised on February 5, 2014. It should have been made public 15 days before the hearing. Failure to follow this procedure make it a de-facto spot zoning because it was initiated by the Zoning Administrator on behalf of a small group that would directly benefit. The Whitefish Zoning regulations do not allow for the Zoning Administrator to make a change when a problem occurs. She said the regulations require a zoning compliance permit prior to a change in use or expansion of a use. She said if this occurs without a compliance permit, an after-the-fact permit must be applied for and charged to the applicant to make this a fair system.

She said that the UPS store was a legally grandfathered use in the mall, but it is not just the UPS store they are looking at tonight—it is any business that doesn't follow their regulations. They worked to come to a consensus in 2011 to avoid a piecemeal zoning process. The City Council amended the WB-2 zone in 2011. The staff report is misleading and inconsistent with the 2011 process. The findings for the 2011 zone change are important for them to remember. It said the 2007 Growth Policy had several pertinent issues including, "to preserve the character of the small town," limiting the size of buildings and limiting businesses that compete with downtown. The report concluded that it was an attempt to mitigate the effects of City oversight when they allow illegal uses to proliferate. She said in 2011 they tried to stop the very thing that is before them tonight. She said the staff report doesn't have a factual basis for saying this zone has been silent on the use of business services in the WB-2. Montana zoning statutes are very clear than zoning districts can limit the uses and distinguish the uses permitted in one district from another in 76-2-302. She said they have to ask the question, if this has been a problem, why it wasn't brought to the core of the WB-3 district which is their center core instead of the WB-2. She said additional growth does not have to be encouraged on the Highway 93 corridor. They want to keep the business focus on downtown.

She said the staff report argues that the UPS has been in different locations in the WB-2 zone since 1980, but it fails to state that it was located in the Whitefish Mall as a grandfathered use. She said the staff report is not consistent with the 2011 Growth Policy amendments nor is it supported by other standards of review for a zone change. Under finding #1 staff says this supports diversification, but the 2011 Growth Policy said they want to strengthen the downtown. She said they want to protect the synergy downtown.

Mayor Muhlfeld noted it had already been 12 minutes and asked her to wrap it up. Mayre Flowers said she has gone through the findings and identified where she thinks they are deficient. It is important that they comply with their own regulations and require a zoning compliance permit. Those changing a permit must be familiar with zoning regulations. The failure of the City staff to notice the zoning regulations violation shall not excuse the applicant from complying. She asked them to reject the proposed findings of fact as unacceptable and asked them to comply with their 2011 regulations.

Rhonda Fitzgerald, 412 Lupfer Avenue, said when she saw the packet she was upset. Just two years ago the City discussed this very situation. They were assured by staff in 2011 that the new regulations would tamp down the possibility of this happening. She was on the stakeholder committee and they spent months determining what uses should be allowed in the WB-2. She is surprised this came up so soon. She said in 2009 they began the discussion on business uses and in 2010 the Council was looking at adopting commercial uses, but 80% of the public comments were opposed to the changes. A petition with 500 signatures was submitted by those opposed to more businesses in the strip.

She said the Flathead Beacon ran an online survey about expanding retail uses on Highway 93 south and 77% of the respondents said they didn't want it. She said the community wants them to honor protecting the downtown core. She said there are 2 dozen businesses in the downtown core that engage in these very businesses. She is amazed that people would say those can't occur downtown. She said the WB-2 is a secondary business district for those that require large storage and floor areas.

Sean Frampton, 341 Central Avenue, said the UPS store was in the WB-2 and it is still in the WB-2. He said he doesn't see why Citizens for a Better Flathead only wants a better downtown rather than a better Flathead.

Mayor Muhlfeld closed the public hearing.

Councilor Sweeney said he was concerned by the genesis of this request and the appearance of the function of asking for forgiveness for something they should have asked permission for. He would be less concerned if it was independent of a specific business, especially in this zone. He said they visited this issue when he came on the Council in 2011. He sees this as more than a mere correction to a zone description.

Councilor Anderson offered a motion, seconded by Councilor Sweeney, to table this item until March 17, 2014. The motion failed 4-2 with Councilors Anderson and Sweeney voting in favor.

Councilor Hildner said they are being asked to approve something after the fact. It was the responsibility of Mr. Halama to come up with the necessary zoning compliance permit. He said he could not favor it. Councilor Frandsen asked and Manager Stearns said he had received the notice that this was not compliant. Director Taylor said there is a separate issue with the business license. Councilor Frandsen said there is a business that is non-compliant, but they haven't received a non-compliant notice. Director Taylor said the Council doesn't receive a notice on every violation. Councilor Hildner asked if they were pursuing the violation. Director Taylor said if this remedy is not successful then they will have to pursue it as a violation. Councilor Frandsen said in the 2010 minutes a similar issue got tabled because Councilor Turner Askew said there could be and would be a Corridor Study on the Highway 93 S. Corridor. She said former Councilor Hyatt said the Corridor Study was a must at that time as well. She said they are still in the same spot. It is a conundrum and they are continuing to perpetuate the problem from 2010 and 2011. She said they are in this situation because of a non-compliant business and that does not settle well with her.

