



**CITY COUNCIL SPECIAL SESSION
CITY COUNCIL CHAMBER CONFERENCE ROOM
1005 BAKER AVENUE
TUESDAY, SEPTEMBER 8, 2015, 5:15 PM**

1. Call to Order
 2. 5:15 p.m. Interview for Whitefish Lakeshore Protection Committee
 - a) Donna Emerson, applicant
 3. Public Comment
 4. Adjournment
-

**CITY COUNCIL WORK SESSION
CITY COUNCIL CHAMBER CONFERENCE ROOM
1005 BAKER AVENUE
TUESDAY, SEPTEMBER 8, 2015, 5:30 PM**

1. Call to order
2. Discussion of options for animal resistant garbage containers and recycling options.
 - a. Garbage - Animal resistant garbage container design and costs
 - b. Garbage – Discuss proposal from North Valley Recycling to take over the monthly billing services
 - c. Recycling – discuss mandatory curbside recycling with monthly charges
 - d. Recycling – discuss relocating downtown recycling bins
 - i. Option 1 – in lease parking lot south of Craggy Range and/or
 - ii. Option 2 – large, roll-off recycling containers in the snow lot
3. Public Comment
4. Direction to City Manager on above topics
5. Adjourn

NVR NORTH VALLEY REFUSE

April 23, 2015

City of Whitefish
PO Box 158
Whitefish, MT 59937

To Whom It May Concern:

Imposing new bear resistant container requirements in the Whitefish area would affect the current pricing in the solid waste contract that North Valley Refuse currently has with the City of Whitefish. We are no longer able to obtain the cart that we were using in the current contract for a bear resistant cart rate and also they are not fully automated as the Kodiak.

BEAR RESISTANT:

Bear Resistant rate with NVR provided Kodiak cart

\$ 16.98 per month

This rate calculated for year round service

***NVR would have to amend Exhibit D for Bear cart service rate and*

replacement cost for this cart if lost or damaged beyond repair to \$358.00 plus freight

RECYCLE OPTIONS:

Some recycle options were discussed with Chuck Sterns, Greg Acton, Rose Elliott and Roger Bridgeford. One option was to have centralized recycling like what is in being done in Kalispell and some of Flathead County. There was also discussion about curbside recycling options for Whitefish.

1. First Recycle Option: If a location could be found to place two large 25 cubic yard container. North Valley Refuse would remove the current recycle closets that are constantly a mess, and place two large containers in one location that would be able to hold all the weekend surge of use. One container would be mixed paper products, newspaper, junk mail, magazines and cardboard. The second container would have #1 & #2 plastics with tin and aluminum. This would all be done at no charge per our contract with the City of Whitefish.

2. Second Recycle Option: This would be single stream curbside with North Valley Refuse providing approximately a 96 gallon capacity cart for each customer, collected every other week. The rate around the state for this service varies from \$9.55 to \$20.70 per month and this depends on processing fees for the recycled material. This option was first discussed when the City of Whitefish was looking at bear-resistant container city-wide. A large portion of the containers that would have been replaced by bear-resistant containers could have been used for curbside recycling. This would have helped defray the cost of recycling. Another concern that came about was the recycling material could also attract bears. North Valley Refuse is currently working with a local MRF in Kalispell to process this material to make sure there is a long-term market and to get an estimated price they will charge to process the materials. The reason the recycling charges seem higher than current trash rates is Whitefish is due to higher fees to process recyclable material and disposal charges for the residents of Whitefish are assessed by Flathead County at \$80.73 per year, this in conjunction with City of Whitefish collection fee to the customer is about \$15.21 per month.

BILLING OPTIONS:

NVR could take over billing each customer that is currently being done by the City of Whitefish. NVR would only increase rates with the annual Cost of Living as agreed upon by the City of Whitefish. NVR would pay a "franchise fee" to the City of Whitefish.

Sincerely,

Roger Bridgeford
General Manager

NVR NORTH VALLEY REFUSE

City of Whitefish
PO Box 158
Whitefish, MT 59937

From meeting on June 24, 2015--There was some clarification requested:

One item discussed was the bear resistant rate with NVR providing a Kodiak cart:

The rate of \$16.98 included the cost of the cart projected over a period of time and with only three years in current production and now on a new design change, we are cautious not to depreciate out too far, also the other thing was increased maintenance on our equipment on the dumping of these carts that we experienced on our brief test. When we did this proposal, they didn't have the new costs for **the new designed cart which hasn't been certified at this time**, but they do have more data to project the future cost that we didn't have at the time of the proposal. Taking that into account, we could offer this to the City of Whitefish for \$15.75 per month, this includes collection and maintenance-- with this being a new design, we would like to have a review in three years to see if the product is performing and holding up to the expected life we used to formulate this fee. Also Kodiak should be offering bear resistant 300 gallon trash containers by the end of 2015 or early 2016.

Second on the agenda was recycling options for Whitefish:

NVR would like to recommend a public site with NVR providing two 25yd containers. One recycle rolloff container would be mixed paper products, newspaper, junk mail, magazines and cardboard. The second container would have #1 & #2 plastics with tin and aluminum. NVR would also place containers at this location for corrugated cardboard recycling-- this would be at no charge to the City or the residents of Whitefish. NVR would be willing to add up to one more site at a location to be determined by the City of Whitefish at no charge as written in our Refuse Collection Contract. NVR feels this would be your best option at this time and give us time to start a pilot program on single stream to make sure it is sustainable in this area.

Third on the agenda was billing options for Whitefish:

We spoke about North Valley Refuse taking over all the billing, collection and customer service for all solid waste customers within the city limits of Whitefish, Montana. We would bill the same rate the City is currently billing its customers for solid waste removal. NVR would then pay the City of Whitefish a 10% franchise fee. All cost of living increases would have to be approved by the City of Whitefish before passing on to the customer.

Sincerely,

Roger Bridgeford
General Manager



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Bearicuda Kodiak Can: The Only Fully Automatic Bearproof Trash Can

New Fully Automatic 96 Gallon Bear Proof Garbage Can

This 96 gallon automated Bear Proof curbside refuse and garbage can is a cost-effective solution for neighborhood community residents looking to bear-proof their waste-management programs. In conjunction with the Living with Wildlife Foundation our Full-Automatic 96 gallon bear proof can was proven and tested with grizzly bears.

These bear proof refuse carts have locking lids that are disengaged by pressing on two paddles in the front of the receptacle. Those of you with opposable thumbs will have no problem then flipping the two small latches that keep the lid unlocked long enough to toss your trash inside. Once the garbage is inside, the lid locks again as soon as it's lowered.

The trick to keeping grizzly and black bears from breaking in is a gravity-activated mechanism that keeps the lid locked if the trash can is tipped on its side. You – or a bear – can press on the paddles and latches from now till Sunday and the lid will remain locked as long as it's on its side.

- Rotational molded from LLDPE polyethylene with post recycled content.
- Double wall molded construction for strength on lid and upper section of this Bear Proof container.
- Bear Proof Container is compatible with fully and semi automated refuse collection equipment.
- Container is always locked at curb site until lifted by collection truck, unlocks automatically while being dumped.
- Bear Proof Container remains locked when knocked over preventing animal and wind intrusions.
- Lid and container interlock to prevent Grizzly bear attacks resulting in container being breached.
- Meets ANSI standards for 95 gallon containers.
- IGBC (Interagency Grizzly Bear Committee) certified, cert # 3356.



Proudly made in the USA.



From the container front as shown, locate latch openings below finger tabs.

Inside opening find the manual open lever (shown in red for clarity).

Push the lever towards the container until it stops and release to unlock latch.

After both latches are unlocked the lid may be opened.

Opening and reclosing the lid will relock the latches automatically.

Kodiak Bearproof Trash Can Features

Double Wall Rotationally Moulded One Piece Thick Lid!



Innovative and secure hinged lid design.

One piece of solid HDPE with unique locking mechanism keeps bears out of can.

Interlocking Lid and Container Keeps Grizzly Bears Out.



Lid and container interlock to prevent Grizzly bear attacks resulting in container being breached

Opening and reclosing the lid will relock the latches automatically.

**Smart and Clean Design
With No Moving Parts.**



64 or 96 Gallon Capacity,
12" rubber wheels for easy maneuvering

**The Simplest Of All Operations,
Easy To Open and Close**



Easy One Push Operations.
Heavy duty corners resist chewing.
Double wall molded construction for strength
on lid and upper section

**Fully Automated!
No Need To Unlock Can.**



This is the only fully automated bearproof garbage can on the market today.
There is no need for waste haulers or the homeowner to unlock the can before pick up.

Fully Automatic 96 Gallon Bear Proof Garbage Can				
Qty	Item	Description	1-9	10+
<input type="checkbox"/>	KOD196 Buy Now	96 Gallon Fully Automatic Bear Proof Can / Refuse Cart Height: 46.5 inches, Width: 29.0 inches, Depth: 37.2 inches Maximum load: 300 pounds or 136 kilograms Empty weight: 52 pounds assembled Scheduled to Ship End December For over 20 Qty, please call Seen this product for less?	359.00 319.00	349.00 309.00

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Exhibit "A"

City of Whitefish Solid Waste Collection Rates

Rate increase effective 10/1/2014

RESIDENTIAL CONTAINER RATES

Type/Size	Frequency - # of Containers and/or # of Pick-ups				
	1	2	3	4	5
Curbside Recycle	\$4.12				
1 Container	\$9.02	\$16.37	\$23.46	\$30.55	\$37.64
1 Bear Cart	\$11.19	\$20.22	\$29.23	\$38.25	\$47.26

COMMERCIAL CONTAINER RATES

For commercial rates, add number of businesses multiplied by \$5.50 for the admin charge

All commercial accounts that contract directly for service with a licensed private hauler due to specific needs (such as

Type/Size	Frequency - # of Containers and/or # of Pick-ups				
	1	2	3	4	5
300 Gallon	\$24.10	\$48.21	\$72.31	\$96.41	\$120.52
300 Gal Shared	\$12.05	\$24.10	\$36.16	\$48.21	\$60.26
1.5 Yard	\$50.03	\$100.06	\$150.10	\$200.13	\$250.16
1.5 Yd Shared	\$25.02	\$50.02	\$75.04	\$100.05	\$125.06
2 Yard	\$56.28	\$112.56	\$168.84	\$225.12	\$281.40
2 Yd Shared	\$28.14	\$56.28	\$84.42	\$112.56	\$140.69
2 Yard Bear	\$62.05	\$124.10	\$186.16	\$248.21	\$310.26
2 Yd Bear Shared	\$31.03	\$62.06	\$93.08	\$124.11	\$155.14
3 Yard	\$60.04	\$120.07	\$180.11	\$240.15	\$300.18
3 Yd Shared	\$30.01	\$60.03	\$90.04	\$120.06	\$150.07
3 Yard Bear	\$66.30	\$132.59	\$198.89	\$265.18	\$331.48
3 Yd Bear Shared	\$33.15	\$66.31	\$99.46	\$132.62	\$165.77
4 Yard	\$82.54	\$165.08	\$247.61	\$330.15	\$412.69
4 Yd Shared	\$41.27	\$82.54	\$123.81	\$165.08	\$206.35
4 Yard Bear	\$89.30	\$178.59	\$267.88	\$357.18	\$446.47
4 Yd Bear Shared	\$44.64	\$89.29	\$133.94	\$178.59	\$223.24
6 Yard	\$110.06	\$220.11	\$330.16	\$440.22	\$550.27
6 Yd Shared	\$55.03	\$110.05	\$165.08	\$220.11	\$275.14
6 Yard Bear	\$117.88	\$235.75	\$353.63	\$471.51	\$589.38
6 Yd Bear Shared	\$58.94	\$117.88	\$176.83	\$235.77	\$294.71
8 Yard	\$140.08	\$280.16	\$420.24	\$560.32	\$700.41
8 Yd Shared	\$70.03	\$140.07	\$210.10	\$280.14	\$350.17

GENERAL FEES

Special Pick-Ups (Off Route)	
Standard Cart - Per Lift	\$7.93
Bear Cart-Per Lift	\$9.82
300 Gallon-Per Lift	\$25.15
1.5 Yard-Per Lift	\$25.15
2 Yard-Per Lift	\$33.21
3 Yard	\$49.28
4 Yard	\$53.05
6 Yard	\$57.29
8 Yard	\$61.53

Extra Pick-up on Site Outside of Container	
Standard-Per Lift	\$7.93
Bear Cart-Per Lift	\$9.82
300 Gal-Per Lift	\$14.21
1.5 Yard-Per Lift	\$14.21
2 Yard-Per Lift	\$15.91
3 Yards-Per Lift	\$17.32
4 Yards-Per Lift	\$21.07
6 Yards-Per Lift	\$27.33
8 Yards-Per Lift	\$33.58

Exhibit "A"

GENERAL FEES-CONTINUED

Change from Regular Cart to Bear Cart	\$49.88	
New or Additional Cart:		
Regular Cart	\$66.95	
Bear Cart	\$110.21	
Cleaning of Carts:		
1st Cart	\$13.76	
Additional Cart	\$9.52	each
Delivery Fee-Change out 300g thru 8Yd	\$31.67	not applicable to new construction
Damaged Containers:		
Standard Cart	\$107.00	
Bear Cart	\$190.81	
300 Gal	\$540.90	
1Yd to 8Yd Refurbished	\$482.56	
Bear 1 Yd - 8 Yd	\$800.83	

CARDBOARD RATES

Type/Size	Frequency - # of Containers and/or # of Pick-ups				
	1	2	3	4	5
1.5 Yard	\$18.20	\$36.40	\$54.60	\$72.80	\$91.00
2 Yard	\$18.20	\$36.40	\$54.60	\$72.80	\$91.00
3 Yard	\$24.31	\$48.62	\$72.92	\$97.23	\$121.54
4 Yard	\$24.31	\$48.62	\$72.92	\$97.23	\$121.54
6 Yard	\$30.32	\$60.65	\$90.97	\$121.29	\$151.62
8 Yard	\$36.44	\$72.88	\$109.32	\$145.77	\$182.21

Cardboard Special Pick-ups

2 Yard	\$4.20	
3 Yard	\$5.61	
4 Yard	\$5.61	
6 Yard	\$7.00	
8 Yard	\$8.42	
	\$0.00	
Concrete Units	\$11.60	per month per unit
Locks	\$1.55	per month per lock

MWS bills customers directly who have compactors and cardboard recycling

Grass clippings need to be bagged and placed in cart - up to 3 bags only (single carts not 300 gal)

All overnight or weekly residential rental units shall be charged at commercial rates.

