

WHITEFISH CITY COUNCIL MINUTES

March 17, 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, Public Works Director Wilson, Senior Project Engineer Hilding, Parks and Recreation Director Cozad, Parks Superintendent Loveless and Police Chief Dial. Approximately 30 people were in attendance.

2. PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Eric Sawtelle to lead the audience in the Pledge of Allegiance.

3. PRESENTATIONS

3a. Presentation by TD&H Engineering Firm on Skye Park pedestrian bridge (p. 124)

Doug Peppmeier with TD&H said they were the engineers for the project. The first thing they needed to do was to get the BNSF license agreement and that has been completed. They are presenting the design concept tonight. There is a 180 foot bridge span and the design is similar to other bridges in town. Staff asked them to change the wood rails. To meet ADA standards they will do a lot of fill and will re-construct a portion of Birch Point Drive. He said Bruce Boody was the mastermind behind much of this design and he was here tonight as well. Councilor Hildner said the bridge at Riverside Park has handrails that are too high. He wanted to be sure it was lowered and Mr. Peppmeier said that is one of the concerns they will be addressing with this bridge design. Director Wilson said they came up with a solution to this problem when they constructed the Rocksund Bridge and this design will be similar to that one. Mayor Muhlfeld asked and Peppmeier said they will work on the slope at Birch Point Drive to meet the ADA slope requirements for access.

3b. Proclamation – Proclaim April 5, 2014 as 2nd Annual Million March against Child Abuse Day (p. 51)

Mayor Muhlfeld read a proclamation against child abuse and neglect. He said that Flathead County had 1,559 reports of child abuse and neglect in 2013. He said the U.S. has the worst record, losing 5-10 children every day due to child abuse deaths. He proclaimed April 5, 2014 as the Annual Million March against Child Abuse.

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

Dan Graves, Whitefish Mountain Resort, said he was here to represent the Chamber of Commerce tonight. He serves on the Chamber board.

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Nick Polumbus, 303 Stumptown Loop, said he was here tonight as a School Board Trustee and as the proud parent of three children in the Whitefish School District. He said they will have a discussion at the April Board meeting about suggestions for an extended learning time class schedule. He said they are gathering information from students regarding pre-registration for next year, they held a learning tour on February 11, 2014, and they held at least one more public tour. All of the students have been oriented on the new building. They have created a scheduling team with High School administrators and District Administration and two high school teachers who were elected by their peers. A parent focus group was formed and their goal is to give feedback from the parent's point of view. He said he went to a school with extended learning times when he was in high school. He said they have spent three years investing in significant professional development for their teachers. Research shows that said students will be innovative and exciting instead of obedient with this new learning option.

Sarah Scott, 130 Armory Road, and a teacher at Whitefish High School, said concerns were raised about the extended learning schedule and whether students can concentrate that long. She explained some of the benefits of the block schedule. She said most of her students have a hard time transitioning in a 45-minute time period. By eliminating the number of transitions per day students will have more time on task. She said a typical high school teacher sees 120 students per day, but the block system reduces that number and gives them more time to work one on one with the students. She said project based learning will be an exciting option, especially for kinesthetic learners. She said she works with special needs students and her students need these methods to learn, but all students benefit from a schedule like this.

Eric Sawtelle, 239 Somers Avenue, and a teacher at Whitefish High School, spoke in favor of the extended learning schedule. He is a science teacher at Whitefish High School. Powerful learning experiences come from integration between disciplines as well as collaboration between students. Their goal would be to create bridges where students are engaged with the community as part of their curriculum. They want to integrate core sciences and community outreach with the food bank, for example.

Chris Hyatt, 611 Somers Avenue, spoke on behalf of the Hellroaring Ski Heritage Days. For event information people can visit the Flathead Valley Ski Education website at fvsef.org.

5. COMMUNICATIONS FROM VOLUNTEER BOARDS

Chief Dial said the 9-1-1 Committee met and talked about the budget. They proposed a 6.2% increase over all. They will be asking departments to cut back and will meet again in April to make a final decision on the budget.

