

## WHITEFISH CITY COUNCIL MINUTES

AUGUST 18, 2014

7:10 P.M.

### **1) CALL TO ORDER**

Mayor Muhlfeld called the meeting to order. Councilors present were Barberis, Frandsen, Anderson, Hildner, Feury and Sweeney. City Staff present were City Manager Stearns, City Clerk Lorang, City Attorney VanBuskirk, Planning and Building Director Taylor, Planner II Minnich, Public Works Director Wilson, Parks and Recreation Director Butts, Fire Chief Kennelly and Police Chief Dial. Approximately 11 people were in the audience.

### **2) PLEDGE OF ALLEGIANCE**

Mayor Muhlfeld asked Steve Thompson 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) (CD 0:46)

Steve Thompson, 545 Ramsey Avenue, said he was a member of a local group called Glacier Climate Action; a group opposing carbon pollution. He pointed out a recent article in the Flathead Beacon that addressed congested freight train travel affecting passenger trains arriving and departing on time in Whitefish; and he said it could become worse if Arch Coal receives approval to open a proposed Otter Creek Mine in southeast Montana. He said along with that a new rail line is proposed, the Tongue River Railroad, to be the conduit to the existing BNSF line, bringing increased coal train traffic through Whitefish. The Surface Transportation Board (STB) and the Montana Department of Environment Quality (MDEQ) will be holding public hearings in western Montana regarding these two proposals, and Mr. Thompson encouraged the Council to join the cities of Missoula and Spokane who are voicing their concerns to the STB; to send a resolution to the STB addressing Whitefish issues, and request that STB and MDEQ hold public hearings in western Montana, including in Whitefish, during the comment periods as described in the draft Environmental Impact Statement on these two proposals. He gave samples from Missoula and Spokane of those documents to the Council.

### **4) COMMUNICATIONS FROM VOLUNTEER BOARDS** (CD 7:34)

Councilor Sweeney reported on matters of the Park Board. (1) In 2006, the City Council adopted a Weed Management Plan, a detailed plan regarding maintenance in City Parks, that is outdated and hindering the flexibility and needs of the Department for park maintenance. He said it is the Board's recommendation to repeal that plan. (2) The Park Board is considering requesting a start-up of Phase II of construction in Depot Park, including sidewalks and the gazebo, but may have a recommendation in a change for the gazebo location. (3) The Park Board is considering a request to the Council to change the committees that work with the Park Board and the Parks and Recreation Department, to be sub-committees of the Park Board, and be appointed by the Park Board instead of the Mayor and Council.

Councilor Hildner reported the ad hoc New City Hall Committee met last week with the architects and worked on and discussed their proposals for space utilization. The architects will meet again with the committee this Thursday, August 21<sup>st</sup>, at 2:00 p.m., followed by a public meeting Thursday night from 7:00 to 9:00 p.m., August 21<sup>st</sup>, to gather more public input.

- 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) (CD 13:16)
- a) **Minutes from the July 21, 2014 Council regular session (p. 17)**
  - b) **Minutes from the August 4, 2014 Council special session (p. 27)**
  - c) **Minutes from the August 4, 2014 Council regular session (p. 28)**
  - d) **Consideration of approving application from Glacier Dock on behalf of Philip Palm for Whitefish Lake Lakeshore Permit (#WLP-14-W33) at 1490 Barkley Lane to Remove old dock/Install new 380 sq. ft. 'L' shaped Glacier dock subject to 11 conditions (p. 34)**
  - e) **Consideration of approving application from Nick Paladino on behalf of Cam Clark for Whitefish Lake Lakeshore Permit (#WLP-14-W34) at 910 Birch Point Drive for Removal of grass lawn and placement of 6 cubic yards of gravel subject to 15 conditions (p. 46)**
  - f) **Consideration of approving application from Cory Izett on behalf of Lois Torfason for Whitefish Lake Lakeshore Permit (#WLP-14-W35) at 1516 West Lakeshore Drive to expand existing dock to a 480 square foot 'F' shaped EZ dock subject to 11 conditions (p. 58)**
  - g) **Lakeshore variance – Consideration of approving application from Lois Torfason on behalf of Richard Buckley Professional Corporation for Whitefish Lake Lakeshore Variance (#WLV-14-W36) at 840 Birch Point Drive for a Minor variance to the constructed area allowance to increase dock length to 100 feet and reduce the side setbacks to allow the installation of a shore station subject to 15 conditions (p. 73)**
  - h) **Resolution No. 14-25; A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City a certain tract of land known as 265 Haugen Heights Road, for which the owner has petitioned for and consented to annexation (p. 96)**