Mayor Muhlfeld offered a motion, seconded by Councilor Anderson, to call a 5-minute recess. The motion passed unanimously. The Council reconvened at 8:55 p.m.

Councilor Anderson recognized Mr. Frampton.

Mr. Frampton said this has gone for a legislative issue to a personal issue. He said he is a representative of Bill Halama. On August 15 Mr. Halama emailed the Planning Department and said he heard that Virgil Bench had approved the permit and it had gone to Planning. He wrote that they were eager to start the project and eager to avoid winter weather. He noted that a portion of the ground floor of Building B would be occupied by the UPS Store and they wanted to be sure that it would not face any zoning issues in the use of this space. He said that Mr. Halama received an email from Planner Compton-Ring that said "she just signed off," meaning she approved the application. He said Bill

Halama wrote an email and thanked Wendy Compton-Ring and said the builder would begin the foundation. He said by receiving her email he would take it as permission to let the UPS store know they had been approved.

Councilor Sweeney asked if they ever received any application from Mr. Halama or the UPS store for a zoning compliance permit. Director Taylor said they never received a zoning compliance permit.

Councilor Feury offered a motion, seconded by Councilor Sweeney, to approve Ordinance 14-03; amending Zoning Regulations in Whitefish City Code Section 11-2K-2 to identify Business Services as a permitted use in the Secondary Business District (WB-2) defining Business Services to include only shipping and packaging services, and amending the definitions of Personal Services and Professional Services in Section 11-9-2, at first reading and to approve the staff report as findings of fact.

Councilor Feury said he didn't like doing planning this way, but he won't be the guy to stomp all over the UPS store. He said Mr. Halama didn't do his homework, or maybe he did. He said they are going over semantics of emails and they could be interpreted many different ways. He said they are being asked to create a zoning text amendment to serve one business. He said he thinks the UPS store could be in the WB-2 zone, but all of those other described business services uses are a problem and raise the hackles of folks from 2011. And rightfully so. He feels bad for the UPS store. He said the City has accommodated problems in the past. He said Mambos poured its foundation way too close the sidewalk on a Saturday and Virgil Bench didn't come to work until Monday, so they let it go.

Councilor Sweeney said he agreed with Councilor Feury. He said one of the reasons that concerns him is because this request to change should have come to them as a predicate. The applicant should have been required to obtain, prior to moving in, the business license or the business compliance permit. That's why it was put in the ordinances because the past Council saw the inconsistencies. He said he would like to get this fixed.

Councilor Barberis asked if there was any way to grandfather in a business that did exist before the 2011 Growth Policy without changing the whole business services issue. Director Taylor said grandfathering is specific to a location. Councilor Anderson said there is still a need for a zoning compliance permit. He asked what the fine is and how long the UPS store has been operating and Director Taylor said it has been about a month. He said staff hasn't issued the business license yet; it is still on hold. Councilor Feury said he knows his motion is fraught with a lot of challenges. He asked and Attorney VanBuskirk said there is a way for the UPS store to operate until they can decide this.

Attorney VanBuskirk said the Council can permit the UPS store to continue operations until the Council has made its decision, reserving all rights as stated by Councilor Anderson, instruct staff to put together a different zoning proposal, and hold off on working toward a penalty for a failure to apply for a zoning compliance permit or taking any further enforcement action.

Councilor Hildner recognized Mayre Flowers. She pointed out that this is one situation and what happens with the next situation. She said they have to draw a line in the sand and make some type of motion so they don't find themselves here again.

Mayor Muhlfeld said the motion was well stated. He thinks it speaks to whether or not they add a new service type to the WB-2 or take the uses and add them to professional services, which states that a business "may be licensed." It doesn't have to be a whole new service category.

Attorney VanBuskirk said a shipping, receiving store could be a specific conditional use or a permitted use. Councilor Anderson said they could make it a conditional use in this district. Councilor Hildner said he wonders if they should table and ask staff to come back with a revised proposal that may be more palatable. He said they could create a new Business Services or add something to professional services. He said he would vote against it in the hope that they could come up with a better solution.

The motion failed 5-1 with Councilor Sweeney voting in favor.

Councilor Anderson offered a motion, seconded by Councilor Feury, to direct staff to come back with an alternative option for shipping and packaging services as a conditional use in the WB2 zone.