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

6a. Minutes from the March 3, 2014 Council regular meeting (p. 53)

6b. 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 (2nd Reading) (p. 69)

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

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

7a. Ordinance No. 14-___; An Ordinance amending Zoning Regulations in Whitefish City Code Section 11-2K-3 to identify shipping and packaging services as a conditional use in the Secondary Business District (WB-2) (First Reading) (p. 76)

Senior Planner Compton-Ring reported that at the City Council meeting on March 3, 2014, the Council did not recommend approval of a new definition of 'Business Services' nor add it as a permitted use to the WB-2 (Secondary Business District). Instead the Council directed staff to come back to the March 17th meeting 'with an alternative option for shipping and packaging services as a conditional use in the WB-2 zone.' The Council identified concerns including adding a broad range of uses to the WB-2 that would include more than just shipping and packaging services. The Council was interested in focusing the amendment to address the shipping and packaging services and not include an expanded definition of multiple 'Business Services' uses. The proposed changes are evaluated based on the criteria for consideration for amendments to the provisions of the Zoning Regulations per Section 11-7-12E.

Planner Compton-Ring said the staff report in tonight's packet did not include findings supporting utilizing the conditional use and she distributed copies and reviewed the proposed findings to the Council. She pointed out that, by definition conditional uses require a special degree of control to make such uses consistent with and compatible to other existing or permissible uses in the same area. Projects are reviewed by the Council to consider traffic implications, impacts on public infrastructure, noise, odor smoke, hours of operation, compatibility within the neighborhood and site suitability. Applications for conditional uses receive extra scrutiny from the community and the Council in a public forum through the Conditional Use Permit process.

Staff Report WZTA 14-03 recommends that the City Council, after considering testimony at the public hearing, the Planning Board recommendation, and the staff recommendation, approve an Ordinance amending Zoning Regulations in Whitefish City Code Section 11-2K-3 to identify shipping and packaging services as a conditional use in the Secondary Business District (WB-2). However, Planner Compton-Ring stated staff has recommended that shipping and packaging services be a permitted use, rather than a conditional use in the WB-2 zone. A shipping and packaging service probably doesn't warrant intense scrutiny like a CUP. Also, to make the zoning consistent, staff recommended they use the term private postal services and shipping services, which is also used in the Business Service District. She noted that more public comment in support of the zoning text amendment was received after their packet went out and she handed these out tonight.

Mayor Muhlfeld opened the public hearing.

Richard Hamm, 2330 Dillon Road, said they've been here for 10 years. When they first moved here they went to the shipping store and found the most conscientious folks ever. He said the new

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facility is much easier to access and is all around safer. He doesn't see anything wrong with it being where it was. It is less dangerous where it is now. He recommended that they approve this request.

Bent Petersen, area franchisee for UPS stores in Montana spoke on behalf of Pete and Patty Olson and their business. He said UPS has been here for 21 years and Pete and Patty have built a successful business over the past 15 years. They have been in the same zoning district along Highway 93 for all of these years. He wanted to make it clear that there was never any intent on their part to evade the laws or subvert the rules. He said this is a franchise and locally owned by the Olson's. He said there is an inclination to think that big corporations have a negative impact on the community, but UPS is only the business title; this is a small local business. He said their business has changed drastically with internet purchasing so they need to be able to continue with all of the other services they offer along with packaging and shipping. He said their business is not a good fit downtown because of parking issues. He said he and the Olson's want to see a vibrant, successful downtown, but they can't put their business down there. He said the Olson's took the necessary steps to move their business and he hopes the Council will give them the opportunity to continue.

Janice Mazur, 133 Mallard Loop, spoke about the concept of business services in the WB-2 zone. She said they have a small law practice and work out of their home. She said when they moved here they looked at the schools and at the UPS store because it provides essential services for small businesses like theirs. She said if Whitefish wants to continue to attract small businesses, which are the heart of the community, then they need to support stores like the UPS store that provide assistance for small businesses. She said the WB-2 zone is the perfect location for businesses like these that support small businesses and have lots of traffic. It would be to Whitefish's advantage to adopt a permanent amendment for a designated area for business support services in this zone. She urged them to approve this request.