An admin fee is included in the Residential rate. The admin fee of \$5.50 per business is not included in the Commercial rate.

Extra collection charges for garbage outside of containers, special pickups, and cleaning of carts are charged the cost of collection billed to the City plus a \$1.00 administration fee. The \$1.00 is included in rate schedule.

Extra Pick-ups charges will be waived for two weeks after December 25 for residential pickups.

All new accounts requiring service at a location not previously served or accounts requesting additional cart(s) will be assessed a one-time charge of the cost of the cart(s) billed to the city plus a \$5.00 set-up fee. The \$5.00 fee is included in the rate schedule above.

Change from regular cart to bear cart, delivery fee for change out 300g thru 8yd, and damaged containers will be assessed the charge of the cost to the city plus a \$5.00 admin fee. The \$5.00 fee is included in the rate schedule.

Untitled Map

Write a description for your map.

Legend

- Baker Ave
- Darfur
- Feature 1
- Feature 2
- Feature 3
- Feature 4
- Feature 5
- How Big is this?
- Kangerdlugssuaq Glacier
- WV

Proposed site for cardboard bin

Proposed location for recycling bins

Existing containers

E 1st St

Central Ave

Google earth



City of Whitefish Recycling Container Proposed Locations



NO NAME

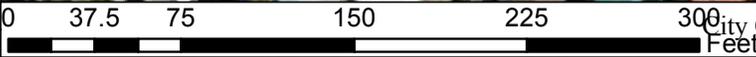
PARK AVE

RAILWAY ST

COLUMBIA AVE

SOMERS AVE

ALLEY



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CITY COUNCIL REGULAR MEETING AGENDA

The following is a summary of the items to come before the City Council at its regular session to be held on **Tuesday**, September 8, 2015, at **7:10 p.m.** at Interim City Hall, **1005 Baker Avenue**.

Ordinance numbers start with 15-16. Resolution numbers start with 15-38.

- 1) CALL TO ORDER
- 2) 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)
- 4) COMMUNICATIONS FROM VOLUNTEER BOARDS
- 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)
 - a) Minutes from the August 17, 2015 City Council executive session (p.23)
 - b) Minutes from the August 17, 2015 City Council special session (p.23)
 - c) Minutes from the August 17, 2015 City Council regular session (p.24)
 - d) Ordinance No. 15-15; An Ordinance amending Whitefish City Code Title 2, Chapter 12, regarding the membership qualifications for the Convention and Visitor Bureau Committee (Second Reading) (p.35)
 - e) Resolution No. 15-___; A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City a portion of a certain tract of land known as 1840 Baker Avenue, for which the owner has petitioned for and consented to annexation (p.38)
- 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)
 - a) None
- 7) COMMUNICATIONS FROM PLANNING AND BUILDING DIRECTOR
 - a) Resolution No. 15-___; A Resolution maintaining the cash-in-lieu payment in connection with affordable housing at the current \$8,000.00 per unit (p. 45)
- 8) COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR
 - a) Discussion of reconsidering proposed land transfer with John Hagg for land by the Skye Park Bridge and wastewater lift station (p.51)
- 9) COMMUNICATIONS FROM CITY MANAGER

- a) Written report enclosed with the packet. Questions from Mayor or Council? (p.57)
- b) Other items arising between September 2nd and September 8th
- c) Resolution No. 15- ____; A Resolution approving an amendment to the I.A. O'Shaughnessy Cultural Arts Center Building Lease between the City and the Whitefish Theatre Company (p. 62)

10) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

- a) Letter from Brad Seaman, Chair of the WAVE Board of Directors, regarding donation of private portion of O'Brien Avenue to the City (p. 75)

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



The following Principles for Civil Dialogue are adopted on 2/20/2007 for use by the City Council and by all boards, committees and personnel of the City of Whitefish:

- We provide a safe environment where individual perspectives are respected, heard, and acknowledged.
- We are responsible for respectful and courteous dialogue and participation.
- We respect diverse opinions as a means to find solutions based on common ground.
- We encourage and value broad community participation.
- We encourage creative approaches to engage public participation.
- We value informed decision-making and take personal responsibility to educate and be educated.
- We believe that respectful public dialogue fosters healthy community relationships, understanding, and problem-solving.
- We acknowledge, consider and respect the natural tensions created by collaboration, change and transition.
- We follow the rules and guidelines established for each meeting.

Adopted by Resolution 07-09
February 20, 2007

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September 2, 2015

The Honorable Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

Mayor Muhlfeld and City Councilors:

Tuesday, August 17, 2015 City Council Agenda Report

Reminder – meeting is at 1005 Baker Avenue!

There will be a special session on Tuesday at 5:15 p.m. an interview followed by a work session on various solid waste and recycling options.

The regular Council meeting will begin at 7:10 p.m.

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)

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- e) Resolution No. 15-___; A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City a portion of a certain tract of land known as 1840 Baker Avenue, for which the owner has petitioned for and consented to annexation (p. 38)

RECOMMENDATION: Staff respectfully recommends the City Council approve the Consent Agenda.

Items a-c are administrative matters. Items d and e are legislative matters.

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)

a) None

COMMUNICATIONS FROM PLANNING AND BUILDING DIRECTOR

a) Resolution No. 15-___; A Resolution maintaining the cash-in-lieu payment in connection with affordable housing at the current \$8,000.00 per unit (p. 45)

From Planning and Building Director Dave Taylor's staff report:

Section 11-2S-3(B)(1) of the code provides that the Cash-in-Lieu fees for affordable housing be reviewed annually by the City Council. Attached in the packet is a memo from Lori Collins, Director of the Whitefish Housing Authority, as well as a housing price index and a chart of lessee purchase prices and maximum unit subsidies. In 2008, the Council raised the per unit fee from \$6,000 to \$11,000. Later, it was reduced to \$8,000 by the council. The Housing Authority is recommending keeping the fee at the existing rate of \$8,000 per unit.

The Planned Unit Development District (PUD), Chapter 2, Title 11 of the Whitefish City Code, contains voluntary provisions that allow a 50% density bonus if affordable housing is provided at a rate of at least 10% of the project. Paragraph B.1 provides that the density bonus may also be taken by providing "cash-in-lieu" in an amount set by City Council resolution. That number is currently \$8,000 per unit.

An "affordable" unit is defined as one which can be purchased by someone earning up to 120% of the median family income in Flathead County, without being cost-burdened. Generally, a homeowner is considered cost-burdened when mortgage payments (PITI) exceed 30% of their monthly income. The Whitefish Housing Authority and the Whitefish Area Land Trust operate permanent affordable housing programs which buy down the price of a home to the affordable mortgage price. According to the numbers provided in the attached memo from the Whitefish Housing Authority, a payment in lieu amount of \$8,000 per market rate unit makes up 100% of the difference between an affordable mortgage and a market rate home mortgage.

Lori did say that she is likely to request an increase in that number next year.

RECOMMENDATION: Staff respectfully recommends the City Council adopt A Resolution maintaining the cash-in-lieu payment in connection with affordable housing at the current \$8,000.00 per unit.

This item is a legislative matter.

COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

- a) Discussion of reconsidering proposed land transfer with John Hagg for land by the Skye Park Bridge and wastewater lift station (p. 51)

From Senior Project Engineer Karin Hilding's staff report:

For some time the City and TD&H have been working with the Hagg family on a land transfer that would benefit both the Skye Park bridge and Birch Point lift station projects. Two exhibits of the proposed transfer areas are attached. One purpose of the land transfer would be to provide the contractor for the bridge project with additional working and staging area. Dick Anderson Construction is the contractor that was awarded the Skye Park Bridge project and they started construction this week. With the cranes and equipment needed to erect the bridge, Anderson Construction feels that this additional space is critical to the overall success of the project. They also stressed that one of the most critical things when working on a project is to be a good neighbor. With the vicinity of the work within the cul-de-sac and limited amount of space adjacent to the south abutment, this easement and land transfer will provide the Contractor an additional 20 feet of area to work within.

The exchange would also provide a large benefit to the City in providing the needed space for future maintenance or repair of the new Birch Point lift station. During construction of the lift station, it became very evident that there is very little room to work within. Much of the lift station work has been completed, but the project is currently on hold due to a delay in the arrival of the control panel. The pumps and control panel need to be installed and the system needs to be switched over from the old lift station to the new one. The new lift station is quite deep. When work needs to be done in the future on the wet well, this would provide the City with sufficient area to work within and potentially eliminate the need for costly shoring during excavation.

With the proposed exchange the Hagg family would receive a 3.24 foot wide easement along Lot 2 and a 3.24 foot strip of land along Lot 1. The City would receive an equal square footage of easement and property. The main benefit to the Hagg family is that it makes their eastern lot more usable. In exchange, the City would gain additional space for the current bridge project and future access for maintenance of both the bridge and lift station.

The main problem that the City had with the earlier land transfer agreement was a section providing access, a few times a year, to the Hagg's boat storage building that is located along the river. The City could not agree to provide access on the bike/pedestrian path since the property belongs to BNSF. The Hagg family has now agreed to remove any request for access to their boat storage building.

In discussions with Dick Anderson Construction they said that having this easement would be extremely beneficial to the project as the southern bridge abutment will be very close to the property boundary. They also stressed that having a neighbor that is working with us would be a great benefit to the project. They would be willing to deduct \$3,000 from this contract price if this would help make the proposal more acceptable to the Council.

Sandry Construction, the Birch Point lift station contractor, has agreed to pay for the costs of the land exchange. The cost for an amended plat is about \$2,500. Due to the major benefit to both the bridge project and future maintenance of the lift station, the Public Works Department is recommending that the Council approve staff proceeding with preparation of a land transfer agreement and resolution with the Hagg family.

RECOMMENDATION: Staff respectfully requests Council authorization to move forward with finalizing land transfer and easement agreements for the Hagg property.

This item is a legislative matter.

COMMUNICATIONS FROM CITY MANAGER

- a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 57)
- b) Other items arising between September 2nd and September 8th
- c) Resolution No. 15- ___; A Resolution approving an amendment to the I.A. O'Shaughnessy Cultural Arts Center Building Lease between the City and the Whitefish Theatre Company (p.62)

The City of Whitefish entered into an original land lease for the site where the O'Shaughnessy Center is located in 1995 after the City had acquired the land from BNSF. In 2001 the lease was amended to reflect the construction of the O'Shaughnessy Center. The lease was again amended to reflect changing conditions on December 7, 2005 and December 2, 2009.

When the City built the public bathrooms for Depot Park on to the south side of the O'Shaughnessy Center in 2014, Whitefish Community Theatre requested that we pay for the proportionate share of their electric, natural gas, water, and sewer utilities for the public bathrooms. Earlier this year we paid the first six month pro-ration of the utility bills. In estimating a pro-ration for a full year of utilities for the bathrooms, Gayle MacLaren, WCT Executive Director, and I estimated the annual cost at \$2,400. That estimate is just about the same as the annual water bill for the entire O'Shaughnessy Center, so I suggested that the City just take over paying for their annual water bill and Gayle would not have to do all the tracking, comparing, and pro-rating of all the utility bills. Gayle and the WCT Board thought that was a great idea. The WCT Board has approved this amended lease.

So the attached amended lease that we are proposing would do just that – the City would take over paying for the monthly water bills for the entire O'Shaughnessy Center

and WCT would continue paying for the natural gas, electricity, and sewer/garbage for the entire building.

The current annual cost is estimated at \$2,400. This cost would be absorbed by the Parks and Recreation Department which has responsibility for the Depot Park bathrooms.

RECOMMENDATION: Staff respectfully recommends the City Council approve a Resolution approving an amendment to the I.A. O'Shaughnessy Cultural Arts Center Building Lease between the City and the Whitefish Theatre Company.

This item is a legislative matter.

COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

- a) Letter from Brad Seaman, Chair of the WAVE Board of Directors, regarding donation of private portion of O'Brien Avenue to the City (p.75)

ADJOURNMENT

Sincerely,

A handwritten signature in blue ink that reads "Chuck".

Chuck Stearns, City Manager

"Cheat Sheet" for Robert's Rules

Motion	In Order When Another has the Floor?	Second Required?	Debatable?	Amendable?	Vote Required for Adoption	Can be reconsidered?
Main Motion	N	Y	Y	Y	Majority unless other spec'd by Bylaws	Y
Adjournment	N	Y	N	Y	Majority	N
Recess (no question before the body)	N	Y	N	Y	Majority	N
Recess (question before the body)	N	Y	Y	Y	Majority	N
Accept Report	N	Y	Y	Y	Majority	Y
Amend Pending Motion	N	Y	If motion to be amended is debatable	Y	Majority	Y
Amend an Amendment of Pending Motion	N	Y	See above	N	Majority	Y
Change from Agenda to Take a Matter out of Order	N	Y	N	N	Two-thirds	N
Limit Debate Previous Question / Question	N	Y	N	Y	Two-thirds	Yes, but not if vote taken on pending motion.
Limit Debate or extend limits for duration of meeting	N	Y	Y	Y	Two-thirds	Y
Division of Assembly (Roll Call)	Y	N	N	N	Demand by a single member compels division	N
Division of Ques/ Motion	N	Y	N	Y	Majority	N
Point of Information	Y	N	N	N	Vote is not taken	N
Point of Order / Procedure	Y	N	N	N	Vote is not taken	N
Lay on Table	N	Y	N	N	Majority	N
Take from Table	N	Y	N	N	Majority	N
Suspend the Rules as applied to rules of order or, take motion out of order	N	Y	N	N	Two-thirds	N
Refer (Commit)	N	Y	Y	N	Majority	Neg. vote only

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WHITEFISH CITY COUNCIL
CLOSED EXECUTIVE SESSION
AUGUST 17, 2015
5:30 P.M. to 6:45 P.M.