Councilor Feury said he could support this motion. Manager Stearns said a CUP would add another step in the application process. Director Taylor said the applicant would have to go through 2-3 months of waiting while it went through the Planning Board process. Councilor Feury suggested they not move with a non-compliance violation, allowing the UPS store to function and reserving all rights for both parties.

The motion passed 5-1 with Councilor Frandsen voting in opposition.

7. COMMUNICATIONS FROM CITY MANAGER

- 7a. Written report enclosed with the packet. Questions from Mayor or Council? (p.267) None.**
7b. Other items arising between February 26th and March 3rd

Manager Stearns said the Insurance Committee met and discussed the potential medical increase of 5-8%. There would be no change in rates for dental or vision programs. The Insurance Committee met and voted to continue membership in MMIA. There is a 3-year waiting period to get back in MMIA if they leave it. It is the best choice they have right now.

- 7c. Resolution No. 14-05; A Resolution authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (Intercap Revolving Program), Approving the form and terms of the loan agreement and authorizing the execution and delivery of documents related thereto – Fire Ambulance (p. 273)**

Manager Stearns said this year's budget anticipated purchasing a new Fire Ambulance and financing it through the State of Montana INTERCAP program. The INTERCAP financing program provides short term financing (up to 10 years) for capital equipment and other capital assets with a variable interest rate which is reset each February. The current interest rate is 1.00% which is a very good interest rate. For the ambulance purchase the City is doing a five year loan. It is a variable rate that is adjustable annually in February. He said it is a good deal for the City when they need to do short term borrowing. This is the first of two intercap resolutions for an ambulance and a fire tender.

The INTERCAP program has approved our application and sent us the documents which we need to execute for the loan. The documents enclosed in the packet are:

1. A Resolution authorizing the loan
2. A Loan Agreement

3. A Promissory Note
4. A Security Agreement

City Attorney Mary VanBuskirk and Manager Stearns have reviewed these documents and found them to be in order.

For the next five years, each year's budget will have to include approximately \$30,000 - \$32,000 per year (decreasing as the principal balance is paid off) to repay this loan. Councilor Frandsen asked and Manager Stearns said they would have outlined the 5-year term in the budget, so this is consistent with that.

Councilor Hildner offered a motion, seconded by Councilor Anderson, to approve Resolution No. 14-05; A Resolution authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (Intercap Revolving Program), Approving the form and terms of the loan agreement and authorizing the execution and delivery of documents related thereto – Fire Ambulance. The motion passed unanimously.

7d. Resolution No. 14-06; A Resolution authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (Intercap Revolving Program), Approving the form and terms of the loan agreement and authorizing the execution and delivery of documents related thereto – Police Chief pickup truck (p. 307)

Councilor Feury offered a motion, seconded by Councilor Frandsen, to approve Resolution No. 14-06; A Resolution authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (Intercap Revolving Program), Approving the form and terms of the loan agreement and authorizing the execution and delivery of documents related thereto – Police Chief pickup truck. The motion passed unanimously.

7e. Resolution No. 14-07; A Resolution approving and adopting the Montana Municipal Interlocal Authority Revised and Restated Workers' Compensation Program Agreement dated July 1, 2014 (p. 341)

Manager Stearns said the City of Whitefish has been a member of the Montana Municipal Interlocal Authority (MMIA) Workers' Compensation program for the required workers' compensation insurance since 1987. MMIA provides very good rates and very good training on avoiding accidents for this insurance program. When the City approved participation in 1987, the City had to approve a program agreement which defines the terms and regulations of the program.

At their January Board meeting, the MMIA Board authorized some changes to the Workers' Compensation Program Agreement. The revised Program Agreement needs approval from each of its members, including the City of Whitefish. As described in an attached memo from MMIA's Executive Director, these changes provide a more quantitative method for determining capital reserves and adjusting rates as compared to the current method. The program agreement also describes all of the regulations and procedures regarding the program, most of which are unchanged.

City Attorney Mary VanBuskirk and Manager Stearns have reviewed these documents and found them to be in order. It is not anticipated that these changes have any direct or predictable effects on the City's workers' compensation rates. While rates may change because of their quantitative methods, such rates could go up or down and can't be predicted at this time.

Councilor Anderson offered a motion, seconded by Councilor Barberis, to approve Resolution No. 14-07; A Resolution of the City Council of the City of Whitefish, Montana, approving and adopting the Montana Municipal Interlocal Authority Revised and Restated Workers' Compensation Program Agreement dated July 1, 2014. The motion passed unanimously.