Mayre Flowers, Citizens for a Better Flathead (CBF), 35 4th St. West in Kalispell, apologized and said she didn't have copies of her comments tonight because she had computer problems. She said her comments are focused on the process and procedures that got them where they are tonight. It is not a personal issue about the UPS store; it is an issue about the process. CBF is recommending that they table this decision tonight. She said it was unfortunate that the new findings were not in the packet. The CBF would like an opportunity to see the findings and comment on them. The findings that were in the report were applicable to WZTA-14-03 and that staff report doesn't reference the CUP and the findings in that report recommend a string of other uses. She asked that her comments from the last meeting be continued over to this meeting as well. She said the Council is on a slippery slope if they adopt this request for one business.

She asked them to draft clear and defensible findings to support the text change tonight. She said they can't review it adequately, nor can the public, since it wasn't in the staff report. They deserve to have that cleared up before they move forward. She said the 5th and 6th clause has confusing wording that applies to multiple amendments. This should not be corrected on the fly. She said the additional memo by the Planning Office from 3/11/2014 has a troublesome analysis that should not be adopted as part of this proposal as well. It states that this change doesn't warrant additional scrutiny because this zone has other businesses in it with similar impacts. She said that broad description is a flawed argument and should be rejected now. The zone change needs to be based on the legal basis of Montana Law. She said their zoning must be consistent with the Growth Policy. She asked them to table this and bring it back for consideration. She respects that they are trying to find a reasonable compromise, but this needs more review.

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Rebecca Norton, 530 Scott Avenue, said it was shocking that they had a whole building built before they had the zoning. She said two 3-story buildings were built in her neighborhood in the wrong place, but the developer got away with this wrong action. She said they need to be less messy about how they handle situations in the future. It isn't fair to the people who are doing business here. She said if it means they do an audit to make sure things are precise and clear, that would be fine. It is disturbing to see that they are even here tonight.

Sean Frampton, 341 Central Avenue, said he was there to represent Mr. Halama tonight. He said this is consistent with the general zoning and the Code in 11-3-2 says a goal of the WB-2 zone is less congestion in the streets. This request is consistent with the intent and purpose of the WB-2 zone which speaks of services which require large storage or parking areas. He said the CUP concept doesn't appear proper because allowing shipping and packing in the WB-2 won't have a detrimental effect on the zone. He asked them to allow this as a permitted use.

Linda Hubner, 101 Beaver Creek Ranch Road, said they moved here and chose to use the UPS store because they needed a place to receive their mail. She said that the Olson's were warm and welcoming. She said from a practical perspective there is no difference in where the store is located now. It complements Walgreens and if she were a Council person she would think of 3 things: is there a good proprietor, is what they are doing safe, and does it add to the quality of the community. She thinks it improves downtown Whitefish as well as the outer area. She hoped they would make a decision that wouldn't harm the business and those who use the business.

Rhonda Fitzgerald, 412 Lupfer Avenue, said the WB-2 zone is an important zone in the community with a specific intent. The intent is to provide a location for businesses that require large storage or parking areas. She said if a lot of other businesses migrate into this zone then it damages the fabric of the rest of the community. She said it is unfortunate that they are discussing a specific type of business. She said about 20 people served on a committee that addressed uses in the WB-2 zone. One concern was that the mall had services that were grandfathered into the mall but were not allowed in the WB-2 zone. She doesn't think people understand that distinction. She said they have businesses downtown even now that effectively use shipping services. She said they need to get to the principles and not talk about specific businesses.

Mayor Muhlfeld closed the public meeting.

Councilor Anderson said the Council gave staff direction for a CUP. He has concerns about the alternate findings and thinks they need more work to be defensible. He said he thinks it should go back to staff one more time. Councilor Hildner said he agreed with Councilor Anderson that they should stick with the CUP. He said the private postal services/shipping wording that was suggested probably fits better with the Conditional Use Permit. Councilor Sweeney said he agreed they need more fleshed-out findings. He said the proprietor is someone the community holds in great regard. He said the problems were generated by the zoning issue and how it should be structured. He said he thinks they are in this place now because this type of use is not inappropriate in this area, but it doesn't fit in the zoning. It is not inappropriate for this zone and they need to figure out how they can best accommodate that particular use.