#### RESOLUTION NO. 14-25

**A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City a certain tract of land known as 265 Haugen Heights Road, for which the owner has petitioned for and consented to annexation.**

WHEREAS, Whitefish West Limited Partnership by and through Shawn Hass, Partner, on behalf of Property Owner, has filed a Petition for Annexation with the City Clerk requesting annexation and waiving any right of protest to annexation as the sole owner of real property representing 50% or more of the total area to be annexed, described and shown more fully on Exhibit A, attached hereto and made a part hereof. Therefore, the City Council will consider this petition for annexation pursuant to the statutory Annexation by Petition method set forth in Title 7, Chapter 2, Part 46, Montana Code Annotated; and

WHEREAS, services to the annexed area will be provided according to the City of Whitefish

Extension of Services Plan, adopted by the City Council by Resolution No. 09-04 on March 2, 2009, as required by and in conformity with §§7-2-4610 and 7-2-4732, MCA, available at the office of the City Clerk; and

WHEREAS, it is the considered and reasoned judgment of the City Council of the City of Whitefish that the City is able to provide municipal services to the area proposed for annexation. Further, it is hereby determined by the Whitefish City Council to be in the best interest of the City of Whitefish, and the inhabitants thereof, as well as the current and future inhabitants of the area to be annexed described herein, that the area be annexed into the City of Whitefish and it is hereby declared to be the intent of the City of Whitefish that the corporate boundaries of the City of Whitefish be extended to include the boundaries of the area described in the Petition for Annexation within the limits of the City of Whitefish.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: The corporate boundaries of the City of Whitefish are hereby extended to annex the boundaries of the area herein described in the Petition for Annexation, according to the map or plat thereof, on file and of record in the Office of the Clerk and Recorder of Flathead County, Montana, and legally described as:

LOT 4 OF BLOCK 11 OF LAKE PARK ADDITION TO WHITEFISH, MONTANA,  
ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND OF RECORD IN  
THE OFFICE OF THE CLERK AND RECORDER OF FLATHEAD COUNTY,  
MONTANA.

Section 2: The minutes of the City Council of the City of Whitefish, Montana, incorporate this Resolution.

Section 3: The City Clerk is hereby instructed to certify a copy of this Resolution so entered upon the August 18, 2014 Minutes of the City Council. Further that this document shall be filed with the office of the Clerk and Recorder of Flathead County. Pursuant to §7-2-4607, MCA, this annexation shall be deemed complete effective from and after the date of the filing of said document with the Flathead County Clerk and Recorder.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS 18TH DAY OF AUGUST, 2014.

/S/ John M. Muhlfeld, Mayor

ATTEST:

/S/ Necile Lorang, City Clerk

Councilor Hildner corrected July 21, 2014 Minutes; page 7, 1<sup>st</sup> paragraph under item 8b) "Public Works Director Wilson said"...(not sai); and page 8, corrected Councilpr Hildner to Councilor Hildner in the second paragraph, just above the motion on that page. Mayor Muhlfeld noted to the Council, for

their information, that items e), f), and g) on the consent agenda are coming directly to the Council for their review and approval; they have not been vetted through the Lakeshore Protection Committee because that Committee is no longer in place.

**Councilor Sweeney made a motion, second by Councilor Anderson, to approve the consent agenda as corrected. 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) (CD 14:30)

**a) Resolution No. 14-26; A Resolution of the City Council of the City of Whitefish, Montana, amending the 2014 Fiscal Year annual budget to increase appropriations in four Funds of the City (p. 109)**

Finance Director Smith said these are year-end amendments to four funds wherein the expenditures and transfers exceeded or did not have budget authority, amending the FY14 Budget; and asked if there were any questions. The Council did not have questions and Mayor Muhlfeld opened the public hearing. There was no public comment and Mayor Muhlfeld closed the public hearing and turned the matter over to the Council for their consideration.