Closed Session pursuant to §2-3-203(4) MCA, Quarterly litigation update and strategy with City Attorney. Present were Mayor Muhlfeld, Councilors Barberis, Frandsen, Fitzgerald, Hildner, Feury and Sweeney. Staff present were City Attorney Jacobs and Office Intern Maresa Jenson, City Manager Stearns, Planning and Building Director Taylor and Senior Planner Compton-Ring. The meeting was called to order at 5:30 p.m. and adjourned at 6:35 p.m.

WHITEFISH CITY COUNCIL MINUTES
AUGUST 17, 2015
SPECIAL SESSION, 6:45 TO 7:00 PM

1. Call to Order

Mayor Muhlfeld called the meeting to order. Councilors present were Sweeney, Hildner, Fitzgerald, Frandsen, Barberis and Feury. City Staff present were City Manager Stearns and City Clerk Lorang.

2. Interviews

The Mayor and Council interviewed applicant Alison Young, applicant to fill the remainder of a term on the Whitefish Housing Authority Board.

3. Public Comment – None.

4. Appointments

Mayor Muhlfeld appointed Alison Young to the Whitefish Housing Authority Board to fill the remainder of a term expiring December 31, 2017. Council gave unanimous consensus.

5. Adjournment - Mayor Muhlfeld adjourned the Special Session at 6:58 p.m.

Mayor Muhlfeld

Attest:

Necile Lorang, City Clerk

WHITEFISH CITY COUNCIL

August 17, 2015

7:10 P.M.

1) CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Barberis, Frandsen, Feury, Sweeney, Fitzgerald and Hildner. City Staff present were City Manager Stearns, City Clerk Lorang, City Attorney Jacobs, Finance Director Smith, Planning and Building Director Taylor, and Police Chief Dial. Senior Planner Compton-Ring and Attorney's Office Intern Maresa Jenson were in the audience. Approximately 15 people were in the audience.

2) PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Ben Cavin 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)

David Boye, 1040 E. 2nd Street, said he was representing the Board of Directors of the Whitefish Chamber of Commerce and here to observe the Council for actions on business matters and economic development within the community.

Joan Vetter Ehrenberg, 744 Hidden Valley Drive, thanked the Mayor and Council for their service. She spoke to the dog feces and other litter that makes the streets of Whitefish such a mess and encouraged them to discuss better enforcement as an agenda item sooner than later.

4) COMMUNICATIONS FROM VOLUNTEER BOARDS

Rebecca Norton, 530 Scott Avenue, gave a report as a member of the Whitefish Local Government Study Commission, and distributed some of her notes and research to the Council which has been appended to the packet. She said the Committee is wrapping up their work, another Public Meeting is scheduled for this Wednesday at 7:00 p.m. in the City Hall Council Chambers. She said pay for the Mayor and Council was an item discussed, but it is not an item the Committee has approved for a ballot measure this time and she urged the Council to carry that Charter Amendment forward if that is their desire. The Committee also had discussions of proposing neighborhood councils on the ballot, or bringing wards back; but in the end they decided not to place either of those on the ballot at this time. They will be putting together their ballot language following their next public hearing.

a) Ordinance No. 15-15; An Ordinance amending Whitefish City Code Title 2, Chapter 12, regarding the membership qualifications for the Convention and Visitor Bureau Committee (First Reading) (p. 23) (CD 6:04)

Rhonda Fitzgerald, 412 Lupfer Avenue, serves on the Convention and Visitor Bureau Committee (WCVB). She thanked the Mayor and Council for their volunteer service to the community and said she wasn't sure about a change to the Charter for making their positions paid; she didn't think the community could afford to pay them enough for all their time and effort. The WCVB Committee has reviewed the amendments proposed in the subject ordinance. Following the City's loss of the extra-territorial zoning jurisdiction, which was the WCVB's membership

boundary, the WCVB Committee considered other boundaries including Whitefish City Limits, Whitefish School District #44, and the 59937 Zip Code. She had a map prepared by the City's GIS Technician showing those three different boundaries and distributed them to the Council. That map has been appended to the packet. After consideration, it is the WCVB Committee's recommendation to have the 59937 Zip Code as the membership boundary; of all the options it is the best match that will include their current members. The change will affect only a handful of their current members. Upon adoption of this amended ordinance, the WCVB Committee will change their By-Laws accordingly.

Councilor Frandsen recused herself on any discussion and decision on this ordinance. She owns Old Town Creative, the agency of record for the Whitefish CVB.

Councilor Feury made a motion, second by Councilor Sweeney, to approve the first reading of Ordinance No. 15-15; An Ordinance amending Whitefish City Code Title 2, Chapter 12, regarding the membership qualifications for the Convention and Visitor Bureau Committee. The motion passed with five (5) ayes and Councilor Frandsen abstaining.

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)

- a) **Minutes from the August 3, 2015 City Council regular session (p. 32)**
- b) **Ordinance No. 15-13; An Ordinance rezoning approximately 3.6 acres of land located adjacent to Reservoir Road and Wheeler Lane, to become a part of 1735 East Lakeshore Drive, Section 24, Township 31 North, Range 22 West, Whitefish, Montana, from County RR-1 (Low Density Resort Residential) to City WRR-1 (Low Density Resort Residential District) and adopting Findings with respect to such rezone. Staff Report WZC 15-02. (Second Reading) (p. 38)**
- c) **Ordinance No. 15-14; An Ordinance rezoning approximately 9.99 acres of land located at 325 Monegan Road, Section 5, Township 30 North, Range 21 West, Whitefish, Montana, from County SAG-10 (Suburban Agriculture) to City WA (Agricultural District) and adopting Findings with respect to such rezone. Staff Report WZC 15-01. (Second Reading) (p. 41)**
- d) **Consideration of approving an application from Steven and Stacie Gorder for Whitefish Lake Lakeshore Permit (#WLP-15-W25A) at 1716 West Lakeshore Drive for removal of 285 Square feet of boathouse with hand tools and restoration of removal area with gravel fill, install new façade and stacked rock foundation under front of boathouse subject to 20 conditions (p. 44)**
- e) **Consideration of approving application from J. Richard Bevill for a final plat for the 407 Colorado Avenue subdivision located at 407 Colorado Avenue (p. 62)**
- f) **Consideration of approving a boundary line adjustment (exempt from subdivision review) for Dear Tracs subdivision at 6438 Hwy 93 South to provide the required right-of-way for Baker Avenue that was a condition of the Hampton Inn and Suites project approval (p. 96)**
- g) **Resolution No. 15-24; A Resolution indicating its intent to change the name of Third Street west of State Park Road in Patton's Subdivision to Salmon Run (p. 98)**
- h) **Consideration of City Clerk's request to correct City Council minutes from July 20, 2015 meeting (p. 101)**

Councilor Sweeney made a motion, second by Councilor Barberis, to approve the Consent Agenda as presented. 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)

- a) **Ordinance No. 15-12; An Ordinance setting forth the formula to be used in determining assessments for properties in a proposed Special Assessment District to finance a portion of the costs of a downtown parking structure and calling a public hearing thereon (Second Reading) (p. 105) (CD 12:20)**

Mayor Muhlfeld explained that separate public hearings will be conducted for each of items 6a and 6b, but they both relate to the proposed creation of a special assessment district that will pay part of the costs of the downtown parking structure; so Council's actions on either one or both of these items will follow those public hearings.

City Manager Stearns started his report from his staff report in the packet that starts on page 118. Subsequent to the Council's decision on May 20, 2013, approving structured parking with a city hall; the Council asked staff to bring back a report on the feasibility and information for the creation of a BID. His staff report includes details on the creation of the BID/Assessment District working group that was formed and met a number of times and held work sessions with the Council on possible BID/SID options. Part of the work done by that group was reviewing the City's past Parking SID that ran with subject properties from 1995 through the 2015 taxes for three downtown surface parking lots. The working group considered the assessment method of that SID while determining the best way to approach a new BID or SID. At a work session on March 17, 2014, the Council gave direction to pursue the SID instead of a BID; and after considering all the variables for assessments as allowed by State Law, gave direction for using four of the variables for assessment. Those variables to be included in the methodology are:

- 1) Distance from Parking Structure
- 2) Square footage of floorspace in any improvement on the parcel
- 3) Credit for on-site parking provided for business
- 4) Commercial use of the property

At a work session on September 2, 2014 the Council gave direction to establish two rectangular tiers, Tier 1 and Tier 2, for the basis of the assessment related to a property's distance from the parking structure. A final work session with the Council was held on March 2, 2015, for Council's review of the working group and staff's proposal where they could see the assessment spreadsheet framework and calculations, the nearly final assessment levels, a map of the district with the two tiers; and it was a time that the Mayor and Council to issue final directions to proceed with the process to create the SID. Upon Council's approval of the creation of this special improvement district on the parking structure; assessments do not go onto the property taxes until the structure is available for use, which could be in 2017.

Tonight's Council Agenda items follow their action on July 20, 2015 when they approved Resolution 15-21, the Intent to create Special Improvement District 167; declaring it to be the intention of the City Council to create the district for the purpose of undertaking certain local improvements and financing the costs thereof and incidental thereto through the issuance of Special Improvement District Bonds secured by the City's Special Improvement District Revolving Fund. That resolution also called for this official public hearing tonight, August 17, 2015, and required that mailed notice of tonight's public hearing is given to property owners in the district and that a legal notice is published. Resolution 15-21 included a map of the district with two tiers of assessments, legal descriptions of each tier and the district, and the 41-page assessments spreadsheet with each property listed and whether it is assessed or exempt, along with the assessment information. On July 21st, staff followed up mailing the notices as required above, along with a cover letter of explanation, to a total of 491 properties in the district. The assessment spreadsheet showed assessments for 194 properties; and 297 properties are exempt from assessments at this

time. Manager Stearns explained that the status of properties could change – as vacant properties are developed for commercial use they can be changed from exempt properties to assessed properties. In addition, if a property’s use changes: i.e. from residential to commercial, it will change from exempt to assessed. The status of each property in the district will be reviewed by staff each year. The cover letter explained that properties had the right to submit written protest and deliver to the City Clerk not later than 5:00 p.m. M.D.T., on Thursday, August 13, 2015. Copies of the published notices and a sample of letters sent out are included in the packet. The City Clerk has a tally on those written protests that she will report on later in this report. The Council can also hear protests from the public during the public hearings tonight. During the protest period the city learned of a couple errors in assessment calculation which can be corrected, but it won’t change the overall methodology of assessments; a list of those errors are included in the packet. After discussion with the Bond Counsel and our City Attorney, it was decided that, because we expect everyone’s assessments will go down from what is proposed in the Resolution when it is first assessed in two years because of new developments adding square footage and being assessed (City Hall, the hotel on Block 46, the Galleries building, etc.) no additional notification will be required. Also, on July 20, 2015, the Council approved the first reading of Ordinance 15-12 which set forth the formula to be used in determining assessments for properties in a proposed Special Assessment District to finance a portion of the costs of a downtown parking structure and called a public hearing thereon.....said public hearing to be held on August 17, 2015. The financial requirement, the basic sizing and debt service calculation is itemized on page 121 in the packet. The total SID Bond is \$880,000 and the annual Debt Service is \$67,651 over a 20-year period if assessed at 4.5%. Agenda Item 6a is the second reading of said ordinance.

City Clerk Lorang reported the City received seven (7) letters of protest by the 5:00 p.m. deadline on Thursday, August 13, 2015, representing a principal amount of 6% of the total principal to be assessed.

Mayor Muhlfeld opened the public hearing on the second reading of Ordinance 15-12.

Joan Vetter Ehrenberg, 744 Hidden Valley Drive, spoke in support of constructing a City Hall and Parking Structure on this same block that City Hall now occupies; and expressed her appreciation for all the hard work over long hours spent by staff and council to bring this project to fruition. She supported approval of all the necessary resolutions and ordinances, she supported the SID and the assessment methodology, and she encouraged the use of recycled materials. She said brick is expensive, maybe we should consider wood. And save the tree in the park behind City Hall.

There being no further public comment, Mayor Muhlfeld closed the public hearing and asked the Council if they have any questions before moving onto the next public hearing for the resolution to create the special improvement district. Hearing none, Mayor Muhlfeld requested the staff report for the next item.

- b) Resolution No. 15-25; A Resolution relating to Special Improvement District No. 167; Creating the District for the purpose of undertaking certain local improvements and financing the costs thereof and incidental thereto through the issuance of Special Improvement District Bonds secured by the City’s Special Improvement District Revolving Fund (p. 131) (CD 38:55)**

Manager Stearns said the report he had just given for the Public Hearing Agenda No. 6a is appurtenant to both of these public hearings. The Resolution is different from Ordinance 15-12 in that it creates the special improvement district and will assess properties per the methodology as set out in the Ordinance. The Resolution creates the district, its boundaries, records the number of

protests received, and provides for issuance of bonds with the security of the revolving fund; and completes the process of creation of the special improvement district as prescribed by law.

Mayor Muhlfeld opened the public hearing on Resolution 15-25; and there being no public comment, Mayor Muhlfeld closed the public hearing and turned Agenda Items 6a and 6b over to the Council for their consideration.

Discussion followed regarding uses of property and determination of commercial uses and the requirement of annual review of those uses each year by staff. In addition to the limited information included on City Business Licenses, staff has utilized information from the Department of Revenue on tax records to assist in figuring the level of commercial use.

Councilor Hildner made a motion, second by Councilor Frandsen, to approve Ordinance No. 15-12; An Ordinance setting forth the formula to be used in determining assessments for properties in a proposed Special Assessment District to finance a portion of the costs of a downtown parking structure and calling a public hearing thereon, Second Reading. The motion passed unanimously.