Councilor Anderson offered a motion, seconded by Councilor Feury, to table the proposed ordinance amending Zoning Regulations in Whitefish City Code Section 11-2K-3 to identify shipping and packaging services as a conditional use in the Secondary Business District (WB-2) to

the April 7, 2014 meeting and direct staff to provide more robust findings of fact particularly in regard to Growth Policy standards. The motion passed unanimously.

8. COMMUNICATIONS FROM PARKS AND RECREATION DIRECTOR

8a. Consideration of approving going out to bid for public restrooms addition to O'Shaughnessy Center (p. 116)

Director Cozad said Friday is his last official day as the Director of Parks and Recreation. He said he can't think of a better way to end his long career than here in Whitefish. He thanked the Councilors and committees he has worked with for the support they have given him. He also thanked the management team of the City of Whitefish for their support and collaboration. He said he doesn't think he has ever worked with a better team than the staff of the City of Whitefish. He thanked the community of Whitefish for their support. He and his wife, Kathy, will stay here in Whitefish. It is a wonderful place to be.

Director Cozad said that for many years the downtown core area of Whitefish has been without a designated public restrooms. Visitors have typically used the restroom facilities at the Library, or on occasion, the restrooms at the Train Depot. Neither of these facilities is designed, nor maintained, for the ever increasing demand as generated by the increased popularity of downtown Whitefish. Over the years special events and weekly events during the course of the summer and fall seasons continue to grow in size and scope and create even greater attendance in Depot Park and surrounding venues. In 2012 the city adopted the Depot Park Master Plan for the development and enhancement of Depot Park. Within the Depot Park Master Plan, it was proposed to consider the opportunity to add a public restroom to the exterior of the O'Shaughnessy Performing Arts Center (see Depot Park Master Plan). This option appears to be a viable solution to meeting the needs of providing a designated public restroom in the downtown area of Whitefish. It should also be noted that the development of a downtown restroom facility has been on the City Council "goals list" for the past few years.

The downtown restroom facility would be open to the public 12 months of year and would have lockable doors with designated hours of operation very similar to our current operations at Baker Park, City Beach, and Grouse Mountain Park, with the only difference being that these facilities are only open seasonally.

Councilor Anderson said he had concerns about the clearance for the eaves and Director Cozad said it will be built to City standards. Councilor Frandsen asked if it was too late to modify the doors on the restrooms. She said it appears that the door is directly open to the street. Director Cozad said the challenge is the ADA standards. He would look at it to make sure there was a barrier between the street and the stalls. Manager Stearns noted that they changed some of the dates in the legal notices requesting bids.

Councilor Hildner offered a motion, seconded by Councilor Barberis, to approve authorizing the public notice and solicitation for bids for the construction of the public restrooms addition to O'Shaughnessy Center. The motion passed unanimously.

9. COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

9a. Consideration of approving moving to final design stage for Skye Park Bridge and amendment of contract with TD&H Engineers for final design work (Three motions)

(p. 124)

Public Works Director Wilson clarified the three motions they need to move forward with this project.

He noted that staff also proposes to expand the scope of work to include 200 feet of new water main, which would tie an existing dead end main into the water transmission main crossing the river just upstream from the railroad trestle. This loop would improve the flow capacity and provide better security for the water system serving the Birch Point, West Lakeshore and Ramsey Avenue neighborhoods. The added construction cost for this item is estimated at \$15,000, which staff proposes to pay out of the Water Fund.

He said there is a letter from RC Beall who has concerns about his property on Washington Avenue. His lawn slopes down and in order to make the ADA grade the City needs to bring about 8 feet of fill into this area. He said they are trying to preserve his privacy while linking this trail together and allow ADA access. They will continue to work with RC Beall to address his concerns about his privacy, within reason.