**Councilor Anderson made a motion, second by Councilor Sweeney, to approve Resolution No 14-26; amending the 2014 Fiscal Year annual budget to increase appropriations in four Funds of the City. The motion passed unanimously.**

**b) FY15 Budget, Tax Levy, and Assessments Public Hearing: (CD 16:14)**

- i) Resolution No. 14 - 27; A Resolution accepting and approving the Municipal Budget for the City of Whitefish for the 2015 Fiscal Year Commencing July 1, 2014, in its final form (p. 115)**
- ii) Resolution No. 14 - 28; A Resolution (1) budgeting additional property tax revenue, (2) determining the property tax mills to be levied on all taxable property within the corporate limits of the City of Whitefish, and (3) levying and assessing all special improvement assessments and other assessments on real estate within the Districts for the 2015 fiscal year (p. 117)**
- iii) Resolution No. 14 - 29; A Resolution levying and assessing a tax on each lot or parcel of land in the City lying within the boundaries of the City's Street Maintenance District to defray the costs of street improvements (p. 235)**
- iv) Resolution No. 14 - 30; A Resolution levying and assessing a tax upon all real estate in Special Improvement Lighting District No. 1 in the City of Whitefish, Montana, to defray the cost of improvements in said Special Improvement Lighting District (p. 237)**
- v) Resolution No. 14 - 31; A Resolution levying and assessing a tax upon all real estate in Special Improvement Lighting District No. 4 in the City of Whitefish, Montana, to defray the cost of improvements in said Special Improvement Lighting District (p. 239)**
- vi) Resolution No. 14 - 32; A Resolution levying and assessing a tax on each lot or parcel of land in the City lying within the boundaries of the City's Parkland and Greenway Maintenance District (p. 241)**

- vii) **Resolution No. 14 - 33; A Resolution levying and assessing a tax on each lot or parcel of land in the City lying within the boundaries of the City's Stormwater Improvement and Maintenance District (p. 243)**
- viii) **Resolution No. 14 - 34; A Resolution levying and assessing a tax on each lot or parcel of land in said City lying within the boundaries of Special Improvement Parking District No. 155 to defray the cost of creation of said District and of the improvements therein (p. 245)**
- ix) **Resolution No. 14 - 35; A Resolution levying and assessing a tax on each lot or parcel of land lying within the boundaries of Special Improvement District No. 166 (JP Road) to defray the cost of creation of said District and of the improvements therein (p. 247)**
- x) **Resolution No. 14 - 36; A Resolution levying and assessing costs from certain properties within the City for the extermination and removal of noxious weeds pursuant to Title 4, Chapter 3, of the Whitefish City Code; collection of utility service charges pursuant to Title 8, Chapter 1, of the Whitefish City Code; and for the removal of ice, snow, slush or other impediments pursuant to Title 7, Chapter 2, of the Whitefish City Code (p. 250)**

City Manager Stearns spoke from his staff report that starts on page 126 of the packet. The proposed Final Budget for FY15 is a culmination of several months of work sessions with staff and City Council. The FY15 proposed budget totals \$40,437,035 covering 28 active, self-balancing funds. It includes an increase in revenue from property taxation by 4.16% or \$110,242, because of the 3.47% increase in the 2014 certified taxable valuation and because of a 0.8 mill levy increase allocated to the Library. It is worthwhile to note that the Montana Municipal Interlocal Authority (MMIA), our provider for employee health insurance programs, is actually decreasing our medical insurance premiums in FY15 by 0.7%, and has no increases for vision or dental programs. Manager Stearns gave an overview of the budget and explained each of the individual resolutions covering assessments for maintenance and special districts. There were no questions from Council.

Mayor Muhlfeld opened the public hearing, and there being no public comment, Mayor Muhlfeld closed the public hearing and turned the matter over to the Council for their consideration.

**Councilor Feury made a motion, second by Councilor Frandsen, to approve Resolution Nos. 14-27 through 14-36; approving the FY15 Final Budget, the property tax mill levy and the special assessments. The motion passed unanimously.**

#### **7) COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR (CD 30:50)**

- a) Consideration of amendment #4 to the engineering design contract with Anderson – Montgomery Consulting Engineers for the Wastewater Facility Permitting and Improvements Project (p. 254)

Public Works Director Wilson said in the City's effort pursuing major improvements to the wastewater treatment plant and related facilities; this amendment involves critical analyses towards having the Whitefish wastewater treatment system meet future nutrient removal standards. Following this contracted service, they should be ready to bring development costs and a long-term financial plan to the Council in February 2015. The Public Works Department has negotiated the scope of work as

outlined in the staff report for a fee not to exceed \$139,960; which is included in the FY15 Final Budget in the Wastewater Fund. Mayor Muhlfeld and Council followed up this report with a few questions.

**Councilor Anderson made a motion, second by Councilor Barberis, to approve Engineering Contract Amendment No. 4 with Anderson Montgomery Consulting Engineers for the Wastewater Facility Permitting and Improvements Project in an amount not to exceed \$139,960. The motion passed unanimously.**

**8) COMMUNICATIONS FROM CITY MANAGER (CD 36:23)**

- a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 257) – None.
- b) Other items arising between August 13<sup>th</sup> and August 18<sup>th</sup>

Manager Stearns said the only additional item he was going to bring up was the update on the new City Hall design that Councilor Hildner brought up earlier.