Councilor Hildner made a motion, second by Councilor Frandsen, to approve Resolution 15-25; A Resolution relating to Special Improvement District No. 167; Creating the District for the purpose of undertaking certain local improvements and financing the costs thereof and incidental thereto through the issuance of Special Improvement District Bonds secured by the City's Special Improvement District Revolving Fund. The motion passed unanimously.

- c) **FY16 Budget, Tax Levy, and Assessments Public Hearing: (CD 46:10)**
 - i) **Resolution No. 15-26; A Resolution accepting and approving the Municipal Budget for the City of Whitefish for the 2016 Fiscal Year Commencing July 1, 2015, in its final form (p. 193)**
 - ii) **Resolution No. 15-27; 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 2016 fiscal year (p. 316)**
 - iii) **Resolution No. 15-28; 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. 319)**
 - iv) **Resolution No. 15-29; A Resolution levying and assessing a tax on 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. 321)**
 - v) **Resolution No. 15-30; A Resolution levying and assessing a tax on 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. 323)**
 - vi) **Resolution No. 15-31; 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. 325)**

- vii) **Resolution No. 15-32; 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 Stormwater Improvement and Maintenance District (p. 327)**
- viii) **Resolution No. 15-33; A Resolution levying and assessing a tax on each lot or parcel of land in the City lying within the boundaries of Special Improvement District No. 155 to defray the cost of creation of said District and of the improvements therein (p. 329)**
- ix) **Resolution No. 15-34; 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. 330)**
- x) **Resolution No. 15-35; 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; and for the removal of ice, snow, slush or other impediments pursuant to Title 7, Chapter 2, of the Whitefish City Code (p. 331)**
- xi) **Resolution No. 15-36; A Resolution levying and assessing costs from certain properties within the City for the collection of utility service charges pursuant to Title 8, Chapter 1, of the Whitefish City Code (p. 333)**

Mayor Muhlfeld said, as in past years, we will hold one public hearing on the FY16 Budget and related resolutions listed under Public Hearing 6c; and requested the staff report.

Manager Stearns said starting on packet page 190 are copies of the required public notices that were published according to state law and he reviewed the list of tonight's resolutions as listed in items i through xi above. Page 210 in the packet includes a graph of mills taxed from 2006 to 2015, and the proposed mills for 2016. The City's mill rate this year is a reflection of the State's reappraisal process which lowered the City's taxable value. The City's total mills are going up 13.64 from last year, an 11.31% increase; that doesn't mean that each person's property taxes goes up 11.31% because it depends on what happened to each property during reappraisal. Some property values were increased, some were decreased; so some properties could be paying the same or less taxes to the City this year, even with our mill increase. It is different for each property so it is difficult to monitor, but overall, the City is only collecting 3.85% more this year in property tax revenue, because of the reappraisal. The 3.85% increase is not extraordinary, but within the standards of normal growth from new development and increased valuations. He said the extraordinary factor this year is the State's reappraisal. He advised property owners, when they get their tax notice, instead of looking at mills taxed, look at the bottom line for the total taxes paid to the City in 2015 and compare to that total on their 2014 tax notice, or the totals for their School District, or to the County, to see if the reappraisal affected their property. We do anticipate that property owners will see a small tax increase, but it should be in line with a typical annual 4% growth. Manager Stearns continued with his report on the list of resolutions and explained the increases in the Lighting District in the business area and in the assessments for the Parkland and Greenway Maintenance District.

A short discussion followed regarding a typical increase on the Parkland/Greenway District.

Mayor Muhlfeld opened the public hearing. There being no public comment, Mayor Muhlfeld closed the public hearing and turned the FY16 Budget Resolution along with related resolutions for the property tax and assessments levies over to the Council for their consideration.

Councilor Feury made a motion, second by Councilor Fitzgerald, to approve Resolutions No. 15-26 through and including Resolution No. 15-36, the eleven (11) Resolutions approving the FY16 budget and the property tax and assessments levies.

Prior to action on the motion Councilor's Hildner and Feury complimented the staff on their hard work; there were tough challenges they had to face and conquer to build a balanced budget this year, meeting demands from the public and the Council without a high impact on property taxes this year and their hard work is appreciated. What looked to be almost insurmountable turned out better than it appeared at first. On a question regarding total tax increase to a property owner, Manager Stearns explained it is all dependent on the property's reappraisal, as shown in an example on page 201 in the packet; a 3.85% increase could result in an approximate \$50 increase, but all properties will be different.

The motion passed unanimously.

7. COMMUNICATIONS FROM PLANNING AND BUILDING DIRECTOR

- a) Consideration of an application from Jeff Swenson of Dear Tract Residences for a preliminary plat of a minor subdivision at 6348 Hwy 93 South.**
(Staff Report WPP 15-05 (p. 336) (CD 1:04:06))

Senior Planner Compton-Ring reported this is a 2-lot minor subdivision which requires a public meeting, not a public hearing; and it does not require review by the Planning Board so the report and recommendation is coming from the Planning Department directly to the Council. The subject property is included on the land that received PUD approval from the Council last March for the Montana Development Group to construct a 60-unit apartment project, but the PUD did not include the dry cleaner building located on the eastern portion of the property. This request for the preliminary plat approval splits off the dry cleaner building to its own individual lot, Lot 2 of this new plat. Eventual access to both the dry cleaner and the apartments will be the new east-west public road that the Development Group will build with their project. Currently there is a drive-up coffee stand that sits on the larger Lot 1 that will be the apartments, and it will remain on Lot 1 until removed or relocated when the road construction commences and the apartments are developed. The required public notice was posted on the property and mailed to adjacent land owners as required, and no public comments have been received. Staff found the preliminary plat to be in compliance with all required review as listed in the staff report. Staff recommends approval subject to seven (7) conditions of approval which Planner Compton-Ring said are basic and standard conditions.

Councilor Frandsen made a motion, second by Councilor Barberis, to approve the Preliminary Plat of Whitefish Crossing, subject to the seven (7) conditions of approval, according to the Staff Report WPP 15-05 that is included in the packet. The motion passed unanimously.

8) COMMUNICATIONS FROM CITY MANAGER (CD 1:07:55)

- a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 364)**

Councilor Sweeney asked Manager Stearns about the Resort Tax Collections in his report, and why he thought they were down in June by 4.1%; and Manager Stearns said there are some delinquencies, which he tracks, but said Finance Director Smith meets with the Committee and asked if she had other analysis. She agreed that for the Bar/Restaurants and Lodging the reduction is probably due to delinquencies. But in the Resort Tax Monitoring Committee meetings they are hearing from Retail that their business is down, especially from their Canadian market. Her feeling is that Retail is strong and we should see it come back. Manager Stearns referred to the chart on page 365 and said it shows collections this year seem to be more variable, going up and down, than historic collections; he is not sure why, but agrees with Director Smith – it is a busy time of the year and some businesses don't get their reports and payments in on time. There is a penalty for late reports and payments. Councilor Frandsen added that these same numbers were reviewed at a WCVB meeting; and they took into consideration that June was one of our hottest months on record. When the weather is hot, retail tends to go down while Bar/Restaurants and Lodging businesses get increased activity.

Mayor Muhlfeld commented on the Manager's report. He expressed his appreciation for the Police Union approving a three-year collective bargaining agreement; and a reminder the City Hall Steering Committee will be meeting this Friday (August 21st) at 8:30 am in the Council's Conference, which is open to the public and the entire Council.

b) Other items arising between August 12th and August 17th

Manager Stearns noted the Mayor and Council's appreciation to all staff as they were involved in the budget process, and he wanted to again thank Finance Director Smith for her work during preparation of the FY16 Budget. This is her second year with this process, however this year she got in on the whole process. She dove right in and undertook the project and with her finance expertise she was invaluable to him, as he had his attention split by so many other ongoing projects. He pointed out this is the last Council meeting at this site; the next Council meeting on September 8th will be at 1005 Baker Avenue in the City's temporary offices. Council meetings have been held at this location for 97 years, and will again be at this site in 18 to 24 months at the completion of a new city hall building.

c) Consideration of approving a contract with Martel Construction for the construction of the City Hall and Parking Structure project (p. 366) (CD 1:16:10)

Manager Stearns said Steve Conway from Martel Construction is in the audience if there are questions for him, as well as our owner's representative, Mike Cronquist, if there are any questions for him. The staff report covers the history and background that led up to the Council selecting Martel Construction as the City's General Contractor/Construction Manager (GC/CM) at their January 20, 2015 meeting. A contract was drawn up and reviewed by our City Attorney and sent to Martel Construction for their review. Martel Construction proposed some changes which have been reviewed by himself and the City Attorney, and all parties have agreed to the contract that is included in tonight's packet. The main aspects of the contract are listed on page 367 in the packet, and the contract follows the staff report. The Guaranteed Maximum Price (GMP) will be determined once construction drawings are finished. There are initially three financial components to this contract; the City Hall and Parking Structure Construction Fund will pay these costs. Most of that fund comes from the Tax Increment Funds that have been set aside historically or from the upcoming TIF revenue bond which First Interstate Bank and Glacier Bank have agreed to underwrite. The SID 167 that was just approved by the Council tonight will provide \$750,000

toward the cost of the Parking Structure. Property taxes are not raised for or increased for this construction of a City Hall with a Parking Structure.

Councilor Frandsen made a motion, second by Councilor Sweeney, to approve a construction contract with Martel Construction as the GC/GM for the future City Hall/Parking Structure project and authorize the City Manager to sign the contract. (Councilor Feury said the future is now and this can now be called the City Hall/Parking Structure project). **The motion passed unanimously.**

- d) Consideration of approving an amendment to the contract with Martel Construction for the first three guaranteed maximum price contracts for abatement of hazardous materials (asbestos), demolition of the five buildings on the City Hall half block, and construction of the rammed aggregate piers foundation system (p. 441)**

Manager Stearns said the history and background in the staff report for Item 6d is very similar to the one for Item 6c; the Martel Construction contract just approved by Council is a boiler-plate overall construction contract, and there will be a number of amendments along the way. This 1st Amendment includes Martel Construction's General Conditions, and they will proceed with the asbestos abatement of existing buildings (beginning September 8th), demolition of existing buildings (beginning in October), and will begin the foundation with rammed aggregate piers (following demolition and cleanup). 388 piers; 3' wide holes and 14' deep. A diagram of this structural system is in the packet on page 443. Martel Construction has taken and opened bids, bids will be awarded to the lowest responsible bid. In addition to cost of these services, Martel Construction is entitled to indirect costs of liability insurance and the 1% Gross Receipts Tax, their 4.5% construction fee and contingency. Martel's submittal for Amendment #1 is included in the packet starting on page 445 and has been reviewed and found proper by our architect Ben Tintinger and our Owner's Representative Mike Construction for \$1,401,565.00 GMP for Amendment #1.

Councilor Frandsen made a motion, second by Councilor Feury, to approve Amendment #1 to the construction contract with Martel Construction as the GC/CM for the City Hall/Parking Structure project, in the amount of \$1,401,560.00 GMP for asbestos abatement and demolition of the five existing buildings on the City Hall half block, and construction of the rammed aggregate piers foundation system and Martel's General Conditions part of their proposal; and authorize the City Manager to sign the Amendment.

Council had some questions for Steve Conway, Martel Construction, which he answered. Many of the Council's questions related to and would fall under Martel Construction's General Conditions and Requirements, including fencing off the construction site and providing pedestrian walkways. Manager Stearns said he and Owner's Representative Mike Cronquist have already starting visiting downtown business with information regarding how the site will be closed off with commencement of this project. E. 1st Street will be closed for a half block from Baker Avenue to the alley, with only the sidewalk open on the north side of E. 1st Street, then there will be the pedestrian tunnel on E. 2nd Street. Baker Avenue will not have a pedestrian walkway next to the construction site, pedestrians will have to use the sidewalk on the west side.

The motion passed unanimously.

- e) Resolution No. 15-37; A resolution declaring certain property to be unneeded and obsolete, and authorizing the disposal of such property (p. 471)**

Manager Stearns said this resolution includes an itemized list of all items that will be up for sale at an auction to be held Saturday, September 5th, starting at 9:00 a.m. In addition to those items listed, there is a “catch all” phrase.... “Any other furniture, fixtures, equipment, and supplies left over after City Hall is vacated”, as some of those items may not be determined until moving day. Items purchased at the option must be removed by the following Monday by 5:00 p.m., unless special arrangements are made. On Tuesday, September 8th, Martel Construction takes over the site. The City has put an ad in The Pilot and produced a flyer, and the auctioneer is doing some advertising of his own.

Councilor Feury made a motion, second by Councilor Frandsen, to approve Resolution No. 15-37; A resolution declaring certain property to be unneeded and obsolete, and authorizing the disposal of such property. The motion passed unanimously.

9. COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS (CD 1:40:13)

- a) **Letter from Montana West Economic Development Corporation requesting partnering or co-sponsoring a “Summit” meeting on affordable workforce housing on September 24th (p. 428)**

Manager Stearns said they are looking for participatory support as well as any financial support that is possible, up to a maximum of \$250. He thought this was a kick-off and renewed focus on affordable housing issues. Mayor Muhlfeld said he would support a financial contribution in support of this summit from the City if the Council agreed; and the Council showed consensus.

- b) **Consideration of approving a letter to submit as comments on the Environmental Impact Statement for the Tongue River Railroad project in eastern Montana (p. 483)**

Councilor Hildner made a motion, second by Councilor Fitzgerald, to approve the letter for submission as comments on the Environmental Impact Statement for the Tongue River Railroad project in eastern Montana. The motion passed unanimously.

Council Comments:

Councilor Sweeney said probably one of the most important job for the Council, and least known publically because of low turnout at the Council meeting, is the annual budget which was particularly difficult this year because of the reappraisal and reduction in property values and he said Manager Stearns did such a good job of dissecting it for Council and working with them toward solutions. He agreed with Councilor Feury’s comment that it turned out that we were in a little better shape than we thought initially.