Mayor Muhlfeld asked and Director Wilson said construction is anticipated for this fall. Councilor Hildner said the cost has gone up \$60,000 and wondered why they couldn't use Sewer and Water funds to reduce the draw on TIF funds. Director Wilson said the Sewer Department will benefit because they will be able to add extra loads to that road. He said \$20,000 from Wastewater is a rough estimate. They would typically break down the cost after they make a design award.

Councilor Hildner offered a motion, seconded by Councilor Frandsen, to direct staff to proceed with final design and development of construction documents for the Skye Park Bridge and Bicycle/Pedestrian Path project. The motion passed unanimously.

Councilor Hildner offered a motion, seconded by Councilor Frandsen, to approve the expanded scope of design necessary to rebuild the east end of Birch Point Drive and complete a water main loop in that vicinity. The motion passed unanimously.

Councilor Hildner offered a motion, seconded by Councilor Frandsen, to approve an amendment to the engineering contract with TD&H in an amount not to exceed \$6300 for design work.

Councilor Anderson said he is not comfortable with all the money coming out of the TIF. He said the TIF is used a lot and he thinks the dollars could be spent elsewhere. Director Wilson said there is a 10% contingency and that is \$67,000. He hopes that can go a long way toward bringing the cost back down.

Manager Stearns noted that the total cost is \$829,010 with construction and engineering. He said this is an important project and he thinks it is worth the City's investment.

The motions passed unanimously.

10. COMMUNICATIONS FROM CITY MANAGER

10a. Written report enclosed with the packet. Questions from Mayor or Council?(p. 133) None.

10b. Other items arising between March 12th and March 17th

Manager Stearns said he attended the Downtown Master Plan meeting and several of the staff and Councilors attended. He thinks 60-80 people attended and they got a lot of good comments. He said the consultants, Crandall/Arambula, will be finishing up the plan and it will come for final public review in 3-6 weeks.

11. COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

11a. Select a City Council member to participate on interview committee for Parks and Recreation Director.

Councilor Anderson volunteered for this position.

Councilor Sweeney offered a motion supporting Councilor Anderson to participate on the interview committee for the Parks and Recreation Director and all the Council agreed.

Councilor Hildner thanked Director Cozad and said he appreciates all of Karl's work and his efforts for the Park Board and Bike/Pedestrian Committee.

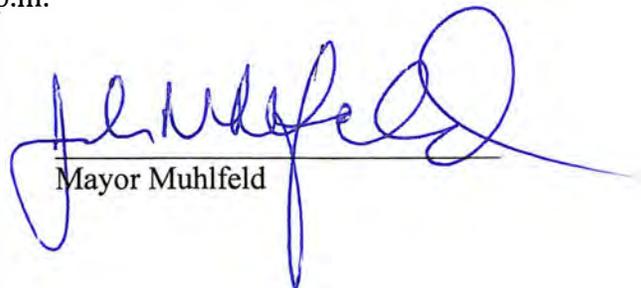
Councilor Hildner encouraged people to pick up after their dogs.

Councilor Frandsen thanked Director Cozad. Mayor Muhlfeld said someone emailed him photos of the trash and liter in front of businesses. He asked people to chip in and pick up some of the trash and cigarette butts.

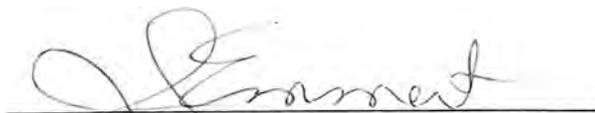
Mayor Muhlfeld said he attended an event with Senators Tester and Walsh to discuss the North Fork Protection Act. He said it is held up in Congress because one Senator can block a bill from going to vote. He said with Council's permission he would send a letter to those Congressmen from the Council to encourage them to move forward on a vote; the Councilors agreed. He thanked Karl Cozad for his service, and congratulated Jason Loveless for his appointment as Interim Parks and Recreation Director.

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

Mayor Muhlfeld adjourned the meeting at 8:40 p.m.



Mayor Muhlfeld



Jane Latus Emmert, Recording Secretary
Attest:



Nesile Lorang, City Clerk