**9) COMMUNICATIONS FROM CITY ATTORNEY (CD 36:50)**

- a) **Resolution No. 14-37; A Resolution approving a License Agreement with Gold Creek Cellular of Montana Limited Partnership d/b/a Verizon Wireless, for a new monopole, equipment building, antennas and related radio equipment and appurtenances in Memorial Field Park, Whitefish, Montana (p. 263)**

City Attorney VanBuskirk reported that this is pursuant to a November 4, 2013 conditional use permit granted for a wireless service facility (cell tower) on Memorial Park property. Following installation of the cell tower, it will be transferred to the City. This resolution provides for a license to Verizon for five (5) years, and setting the rent for the first year at \$18,000, and the rent for each year of the remaining term is 104% of the preceding year's rent. The resolution also provides for the accompanying Memorandum of Understanding (MOU) directing the annual license payments are deposited in the Park Fund, Memorial Park Account, and directing disbursement to the Glacier Twins for its construction and maintenance of the stadium.

**Councilor Hildner made a motion, second by Councilor Sweeney, to approve Resolution No 14-37; a resolution approving a License Agreement with Verizon Wireless for a new monopole, equipment building, antennas and related radio equipment and appurtenances in Memorial Field Park in Whitefish, and the accompanying Memorandum of Understanding. The motion passed unanimously.**

- b) **Ordinance No. 14-07; An Emergency Ordinance pursuant to Section 7-5-104, MCA, providing for the creation of an Interim Whitefish Planning Board, consistent with State law (Emergency Ordinance – One Reading only) (Two Motions) (p. 285)**

Attorney VanBuskirk gave a summary of her detailed staff report (see Council Packet page 288). The proposed Ordinance is pursuant to the Montana Supreme Court opinion in *Phillips v. City of Whitefish*, issued in July of this year, affirming the District Court's July 2013 decision that the referendum was invalid to repeal the 2010 Interlocal Agreement between the City of Whitefish and Flathead County that addressed the City-County Planning Board and regulations in the extraterritorial

area, resulting in the loss of the City-County Planning Board. State Law provides for the process in case this does occur. The City notified the County Commissioners of the City's intent to form a City planning board. By approving this Emergency Ordinance on its one and only reading (must be approved by a 2/3 majority of the Council), the Council creates an Interim Whitefish Planning Board. Staff recommends the City Council approve the creation of an interim city planning board, followed by a second motion to appoint members to serve on the board. Attorney VanBuskirk advised the Council that, upon approval of these motions, staff will prepare documents for the next meeting creating a permanent City Planning Board.

**Councilor Hildner made a motion, second by Councilor Frandsen, to approve the passage of Ordinance No. 14-07, An Emergency Ordinance of the City Council of the City of Whitefish, Montana, pursuant to Section 7-5-104, MCA, providing for the creation of an Interim Whitefish Planning Board, consistent with State Law. The motion passed unanimously.**

**Councilor Sweeney made a motion, second by Councilor Frandsen, for appointment of the seven-member interim planning board at this time, with one member appointed by the City Council from its own membership; one member appointed by the City Council, one member to be designated by the County Commissioners for appointment by the Mayor, and four members who are City residents to be appointed by the Mayor. The motion passed unanimously.**

**Mayor Muhlfeld appointed Ken Stein, Scott Wurster, Greg Gunderson and John Ellis to the Interim City Planning Board. Councilor Anderson made a motion, second by Councilor Sweeney, to ratify the Mayor's appointments. The motion passed unanimously.**

**Councilor Hildner made a motion, second by Councilor Frandsen, to appoint Councilor Sweeney, a former member of the City-County Planning Board, to the Interim City Planning Board as the Council's representative. The motion passed unanimously.**

**Councilor Sweeney made a motion, second by Councilor Anderson, to appoint Ken Meckel for the other Council appointment to the Interim City Planning Board. The motion passed unanimously.**

Attorney VanBuskirk said they will prepare a letter for the Mayor's signature, addressed to the County Commissioners, requesting the Commissioners designate their representative for Mayoral appointment to the Interim City Planning Board.

#### **10) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS (CD 45:45)**

- a) Letter from Barry Green from National Association of Railroad Passengers requesting a letter of support to our congressional delegation for inter-city passenger train service appropriation in the next "highway bill" (p. 300)**

Mayor Muhlfeld said he would be happy to co-author a letter of support as requested from Barry Green if it is the pleasure of the Council. The Council all raised their hands to show unanimous support.