Councilor Feury noted his surprise that we get so little public participation during the annual budget hearings; so he wanted to give special recognition to two people who are not with us any longer but always showed up for budget hearings. Ben Cohen, who always came to talk about SID 132 which is now known as our street maintenance assessment; and Jack Garrity, who always showed up complaining about someone leaning on a shovel and thought we paid city employees too much. He also commented about this being the last meeting in this city hall; he has been present at almost 16% of the 97 years of meetings here, both upstairs and down, and part of him will miss it. He said the downstairs Council Chambers was very cramped, but we had some great meetings down there and over the 97 years some very good and positive work has been done by all the Councils who volunteered a lot of their time, and bore the brunt of a beating once in a while. But for all those volunteers, elected officials and staff who have dedicated their time and efforts for the community

– he takes his hat off to all of them because they have made this a better place.

Councilor Hildner agreed and thanked Andy, and said we are witnessing history in the making, it is pretty exciting to see it all come together. He thanked Heidi Desch for her article in the paper encouraging property owners to water their trees; and he reiterated his comments about those trees in the boulevards needing water.

Councilor Frandsen thanked the staff for their hard work on the budget, it is much appreciated. She asked about the progress on our Water Rate Study and Director Smith said the consultants have gathered a lot of information from staff and it looks like they are on track to give their first report to Council in November and wrapping up before January. Lastly, acknowledging that this is the last Council meeting in this facility, she said after spending more time here and realizing the condition of this facility, she is looking forward to providing a better place for staff to work in. She thanked staff for hanging in there through this long process.

Mayor Muhlfeld asked Manager Stearns what the Study Commission is considering taking to the voters. Manager Stearns said they are still formulating their ballot language, but based on earlier conversations he thinks they are proposing a municipal ombudsperson which would serve at the will of the council, and some housekeeping items; one for instance, that the city administrator may delegate a designee to attend Planning Board meetings in his, (or her) stead. Those are the only two he and City Clerk Lorang were aware of.

Mayor Muhlfeld said the city would be welcoming new Public Works Director Workman on his first day of work, August 24th. Also next week, the first edition of the revived City Newsletter will be circulated in the mail with utility bills. He thanked those who contributed to articles for this first test run.

10. ADJOURNMENT (Resolution 08-10 establishes 11:00 p.m. as end of meeting unless extended to 11:30 by majority)
(CD 1:50:26)

Mayor Muhlfeld adjourned the meeting at 9:03 p.m.

Mayor John M. Muhlfeld

Attest:

Necile Lorang, Whitefish City Clerk

ORDINANCE NO. 15-15

An Ordinance of the City Council of the City of Whitefish, Montana, amending Whitefish City Code Title 2, Chapter 12, regarding the membership qualifications for the Convention and Visitor Bureau Committee.

WHEREAS, the City Council established the seven-member Convention and Visitor Bureau Committee as a standing committee by Ordinance No. 06-05, adopted on March 20, 2006; and

WHEREAS, the City Council expanded the membership of the Convention and Visitor Bureau Committee from seven to up to nine members on July 2, 2012, by Ordinance No. 12-10; and

WHEREAS, Section 2-12-3(A) provides that at least seven members of the Convention and Visitor Bureau Committee shall reside within the City of Whitefish zoning jurisdiction, which no longer exists; and

WHEREAS, the Convention and Visitor Bureau Committee desires to amend Subsections 2-12-2(H) and (J) and 2-12-3(A), and the Committee's By-Laws to remove the requirement to reside in or own a business located in the Whitefish zoning jurisdiction; and

WHEREAS, at a lawfully noticed hearing on August 17, 2015, the Whitefish City Council received an oral report from the members of the Convention and Visitor Bureau Committee, and revised and approved the requested amendment to Subsections 2-12-2(H) and (J) and 2-12-3(A); and

WHEREAS, it will be in the best interests of the City of Whitefish and its inhabitants to accept the requested amendment.

NOW, THEREFORE, be it ordained by the City Council of the City of Whitefish, Montana, as follows:

Section 1: Subsection 2-12-2(H) and (J) and 2-12-3(A) are hereby amended in its entirety to provide as follows:

2-12-2: **PURPOSE, POWERS, PROCESSES AND DUTIES:** The purpose and duties of the committee are:

- H. To solicit nonvoting members residing in or owning a business located in the ~~city of Whitefish zoning jurisdiction~~ Whitefish Postal District (59937), if the committee determines it to be in the best interests of the committee and in the best interests of tourism promotion; such members may be required by the committee to pay an annual fee for membership;

J. To create a new classification of members, to be called "~~lodging~~-associate members", which would have the following characteristics:

~~1. The associate member must have a Whitefish street address (including 59937 zip code) and a Whitefish telephone number.~~

~~2.1. The associate member must provide a significant activity, experience or service that is not already provided in the Whitefish zoning jurisdiction, as determined annually by the board of the WCVB-Postal District (59937).~~

~~3.2. The associate member must agree to all obligations and duties applicable to regular members of the WCVB.~~

~~4.3. The associate member must be nominated by a convention and visitor bureau standing city committee member (board member of the WCVB) and be approved by a majority of the standing city committee (board of the WCVB).~~

Associate members cannot participate in the nomination or recommendation of board positions, nor can they serve on the board. Otherwise, however, they will have the same rights as other members.

2-12-3: **MEMBERSHIP:**

A. Appointment; Compensation: The committee shall have up to nine (9) members. Members shall be appointed by the city council. At least seven (7) members shall reside in the city of Whitefish ~~zoning jurisdiction~~Postal District (59937). Two (2) members may reside in Flathead County, but outside the city of Whitefish ~~zoning jurisdiction~~Postal District (59937), as long as the member has an ownership interest or managerial position at a business located and operating within the City of Whitefish ~~zoning jurisdiction~~Postal District (59937). The city council shall endeavor to appoint members who represent one of the following business categories, and that have broad experience in and a current understanding of the following types of businesses:

- Finance
- Large lodging properties
- Restaurant and bar business
- Retail businesses
- Small lodging properties
- Transportation business
- Whitefish golf course
- Whitefish Mountain Resort

The city clerk shall make a notation of a member's representation category and a member's residence to facilitate appointment to categories not represented. However, the city council shall be entitled to appoint those individuals that it determines most qualified, regardless of representation category. The city council may appoint one of its members to serve as an ex officio (nonvoting) member of the committee. Committee members shall receive no compensation.

Section 2: All other provisions of Title 2, Chapter 12, shall remain unmodified.

Section 3: The Bylaws of the Convention and Visitor Bureau Committee shall be amended accordingly.

Section 4: In the event any word, phrase, clause, sentence, paragraph, section or other part of the Ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid, and the remaining provisions thereof shall continue in full force and effect.

Section 5: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS _____ DAY OF _____, 2015.

Richard Hildner, Deputy Mayor

ATTEST:

Necile Lorang, City Clerk

After Recording Return to:
Necile Lorang, City Clerk
City of Whitefish
PO Box 158
Whitefish, MT 59937-0158

RESOLUTION NO. 15-___

A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City a portion of a certain tract of land known as 1840 Baker Avenue, for which the owner has petitioned for and consented to annexation.

WHEREAS, Elaine I. Edwards, 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, legally described and shown more fully on the attached Exhibit A, incorporated herein by reference.

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 September 8, 2015 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 _____ DAY OF _____, 2015.

John M. Muhlfeld, Mayor

ATTEST:

Necile Lorang, City Clerk

LEGAL DESCRIPTION:

A TRACT OF LAND, SITUATED, LYING AND BEING IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 30 NORTH, RANGE 22 WEST, P.M.,M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:

Beginning at the northwest corner of Parcel B of Certificate of Survey No. 18334 (records of Flathead County, Montana), which is a found iron pin: Thence S89°47'05"E 59.48 feet to a found iron pin on the westerly boundary of the portion of said Parcel B that has previously been annexed into the city: Thence along said boundary S00°06'36"W 397.48 feet to a point on the southerly boundary of said Parcel B; Thence along said southerly boundary N89°34'34"W 60.08 feet to a found iron pin; Thence N00°24'40"E 98.14 feet to a found iron pin; Thence N00°06'36"E 299.12 feet to the point of beginning and containing 0.543 ACRES; Subject to and together with all appurtenant easements of record.

The above-described property is a portion of the property addressed as 1840 Baker Avenue.

Return to: Necile Lorang, City Clerk
City of Whitefish
PO Box 158
Whitefish, MT 59937-0158

PETITION
BEFORE THE CITY COUNCIL OF THE
CITY OF WHITEFISH
PETITION FOR ANNEXATION TO CITY

Dated this 16 day of AUGUST, 2015

The undersigned Property Owner hereby petitions the City Council of the City of Whitefish, pursuant to Section 7-2-4601 (3)(a), MCA, requesting annexation of the following real property into the City of Whitefish and to remove the following real property from the Rural Fire District.

This petition is pursuant to the Contract Agreement for Annexation and City Water and/or Sanitary Sewer Service dated the _____ day of N/A, _____

Petitioner agrees that this annexation petition is irrevocable, and that the City may act on this petition, and actually accomplish the annexation of such real property, at any time in the future, without limitation. Petitioner has had an opportunity to review the City of Whitefish Plan for Extension of Services applicable to such real property, and Petitioner is satisfied with such Plan.

LEGAL DESCRIPTION OF PROPERTY TO BE ANNEXED:

LEGAL DESCRIPTION:

A TRACT OF LAND, SITUATED, LYING AND BEING IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 30 NORTH, RANGE 22 WEST, P.M.,M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:

Beginning at the northwest corner of Parcel B of Certificate of Survey No. 18334 (records of Flathead County, Montana), which is a found iron pin: Thence S89°47'05"E 59.48 feet to a found iron pin on the westerly boundary of the portion of said Parcel B that has previously been annexed into the city: Thence along said boundary S00°06'36"W 397.48 feet to a point on the southerly boundary of said Parcel B; Thence along said southerly boundary N89°34'34"W 60.08 feet to a found iron pin; Thence N00°24'40"E 98.14 feet to a found iron pin; Thence N00°06'36"E 299.12 feet to the point of beginning and containing 0.543 ACRES; Subject to and together with all appurtenant easements of record.

The above described property is a portion of the property addressed as 1840 Baker Avenue of which most is already in the City of Whitefish.

PROPERTY ADDRESS: 1840 Baker Avenue, Whitefish, MT

ZONED AS: I-2 County

ELAINE J. EDWARDS
[Printed Name]
Elaine J. Edwards

[Printed Name]
James & M. Daniel
AUG 16, 2015

STATE OF CA _____):ss

County of ORANGE _____

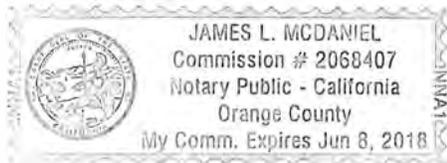
On this 16TH day of AUG, 2015, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared ELAINE I EDWARDS and _____, known to me to be the person(s) whose name(s) is/~~are~~ subscribed to the foregoing instrument, and acknowledged to me that ~~he~~/she/~~they~~ executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year last above written.

James L. McDaniel

(SEAL)

Notary Public for the State of CA
Print or Type Name of Notary: JAMES L. MCDANIEL
Residing at LAKE FOREST
My Commission expires: JUNE 8, 2018



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RESOLUTION NO. 15-___

A Resolution of the City Council of the City of Whitefish, Montana, maintaining the cash-in-lieu payment in connection with affordable housing at the current \$8,000.00 per unit.

WHEREAS, the Whitefish Housing Authority through its Homeownership Program assists low and moderate income households finance the purchase of a home; and

WHEREAS, City Code Section 11-2S-3(B), which appears under the heading "PLANNED UNIT DEVELOPMENT DISTRICT", provides that developers shall be allowed a density bonus when a minimum of ten percent (10%) of the total number of units within the development is set aside for affordable housing or when the developer makes a cash payment in lieu of an affordable housing dedication, by paying a fixed amount per housing unit developed; and

WHEREAS, City Code Section 11-2S-3(B)(1) provides that the cash-in-lieu fees for affordable housing be reviewed and set annually by Resolution of the Whitefish City Council; and

WHEREAS, pursuant to Ordinance No. 06-11, adopted by the Whitefish City Council on May 15, 2006, the cash-in-lieu payment per developed unit was originally set at six thousand dollars (\$6,000.00) per market rate lot and/or unit; and

WHEREAS, beginning in 2008 the City Council adjusted the cash-in-lieu amount to eleven thousand dollars (\$11,000.00) by Resolution No. 08-31, which was maintained at \$11,000.00 by subsequent Resolution Nos. 09-42, 10-42 and 11-49, adopted by the City Council; and

WHEREAS, at the request of the Whitefish Housing Authority, and recommendation of the City Planning and Building Department, the City Council reduced the cash-in-lieu amount from eleven thousand dollars (\$11,000.00) to eight thousand dollars (\$8,000.00) by Resolution Nos. 12-32, 13-26 and 14-42; and

WHEREAS, the Whitefish Housing Authority has requested that the City Council maintain the cash-in-lieu amount at eight thousand dollars (\$8,000.00) and the City Planning and Building Department has also recommended that the amount be left unchanged.

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

Section 1: All of the recitals set forth above are adopted as Findings of Fact.

Section 2: The cash-in-lieu payment per unit shall remain at eight thousand dollars (\$8,000.00) per market rate lot and/or unit, applicable to any subdivision for which application is received by the City after the effective date of this Resolution.

Section 3: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, THIS _____ DAY OF _____, 2015.

Richard S. Hildner, Deputy Mayor

ATTEST:

Necile Lorang, City Clerk

PLANNING & BUILDING DEPARTMENT
510 Railway Street, PO Box 158, Whitefish, MT 59937
(406) 863-2410 Fax (406) 863-2409



September 08, 2015

Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

Mayor Muhlfeld and City Councilors:

Recommendation on Cash-in-Lieu for Affordable Housing Fees

Introduction/History

Section 11-2S-3(B)(1) of the code provides that the Cash-in-Lieu fees for affordable housing be reviewed annually by the City Council. Attached is a memo from Lori Collins, Director of the Whitefish Housing Authority, as well as a housing price index and a chart of lessee purchase prices and maximum unit subsidies. In 2008, the Council raised the per unit fee from \$6,000 to \$11,000. Later, it was reduced to \$8,000 by the council. The Housing Authority is recommending keeping the fee at the existing rate of \$8,000 per unit.