7f. Mid-year financial report – Assistant City Manager/Finance Director Corey Swisher (p. 371)

Assistant City Manager/Finance Director Corey Swisher said the property tax supported funds are up 15% and the General Fund is up 22%, compared to this time last year. He said Resort Tax is up about 5% and last year was also a good year. He said water and wastewater revenues are up about 6% due to more customers, modest rate increases and additional consumption. He said building permit revenue is doing well. They received a large permit for the High School, but even without that, it is a good year. Overall, the City's finances are getting much better and FY14 looks to be a good financial year. Councilor Hildner asked and Swisher said he would get them a report of the growth without the High School permit.

8. COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

8a. Letter from Sean Frampton regarding potential annexation of Houston Drive area

(p. 381) Mayor Muhlfeld said this was addressed in the work session.

8b. Email from Mary Ciganek about Resort Tax street reconstruction priorities and Texas Avenue (p. 384) No comments.

8c. Proposal from Mayor Muhlfeld and Whitefish Lake Institute for budget for Aquatic Invasive Species work in FY15 (p. 386)

Mayor Muhlfeld said the City funded the 2013 AIS inspection work. He met with Mike Koppel and they are asking the Council to give an indication of their willingness to provide \$40,000 again for this project in 2014. Mayor Muhlfeld reviewed the line items and costs: Highway 2 (near Coram) Boat Inspection Station - \$15,000, Beaver Lake Eurasian Watermilfoil (EWM) Monitoring/Control - \$5,000, Early AIS Plant Detection Monitoring of nearby lakes - \$7,500, eDNA Analysis - \$7,500, and City Beach Boat Launch Risk Assessment - \$5,000. He said they don't have budget authority tonight, but he would like their input.

Councilor Hildner said the Basin Commission said they got the most activity between 7-8 p.m. and wondered if they should adjust the hours. Mayor Muhlfeld said they could look at these hours. Councilor Frandsen asked if they would also monitor over at State Park and Mayor Muhlfeld said that falls under the State regulations. It is a huge gap. Mayor Muhlfeld said there are volunteers who inspect over there. He said they reduced the City's contribution to the Coram check station and they are hoping other entities will come on board.

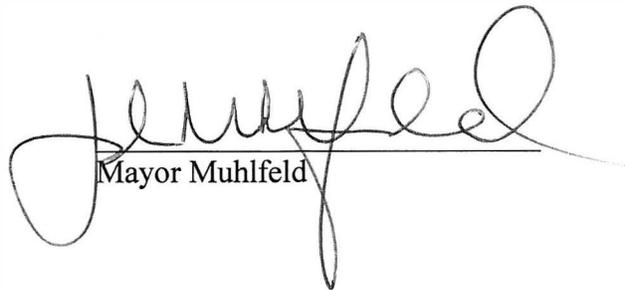
Councilor Anderson expressed his support and the other Councilors agreed.

Councilor Frandsen said adding the text amendment to the WB-2 should allow for a lot of public input and she would like to see them pursue the Highway 93 Corridor Study. Councilor Feury said there is a reason that Houston Drive gets bandied around and anyone can see that it is surrounded by City property. He said for residents to think they don't use City services is naïve, at best. He said they use the streets, City beach and other services. It is not fair for the neighbors to pay for those services. He said the problem is they know that annexing Houston Drive is a guaranteed lawsuit. He said what the City really needs is responsible tax relief and they need it to come from the legislators. He is on the fence about having Houston Drive as number one on the list. Councilor Feury asked for a cost/benefit analysis for what they're going to put into it versus what they will get out of it.

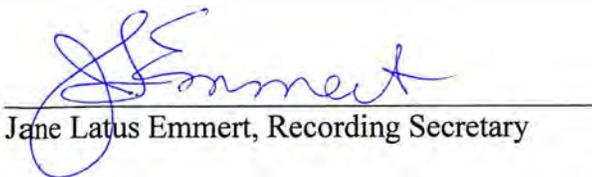
Mayor Muhlfeld reminded them that he needs performance reviews turned in for Manager Stearns and Attorney VanBuskirk. He said after the WB-2 discussion he was thinking that they need some procedural changes. He isn't comfortable having folks acknowledged after a motion is cast. He said he has been neglectful on that and he said he will lead in that direction in the future. Manager Stearns said it is different if the Councilors have questions and want someone to clarify something. Mayor Muhlfeld agreed.

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 9:37 p.m.

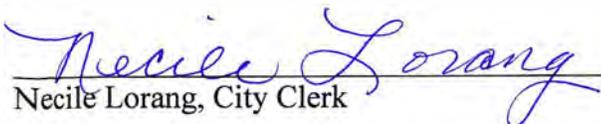


Mayor Muhlfeld



Jane Latus Emmert, Recording Secretary

Attest:



Necile Lorang, City Clerk