Other Council Comments:

**Councilor Hildner made a motion, second by Councilor Anderson, requesting staff prepare a resolution for the Council's consideration at their next meeting requesting that the Surface Transportation Board and the Montana Department of Environmental Quality hold public hearings in western Montana, including in Whitefish, during the comment periods for the proposed Tongue River Railroad and Otter Creek Mine in southeast Montana, along with a letter containing the same request.** He said this could have a huge impact on Whitefish. Councilor Frandsen spoke in support as well. **The motion passed unanimously.** Mayor Muhlfeld said Steve Thompson had provided examples from Missoula and Spokane and wondered if, by using those as templates, could these documents be ready for the next meeting and Attorney VanBuskirk said sure.

Councilor Hildner, in response to an email from Susan Edens at Piney Creek Interiors, with pictures showing garbage strewn on sidewalks and requesting action to mitigate the problems, said it looks like some of the garbage directly relates to the hot dog street vendor. He asked, and Planning and Building Director Taylor said a letter can be sent to that street vendor reminding him that his permit is conditional upon not creating litter downtown. Police Chief Dial said this was an issue discussed at their last staff meeting; and he recommended a letter be written to the bar-owners' association asking them to help clean-up after their customers; they used to do it and perhaps they should be requested to start that back up. (2) Councilor Hildner said he'd like to see the City move soon to investigate curb-side recycling, along with reviewing allegations against North Valley Refuse and their disposal of recycled materials. Councilor Hildner said there are other companies who pick up recycled materials who don't seem to have any of those issues. (3) Councilor Hildner said, in the absence of a Lakeshore Committee, he would like to have the lakeshore permit applications that include a variance, be listed someplace else on the Council's agenda other than on the Consent Agenda for Council's consideration and action. Mayor Muhlfeld asked, and Attorney VanBuskirk advised, that the City's Planning Department can give direction to Council on those applications.

Councilor Frandsen noted the loss of the Wisconsin Avenue recycling drop off and hoped another green box site could be found. (2) Councilor Frandsen thanked Manager Stearns and staff for working with Council through the budget preparation process; she appreciated the response to all of Council's direction, especially to Manager Stearns who was under extra pressure through the transitions between Finance Directors.

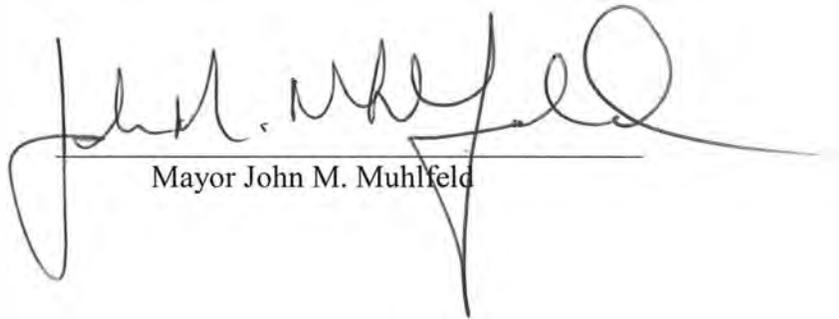
Mayor Muhlfeld said before tonight's meeting he was at an event at First Interstate Bank that was a follow-up of an open house held at the new high school where they were showing off their new D-Wing. At the event tonight the Mayor said the Whitefish Community Foundation donated another \$25,000 to the school who is still fund-raising towards their \$2.3 million, of which they have raised \$1.8.

**11) ADJOURNMENT** (Resolution 08-10 establishes 11:00 p.m. as end of meeting unless extended to 11:30 by majority) (CD 54:12)

Mayor Muhlfeld adjourned the Regular Session of the City Council at 8:05 p.m., and said the Council would be convening into an Executive Session as listed on tonight's Council Agenda.

**12) EXECUTIVE SESSION – Personnel Matter.** Pursuant to §2-3-203(3) MCA, the presiding officer may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceeds the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

The Council convened into the Executive Session at 8:10 p.m. Mayor Muhlfeld called the meeting to order. Councilors present were Barberis, Frandsen, Anderson, Hildner, Feury and Sweeney. City Staff present were City Manager Stearns, City Attorney VanBuskirk and Fire Chief Kennelly. The Executive Session was adjourned at 10:10 p.m.



Mayor John M. Muhlfeld

Attest:



Necile Lorang, Whitefish City Clerk