Current Report

The Planned Unit Development District (PUD), Chapter 2, Title 11 of the Whitefish City Code, contains voluntary provisions that allow a 50% density bonus if affordable housing is provided at a rate of at least 10% of the project. Paragraph B.1 provides that the density bonus may also be taken by providing "cash-in-lieu" in an amount set by City Council resolution. That number is currently \$8,000 per unit.

An "affordable" unit is defined as one which can be purchased by someone earning up to 120% of the median family income in Flathead County, without being cost-burdened. Generally, a homeowner is considered cost-burdened when mortgage payments (PITI) exceed 30% of their monthly income. The Whitefish Housing Authority and the Whitefish Area Land Trust operate permanent affordable housing programs which buy down the price of a home to the affordable mortgage price. According to the numbers provided in the attached memo from the Whitefish Housing Authority, a payment in lieu amount of \$8,000 per market rate unit makes up 100% of the difference between an affordable mortgage and a market rate home mortgage.

Lori did say that she is likely to request an increase in that number next year.

Recommendation:

Based on the recommendation of the Whitefish Housing Authority, as well as the Housing Needs Assessment study, staff recommends the council adopt a resolution to maintain the affordable housing cash-in-lieu per unit fee for future Planned Unit Developments at \$8,000.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Taylor". The signature is fluid and cursive, with a large initial "D" and "T".

David Taylor, AICP
Director of Planning & Building

The Whitefish Housing Authority
PO Box 1237, 100 East 4th Street, Whitefish, MT 59937
Phone: 862-4143 Fax: 862-4107

September 5, 2014

Annual Update of the Payment In Lieu of Housing

The Whitefish Housing Authority recommends no change to the current set amount of the payment in lieu of housing option in the Whitefish Inclusionary Zoning Ordinance.

The Whitefish Homeownership Program aids low and moderate income households finance the purchase of a home. A mortgage is considered affordable if the monthly payment of the mortgage, taxes and insurance does not exceed 30% of the household's income. A household is considered low or moderate income (LMI) if their income does not exceed 80% of the area median income as determined by HUD. At present, the Whitefish Housing Authority has determined that an affordable mortgage for an LMI household of three earning \$35,000 a year is approximately \$117,000 - \$123,000 (5% interest with no debt). The Homeownership Program uses a subsidy to bridge the gap between what a low income household earns and the price of a qualifying home.

In 2011 and 2012, the Homeownership Program aided four households purchase a home.

- The average subsidy for the five sales was \$79,500 per unit.
- The appraised value of the four homes ranged from \$130,000 to \$184,000, for an average of \$160,750.
- The average bank loan secured by the homebuyers was \$113,000.

The Whitefish Housing Authority's proposal of the payment in lieu of housing (PILOH) is again based on the assumption that the PILOH option would serve the same number of households as the option to include the affordable units in the development (10% of the total units).

Using an example development of 20 homes and the voluntary use of the options in the Ordinance by a development:

- A developer choosing to include the affordable homes in their development could expect to build two homes (10% of total) to be sold in the \$117,000 range; affordable to low and moderate income households.
- From recent sales, we would expect the homes to have market value in the \$150,000 - \$195,000 range. The developer contribution for the two homes (in exchange for the incentives of Inclusionary Zoning including an increase in density) would therefore be approximately \$173,000 total or an average of \$86,500 per home for two homes.
- A PILOH of \$8,650 per unit ($8650 \times 20 = \$173,000$ total contribution) is therefore needed to be able to serve the same number of households at large in the community on average

WHA recommendation: The Whitefish Housing Authority recommends no change to the payment in lieu of housing and that it therefore remain at **\$8,000** per each house in the subdivision. As development again grows in Whitefish, the housing authority supports the inclusion of affordably priced homes in the new developments.

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September 1, 2015

Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

Mayor Muhlfeld and Councilors

**Request to Approve Proceeding with the
Hagg Family Land Transfer and Easement Agreements**

Introduction/History

For some time the City and TD&H have been working with the Hagg family on a land transfer that would benefit both the Skye Park bridge and Birch Point lift station projects. Two exhibits of the proposed transfer areas are attached. One purpose of the land transfer would be to provide the contractor for the bridge project with additional working and staging area. Dick Anderson Construction is the contractor that was awarded the Skye Park Bridge project and they started construction this week. With the cranes and equipment needed to erect the bridge, Anderson Construction feels that this additional space is critical to the overall success of the project. They also stressed that one of the most critical things when working on a project is to be a good neighbor. With the vicinity of the work within the cul-de-sac and limited amount of space adjacent to the south abutment, this easement and land transfer will provide the Contractor an additional 20 feet of area to work within.

The exchange would also provide a large benefit to the City in providing the needed space for future maintenance or repair of the new Birch Point lift station. During construction of the lift station, it became very evident that there is very little room to work within. Much of the lift station work has been completed, but the project is currently on hold due to a delay in the arrival of the control panel. The pumps and control panel need to be installed and the system needs to be switched over from the old lift station to the new one. The new lift station is quite deep. When work needs to

be done in the future on the wet well, this would provide the City with sufficient area to work within and potentially eliminate the need for costly shoring during excavation.

With the proposed exchange the Hagg family would receive a 3.24 foot wide easement along Lot 2 and a 3.24 foot strip of land along Lot 1. The City would receive an equal square footage of easement and property. The main benefit to the Hagg family is that it makes their eastern lot more usable. In exchange, the City would gain additional space for the current bridge project and future access for maintenance of both the bridge and lift station.

The main problem that the City had with the earlier land transfer agreement was a section providing access, a few times a year, to the Hagg's boat storage building that is located along the river. The City could not agree to provide access on the bike/pedestrian path since the property belongs to BNSF. The Hagg family has now agreed to remove any request for access to their boat storage building.

Financial Requirement

In discussions with Dick Anderson Construction they said that having this easement would be extremely beneficial to the project as the southern bridge abutment will be very close to the property boundary. They also stressed that having a neighbor that is working with us would be a great benefit to the project. They would be willing to deduct \$3,000 from this contract price if this would help make the proposal more acceptable to the Council.

Sandry Construction, the Birch Point lift station contractor, has agreed to pay for the costs of the land exchange. The cost for an amended plat is about \$2,500. Due to the major benefit to both the bridge project and future maintenance of the lift station, the Public Works Department is recommending that the Council approve staff proceeding with preparation of a land transfer agreement and resolution with the Hagg family.

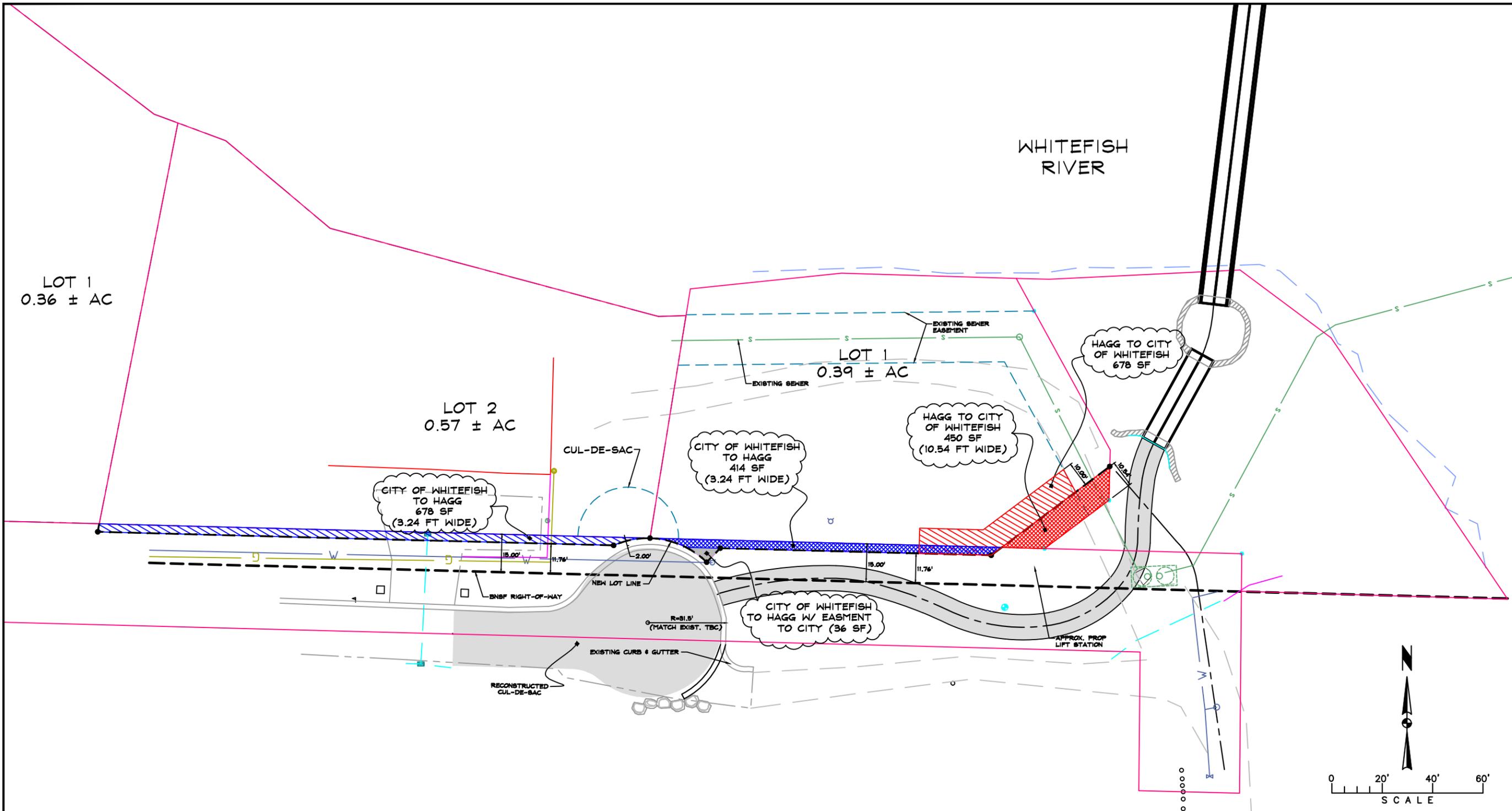
Recommendation

Staff respectfully requests Council authorization to move forward with finalizing land transfer and easement agreements for the Hagg property. If this request is approved, then we will also prepare a resolution that will be presented at a future council meeting authorizing the land transfers and easements. To better visualize the impact of this proposal on our two construction project, Doug Peppmeier has offered to meet council members and staff at 10:30am on Tuesday, September 08, 2015 at the Birch Point Drive cul-de-sac.

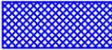
Sincerely,

A handwritten signature in blue ink, appearing to read 'Karin Hilding', with a stylized flourish at the end.

Karin Hilding, P.E., LEED A.P.
Senior Project Engineer



LEGEND

-  EASEMENT TO HAGG (678 SF)
-  EASEMENT TO CITY (678 SF)
-  LAND TRANSFER TO HAGG (450 SF)
-  LAND TRANSFER TO CITY (450 SF)

**CITY OF WHITEFISH - HAGG LAND EXCHANGE
EXHIBIT - DRAWING
05-29-14**



REVISIONS	
BY	DATE


TD&H
 Engineering
GREAT FALLS, BOZEMAN, KALISPELL, MONTANA, SPOKANE, WASHINGTON, LEWISTON, IDAHO

DRAWN BY: _____
 DESIGNED BY: _____
 QUALITY CHECK: _____
 DATE: 5.12.2014
 JOB NO. _____
 FIELDBOOK _____

**HAGG LAND EXCHANGE DRAWING
EXHIBIT 'A'**



LEGEND

-  EASEMENT TO HAGG (678 SF)
-  EASEMENT TO CITY (678 SF)
-  LAND TRANSFER TO HAGG (450 SF)
-  LAND TRANSFER TO CITY (450 SF)

**CITY OF WHITEFISH - HAGG LAND EXCHANGE
EXHIBIT - DRAWING
05-13-14**



REVISIONS	
BY	DATE

T&H Engineering
 idtheengineering.com
 GREAT FALLS, BOZEMAN, KALISPELL, MONTANA
 SPOKANE, WASHINGTON, LEWISTON, IDAHO

DRAWN BY: _____
 DESIGNED BY: _____
 QUALITY CHECK: _____
 DATE: 5.12.2014
 JOB NO. _____
 FIELDBOOK _____

HAGG LAND EXCHANGE DRAWING

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MANAGER REPORT

September 2, 2015



PUBLIC WORKS (AFSCME) COLLECTIVE BARGAINING AGREEMENT

The Public Works union voted to approve a Memorandum of Understanding (MOU) to amend their current labor Collective Bargaining Agreement for a 2.3% pay increase in FY16 as previously explained to and authorized by the City Council. The MOU is fully signed and their pay increases are being implemented with this week's payroll.

CRAIG WORKMAN, NEW PUBLIC WORKS DIRECTOR STARTS WORK

Craig Workman, our new Public Works Director, began work on August 24th, just in time to help pack up and move City Hall. I know the first week on any new job is a whirlwind, but with moving the offices and City Hall, it was much more so. We all are very glad to have Craig on board and he will attend the September 8th City Council meeting where we will introduce him to other City Council members who haven't met him. Craig was previously the Public Works Director in Burlington, Wisconsin and prior to that in Fontana, Wisconsin.

USDOT ANNOUNCES NEW GRANTS FOR RAIL CROSSING SAFETY WHERE OIL IS TRANSPORTED BY RAIL

You may have seen in the Wednesday, September 2nd *Daily Interlake* an article about the U.S. Department of Transportation offering a new grant program of \$10,000,000 to states to improve the safety of railroad crossings where oil is shipped by rail (see attached article). The good news is that it is a new source of funds for railroad crossing improvements. The bad news is that \$10 million dollars does not go very far for all states (given that our Birch Point Crossing is approximately \$800,000 for crossing and quiet zone improvements). We will have staff check with the Montana Department of Transportation to see what the application and selection process will be for these funds and see if we can get some funding dedicated to improvements at the Birch Point Drive crossing.

MONTANA TAXPAYERS ASSOCIATION NEWSLETTER ON PROPERTY TAX BURDENS IN ALL 50 STATES

The most recent edition of the Montana Taxpayers Association newsletter had an interesting article on the comparative property tax burden of each of the 50 states. I am including a copy of that article in this report for your information.

MEETINGS

WAVE Board Meeting (8/19) – As a Board member, I attended the WAVE Board’s regular bi-monthly meeting. The status of the Pre-school operation was discussed as well as the proposal that is on the City Council agenda for September 8th. Regular items discussed were membership trends, financial reports, and operational reports.

WFSA Board Meeting (8/19) – I met with the Whitefish Fire Service Area (WFSA) Board for their regular monthly meeting. We continued negotiations on a proposed new contract for our Fire Department to provide services for the WFSA (rural area outside Whitefish). The WFSA Board is asking the Flathead County Commissioners for an increase to their annual assessment rate in order to pay us a higher, and in our view, a more fair contractual amount.

City Hall Steering Sub-committee (8/21) - The City Hall Steering Sub-committee met and went over additional changes to the façade and other discussion items requested by some members. Future work on the interior to the building is delayed while the Architect prepares the construction drawings for bidding and building permit review.

UPCOMING SPECIAL EVENTS

September 12th – Whitefish Community Foundation 5K Fun Run and non-profit fair in Depot Park

REMINDERS

City Council meeting on September 8th is at 1005 Baker Avenue.

Chuck

Respectfully submitted,
Chuck Stearns, City Manager

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Sep 2, 11:59 AM EDT

US offers \$10 million in grants for railroad crossing fixes

By MATTHEW BROWN
Associated Press

BILLINGS, Mont. (AP) -- U.S. transportation officials on Wednesday offered \$10 million in grants for states to upgrade highway-rail crossings and tracks in response to a recent surge in flammable fuel shipments.

The announcement from the U.S. Department of Transportation comes as rail crossing collisions have increased over the past several years, following more than three decades of steady declines.

The grants would pay for improvements along rail routes that transport flammable fuels. Shipments of crude oil and ethanol increased dramatically over the past decade before energy prices plummeted.

There were more than 2,200 rail crossing collisions in 2014, killing 269 people and injuring 849. Statistics on how many deaths have involved trains carrying fuels were not available.

The force of a 30-car freight train hitting a car is equivalent to the force of a car crushing an aluminum soda can, according to Operation Lifesaver, a nonprofit group that advocates for rail safety.

Acting Federal Railroad Administrator Sarah Feinberg said most rail crossing deaths are preventable and the agency is intent on reversing the upward trend in accidents.

The money announced Wednesday will only go so far: Elevating a single highway over a rail line can cost tens of millions of dollars. Less expensive improvements include flashing signals and automatic gates.

U.S. Sen. Heidi Heitkamp, a Democrat from North Dakota, where most trains carrying crude originate since an oil boom started about seven years ago, said in a statement that the grants will help balance the economic gains of increased oil production with the need for safety.

There are about 212,000 railroad grade crossings across the U.S., according to officials. Almost 40 percent of the fatalities last year occurred in just five states - California, Illinois, Texas, Alabama and Louisiana.

Funding for the state grants was included by Congress in its 2015 spending bill. Separately, the Transportation Department has proposed a \$250 million annual grant program for communities to upgrade highway-rail crossings and other rail improvements. That proposal has gotten tied up by disagreement in Congress over the six-year highway bill.

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How High Are Property Taxes in Your State?

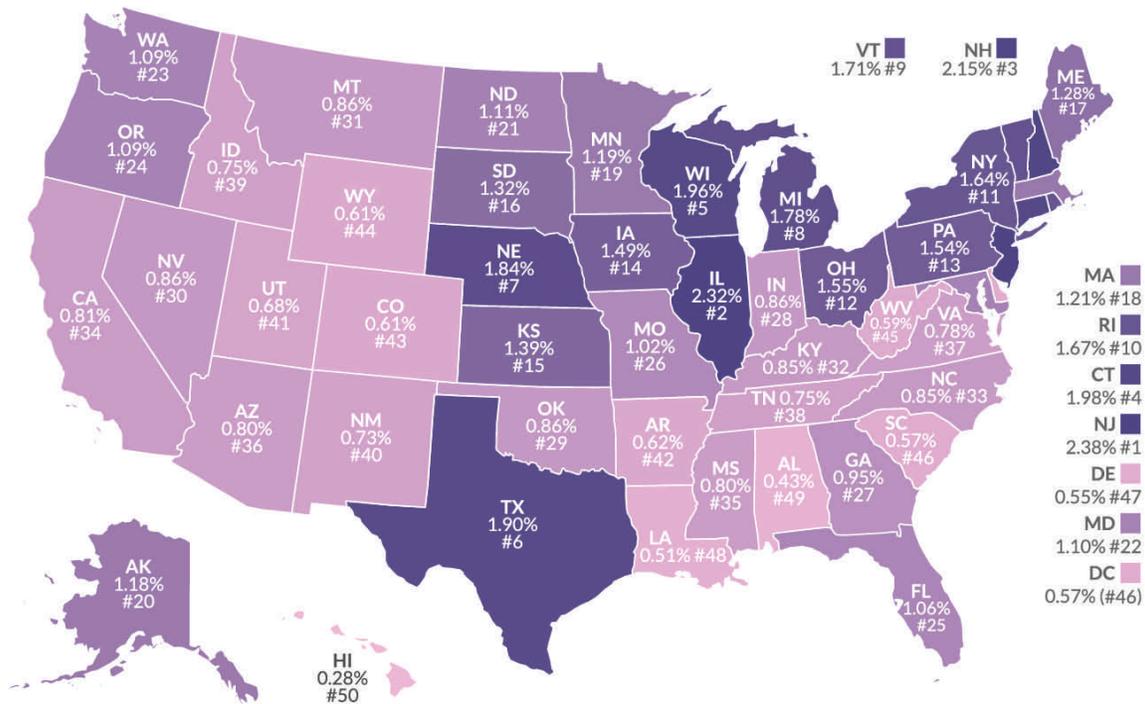
Published by the *Tax Foundation* — *Jared Walczak*

States tax real property in a variety of ways: some impose a rate or a millage—the amount of tax per thousand dollars of value—on the fair market value of the property, while others impose it on some percentage (the assessment ratio) of the market value, yielding an assessed value.

Some states have equalization requirements, ensuring uniformity across the state. Sometimes caps limit the degree to which one's property taxes can rise in a given year, and sometimes rate adjustments are mandated after assessments to ensure uniformity or maintenance of revenues. Abatements are often available to certain taxpayers, like veterans or senior citizens. And of course, property tax rates are set by political subdivisions at a variety of levels: not only by cities and counties, but often also by school boards, fire departments, and utility commissions.

How High Are Property Taxes in Your State?

Mean Effective Property Tax Rates on Owner-Occupied Housing



Notes: The figures in this table are mean effective property tax rates on owner-occupied housing (total real taxes paid divided by total home value). As a result, the data exclude property taxes paid by businesses, renters, and others. D.C.'s rank does not affect other states' rankings, but the figure in parentheses indicates where it would rank if included.
Source: U.S. Census Bureau; Tax Foundation.



Montana Taxpayers Association

PO Box 4909
Helena, MT 59604

Montax.org

August 18, 2015



How High Are Property Taxes in Your State?

(continued from Page 1)

The map on Page 1 cuts through this clutter, presenting effective tax rates on owner-occupied housing. This is the average amount of residential property tax actually paid, expressed as a percentage of home value. Some states with high property taxes, like New Hampshire and Texas, rely heavily on property taxes in lieu of other major tax categories; others, like New Jersey and Illinois, impose high property taxes alongside high rates in the other major tax categories.

Montana's rate is at 0.86%, 31st in comparison with the other states. New Jersey has the highest effective rate at 2.38% and is followed closely by Illinois (2.32%), New Hampshire (2.15%), and Connecticut (1.98%). On the other end of the spectrum, Hawaii has the lowest effective rate at 0.28%, and is followed closely by Alabama (0.43%), Louisiana (0.51%), and Delaware (0.55%).

MONTAX PARTICIPATES IN BLM HEARING ON COAL LEASING

On August 11, 2015 the Bureau of Land Management held a field hearing in Billings to take comments regarding changing its rules on coal leasing and royalty payments. The hearing was well attended with over sixty people signing up to make comments. Prior to the hearing, rallies were held by both the coal industry, and the opponents to coal mining and use.

The proponents for changing the current leasing and royalty practices were almost all employees of members of environmental groups, with the exception of some Montana legislators and the former Director of the Montana Department of Revenue. They stuck to the talking points that coal companies were being subsidized and taking advantage of "loopholes" that avoided paying their "fair share", thus depriving government of much needed revenue to fund many programs. They also spent a fair amount of time talking about climate change, the need for alternative energy, and health issues. Most of their comments had little to do with the leasing program or royalties other than they wanted the BLM to stop leasing coal for development.

The opponents to the proposed changes were Senator Daines, Congressman Zinke, State Senators Duane Ankney and Taylor Brown, and employees of the coal mines. **MonTax** also opposed the changes as they would not increase revenue from royalties, but would likely decrease the tax base of Montana and local governments, thus increasing taxes on remaining taxpayers. **MonTax** also reminded the panel that their purpose was not to solve all the problems of the world, but to set a fair and workable process for leasing coal. Senator Ankney pointed out that the directive from the Director of the Department of Interior stated that the proposed rule changes were to also further the administration's policy regarding climate change.

RESOLUTION NO. 15-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, APPROVING AN AMENDMENT TO THE I.A. O'SHAUGHNESSY CULTURAL ARTS CENTER BUILDING LEASE BETWEEN THE CITY AND THE WHITEFISH THEATRE COMPANY.

WHEREAS, the Whitefish Community Center Company, a Montana nonprofit corporation, constructed a public theatre building known as the I.A. O'Shaughnessy Cultural Arts Center located at 1 Central Avenue, in Whitefish, on real property owned by the City of Whitefish; and

WHEREAS, initially the City leased the land on which the O'Shaughnessy Center was located to the Whitefish Theatre Company pursuant to a lease dated December 29, 1995; and

WHEREAS, the Whitefish Community Center Company thereafter deeded the theatre building to the City, by quitclaim deed dated January 18, 2001; and

WHEREAS, thereafter the City and the Theatre Company entered into a new lease which superseded the December 29, 1995, lease, and the new lease was dated February 6, 2001; and

WHEREAS, thereafter, the lease between the City and the Theatre Company was again amended pursuant to a lease dated December 7, 2005; and

WHEREAS, thereafter, the lease between the City and the Theatre Company was again amended pursuant to a lease dated December 2, 2009; and

WHEREAS, after the City constructed public bathrooms attached to the O'Shaughnessy Center in 2014, WTC requested that the City pay the proportionate cost of the utilities attributed to the bathrooms; and,

WHEREAS, WTC's Executive Director and the City Manager have calculated that the City's proportionate share of all utilities is approximately equal to the entire water bill for the O'Shaughnessy Center;

WHEREAS, the City and the Theatre Company desire to further amend the lease of the I.A. O'Shaughnessy Cultural Arts Center, and an amended lease is attached to this Resolution as Exhibit "A;" and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to approve the amended lease attached to this Resolution;

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

Section 1: The amended lease attached hereto as Exhibit "A" is hereby approved, and the City Manager is authorized to execute the amended lease on behalf of the City.

Section 2: Upon execution of the amended lease by the City and the Whitefish Theatre Company, the lease shall be recorded with the Flathead County Clerk and Recorder.

Section 3: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS _____ DAY OF SEPTEMBER, 2015.

RICHARD HILDNER, DEPUTY MAYOR

ATTEST:

Necile Lorang, City Clerk

EXHIBIT "A"

Return to: Necile Lorang, City Clerk
City of Whitefish
PO Box 158
Whitefish, MT 59937-0158

**LEASE AGREEMENT
(Whitefish Theatre Company)**

THIS AGREEMENT, made and entered into this ____ day of _____, 2015 by and between THE CITY OF WHITEFISH, a municipal corporation, hereinafter called "CITY" and the WHITEFISH THEATRE COMPANY, a non-profit corporation, hereinafter called "WTC."

WITNESS ETH:

WHEREAS, the Whitefish Community Center Company, a Montana non-profit corporation, has constructed a public theatre building, known as the I.A O'Shaughnessy Cultural Arts Center (hereafter the "THEATRE BUILDING"), located at 1 Central Avenue, in Whitefish, on real property owned by the CITY; and

WHEREAS, initially the CITY leased the land on which the THEATRE BUILDING was located to WTC pursuant to a Lease dated December 29, 1995; and

WHEREAS, the Whitefish Community Center Company thereafter deeded the THEATER BUILDING to the CITY, by Quitclaim Deed dated January 18, 2001, and recorded with the Flathead County Clerk and Recorder on February 16, 2001, as DocumentNo.200104708070;and

WHEREAS, the CITY and WTC entered into a new Lease, of the THEATRE BUILDING and the land, which superseded the December 29, 1995, Lease, which new Lease was dated February 6, 2001, and recorded with the Flathead County Clerk and Recorder on February 16, 2001, as Document No. 200104708080; and

WHEREAS, the CITY and WTC entered into a new Lease, of the THEATRE BUILDING and the land, which superseded the February 6, 2001, Lease, which new Lease was dated December 7, 2005, and recorded with the Flathead County Clerk and Recorder on December 21, 2005, as Document No. 200535510310 and ;

WHEREAS the City and WTC entered into a new Lease, of the THEATRE BUILDING and the land which superseded the December 7, 2005 Lease which new Lease was dated December 7, 2005, and recorded with the Flathead County Clerk and Recorder on December 16, 2009, as Document No. 2009000344479 and ;

WHEREAS, the Parties intend this Lease to supersede and replace the and the December 2, 2009 Lease;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. DEFINITION: The term THEATRE BUILDING, as used herein, shall refer to and include the exterior walls (including all vertical support beams and bases) and roof of the building, and all portions of the building and fixtures located within such exterior walls and roof. The term THEATRE BUILDING shall also include any fixtures or other items attached to the exterior walls and roof of the building, including lights, ventilation pipes, windows, signs, and any other fixtures or items. Finally, the term THEATRE BUILDING shall also include the kiosk and all utility, heating and cooling boxes and structures located outside of the building structure. The term REAL PROPERTY shall include all of the land and improvements surrounding the THEATRE BUILDING, including curbs, sidewalks, lawn, parking lot, light poles, signs, landscaping, benches, trash receptacles, fire hydrant, and all other items not included within the definition of the THEATRE BUILDING.

2. LEASE OF THEATRE BUILDING: The CITY does demise, lease and let to WTC, and WTC does agree to lease and rent from the CITY, the THEATRE BUILDING under the following terms and conditions.

3. BASE TERM: The Base Term of this Lease shall be for a term of thirty (30) years, beginning from the date of occupancy, which the parties agree began on March 1, 1998.

4. OPTION TERM: CITY grants to WTC the option to renew this Lease for three (3) consecutive terms of ten (10) years each, commencing after expiration of the Base Term. WTC shall exercise each Option Term in writing to the CITY not less than one hundred eighty (180) days prior to the expiration of each existing term.

5. CONSIDERATION: WTC shall pay to the CITY, as rent during the Base Term and Option Term the sum of One Dollars and no/100 (\$1. 00) per year in advance, with the first rent payment due on March 1, 1998. Rent for each subsequent year of the Base and Option Term of this Lease is due and payable on the annual anniversary date hereof.

6. INSURANCE:

A. Property Damage Insurance. The CITY shall obtain property damage insurance with respect to the THEATRE BUILDING and the REAL PROPERTY, and shall be responsible for payment of any deductible amount with respect to claims covered by such insurance. The CITY'S provision of property insurance shall not reduce or relieve WTC's obligation to provide maintenance, repair and replacement as required by Paragraph 8. WTC shall obtain and provide property damage insurance covering all of WTC's personal property located in the THEATRE BUILDING.

B. Liability Insurance. The CITY shall obtain and provide general liability insurance with respect to the THEATRE BUILDING and the REAL PROPERTY, which insurance shall cover the acts or omissions of CITY officers and employees. WTC, its officers and employees, shall be named as additional insured parties on such general liability insurance policy when WTC is serving as booking agent and leasing or allowing the use of the THEATRE BUILDING by anyone for non-WTC sponsored events.

7. UTILITIES: It shall be the sole responsibility of WTC to provide for ~~water~~, electrical and gas, telephone and all other utilities supplied to the THEATRE BUILDING, and WTC shall be responsible for the monthly cost of such utilities during the term of this Lease. WTC shall also provide and pay for trash and garbage removal from the THEATRE BUILDING. It shall be the sole responsibility of the CITY to supply water for the Theatre Building and irrigation of the lawn and landscaping on the REAL PROPERTY, and electricity for lighting of the REAL PROPERTY. In 2015, in recognition of the CITY building two public restrooms on the outside of the THEATRE BUILDING, the CITY agreed to take over payment responsibility for all of the water consumption for the entire THEATRE BUILDING while WTC agreed to pay for the electrical and gas utility costs of the entire THEATRE BUILDING, including the two new public bathrooms in what was deemed to be an equivalent assumption of the additional utility costs of the bathrooms (estimated at approximately \$2,400.00 per year for water and the same for gas and electricity for the bathrooms at that time).

8. MAINTENANCE OF THEATRE BUILDING: WTC shall maintain the THEATRE BUILDING in good condition during the term of this Lease. WTC's obligation to maintain the THEATRE BUILDING shall include the repair and replacement, as needed, of all portions of the THEATRE BUILDING, including but not limited to all fixtures, walls, windows, roof, plumbing, electrical, heating and cooling. In order to insure that maintenance, repair and replacement of the THEATRE BUILDING will occur as needed, WTC shall establish schedules for maintenance, repair and replacement of all major components of the THEATRE BUILDING, based on the useful lives of such components. WTC shall thereafter budget for the necessary maintenance, repair and replacement, and shall establish a fund adequate to conduct such maintenance, repair and replacement based on the schedules described above. The CITY shall be entitled to review and approve the schedules, budget, and fund.

9. MAINTENANCE OF REAL PROPERTY: The CITY shall maintain the REAL PROPERTY in good condition during the term of this Lease. The CITY's obligation to maintain the REAL PROPERTY shall include snowplowing, maintenance and winterizing of the irrigation system, maintenance of the lawn, flower beds, and landscaping, weed control, maintenance of signs located on the REAL PROPERTY, maintenance of the sidewalks, benches, trash receptacles, and all other personal property or fixtures located on the REAL PROPERTY and outside of the THEATRE BUILDING.

10. USE:

A. THEATRE BUILDING. WTC shall have priority rights to use the THEATRE BUILDING as it deems necessary for its productions or for productions that it arranges or promotes. It is the intention of all parties that WTC shall manage the THEATRE BUILDING and serve as the "Booking Agent." When not in use by WTC the facility shall be available for use by anyone for a myriad of functions. When anyone other

than WTC uses the THEATRE BUILDING, WTC shall be entitled to charge a reasonable fee to reimburse WTC for all costs of such use, including but not limited to administrative costs, janitorial costs, professional cleaning costs when necessary, and for the cost of any technical assistance needed to operate the lights, sound system, technical equipment, film equipment and similar costs. When the THEATRE BUILDING will be used for periods of 12 hours or more, WTC shall be entitled to charge users based on its average daily cost of operating the THEATRE BUILDING. WTC may also require insurance, if the risk created by the user, in the opinion of WTC, justifies such requirement. The CITY may from time to time use the THEATRE BUILDING for public hearings and this limited use shall be free of charge. No permanent, ongoing sales of retail goods shall occur at the THEATRE BUILDING, although it shall be permissible for refreshments and/or retail goods to be sold by WTC or its subtenants on an event-by-event basis, if such goods are related to the event then being conducted.

B. REAL PROPERTY. The CITY shall manage the REAL PROPERTY and serve as the "Booking Agent" for the REAL PROPERTY.

11. SALE OF ALCOHOLIC BEVERAGES: The sale of alcoholic beverages in the THEATRE BUILDING by users other than WTC shall be permitted only on a case-by-case basis, and subject to the terms of this paragraph. If a community member or organization proposes to sell alcoholic beverages in connection with its use of the THEATRE BUILDING, it shall be entitled to do so only if it has obtained prior written approval of both WTC and the CITY, after having first submitted a written application, describing the nature of its use of the THEATRE BUILDING and the extent of the proposed sale of the alcoholic beverages. Any community member or organization proposing to sell alcoholic beverages in connection with its use of the THEATRE BUILDING shall sign an agreement to comply with all City and State laws, regulations and ordinances regulating the sale and use of alcoholic beverages.

12. USE OF ALCOHOLIC BEVERAGES: The use and sale of alcoholic beverages by WTC shall be permitted without the need to obtain approval by the CITY. The use of alcoholic beverages, without sale, by a community member or organization may be permitted by WTC on a case-by-case basis. Any community member or organization proposing to use alcoholic beverages in connection with its use of the THEATRE BUILDING shall sign an agreement to comply with all City and State laws, regulations and ordinances regulating the provision and use of alcoholic beverages.

13. COORDINATION WITH PROGRAMS: The parties acknowledge that WTC and the CITY'S Recreation and Parks Department occasionally sponsor programs, or classes, that are similar in nature. In order to avoid conflicts and unnecessary competition, the parties agree that before sponsoring a program or class that may be sponsored by the other party, they shall communicate and coordinate to insure as little conflict and competition as possible.

14. ASSIGNABILITY: This Lease is not assignable without prior written approval of the City Council. WTC shall have the right to sublet the improvements for uses connected and logically associated with cultural uses. Any subletting does not relieve WTC from any of its obligations herein.

15. ALTERATIONS OR IMPROVEMENTS: Prior to making alterations or improvements to the THEATRE BUILDING, WTC shall first notify the CITY, in writing, of the proposed changes, and shall provide sufficient detail in order to permit the CITY to evaluate the proposed changes. The CITY may request additional information concerning the proposed changes. The CITY shall, within thirty (30) days of receipt of all necessary information, indicate its approval or disapproval of the proposed changes. The CITY shall not unreasonably withhold its approval.

16. TERMINATION: This Lease may be terminated by either party giving to the other party ninety (90) days written notice, however, in the case of the CITY such notice of termination shall only be for (1) delinquency in the payment of rent, (2) violation of CITY ordinances or any covenant herein contained, (3) abandonment of the THEATRE BUILDING by WTC, or (4) if WTC ceases to exist as an organization; which condition continues for forty-five (45) days unabated. If the CITY provides notice of termination for any of the reasons set forth above, WTC shall have forty-five (45) days to cure the situation giving rise to such notice. If a cure is effected by WTC within such time period, then the Lease shall be fully reinstated.

17. NON-PROFIT QUALIFICATION: Throughout the entire term of this Lease WTC shall remain a non-profit corporation, qualified as such under Section 501 (c)(3) of the Internal Revenue Code. The failure to maintain qualification as a non-profit corporation under Section 501 (c)(3) of the Internal Revenue Code shall be considered a material breach of this Lease.

18. WTC BOARD OF DIRECTORS: WTC agrees that during the term of this Lease, the CITY shall be entitled, if it desires, to have a representative from the CITY serve on its Board of Directors. The representative appointed by the CITY, if any, shall be either a Council member or a member of the City staff.

19. NO NUISANCE: At all times during the term of this Lease, WTC shall operate the THEATRE BUILDING in a manner so as not to create or maintain a public nuisance.

20. COMPLIANCE WITH LAWS: WTC shall at all times comply with all applicable ordinances, laws, and regulations with respect to the operation and management of the THEATRE BUILDING, including laws prohibiting discrimination, and shall apply for and obtain all required governmental permits in a timely manner.

21. INDEMNIFICATION: Except for claims arising out of acts or omissions of the CITY and those arising out of use of the REAL PROPERTY unrelated to the use of the THEATRE BUILDING, WTC shall indemnify, defend, and hold the CITY harmless from any and all claims, lawsuits, or causes of action for which the CITY has no insurance coverage, or which exceed the amount of the CITY's insurance coverage, under the CITY's general liability and/or property damage insurance policies. This obligation to indemnify, defend and hold harmless shall extend to any type of claim or action against the CITY, whether for damages or otherwise, and shall include the obligation to pay attorney's fees and other legal costs on behalf of the CITY.

22. VISITOR'S CENTER: The CITY agrees that WTC shall be permitted to cooperate with the Whitefish Chamber of Commerce, if both organizations desire, to establish a visitor's center in the THEATRE BUILDING or on the REAL PROPERTY, as agreed by the two organizations.

23. ATTORNEY'S FEES: In the event of any litigation to enforce or interpret the provisions of this Lease, or to remedy a breach thereof, the prevailing party shall be entitled to reasonable attorneys' fees as fixed by the court.

24. ENTIRE AGREEMENT: This Lease contains the entire agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties hereto relating to the subject matter contained in this Lease which are not fully expressed herein. The provisions of this Lease may be waived, altered, amended or repealed in whole or in part only upon the written consent of all parties to this Lease.

25. PARTIAL INVALIDITY: Each term, covenant, condition or provisions of this Lease shall be viewed as separate and distinct, and in the event that any such term, covenant, condition or provisions shall be held by a court of competent jurisdiction to be invalid, the remaining provisions shall continue in full force and effect.

26. GOVERNING LAW: The construction of this Lease, and the rights and liabilities of the parties hereto, shall be governed by the laws of the State of Montana.

27. SUCCESSORS IN INTEREST: Subject to the restrictions against assignment as herein contained, this Lease shall inure to the benefit of, and shall be binding upon, the assigns, successors in interest, personal representatives, estate, heirs, and legatees of each of the parties hereto.

28. NECESSARY ACTS: Each party to this Lease agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Lease.

29. SUPERSEDES PRIOR LEASE: This Lease supersedes and replaces the Lease dated December 29, 1995, the Lease dated February 6, 2001, the Lease dated December 7, 2005, and the Lease dated December 2, 2009, between the parties.

LESSOR:
WHITEFISH THEATRE COMPANY

LESSEE:
CITY OF WHITEFISH, MT

By: President

By: Charles C. Stearns, City Manager

ATTEST:

Secretary

Necile Lorang, City Clerk

STATE OF MONTANA)
 : ss
County of Flathead)

The foregoing Land Lease was acknowledged before me this _____
day of _____, 2015, by _____ as President of
WHITEFISH THEATRE COMPANY.

WITNESS my hand and official seal.
My commission expires _____.

Notary Public

STATE OF MONTANA)
 : ss
County of Flathead)

The foregoing Land Lease was acknowledged before me this _____
day of _____, 2015, by _____ as Secretary of
WHITEFISH THEATRE COMPANY.

WITNESS my hand and official seal.
My commission expires _____.

Notary Public

MEMORANDUM

#2015-032



To: Mayor John Muhlfield
City Councilors

From: Chuck Stearns, City Manager *Chuck*

Re: Staff Report – Amended lease with Whitefish Community Theatre for the O’Shaughnessy Center

Date: September 1, 2015

Introduction/History

The City of Whitefish entered into an original land lease for the site where the O’Shaughnessy Center is located in 1995 after the City had acquired the land from BNSF. In 2001 the lease was amended to reflect the construction of the O’Shaughnessy Center. The lease was again amended to reflect changing conditions on December 7, 2005 and December 2, 2009.

Current Report

When the City built the public bathrooms for Depot Park on to the south side of the O’Shaughnessy Center in 2014, Whitefish Community Theatre requested that we pay for the proportionate share of their electric, natural gas, water, and sewer utilities for the public bathrooms. Earlier this year we paid the first six month pro-ration of the utility bills. In estimating a pro-ration for a full year of utilities for the bathrooms, Gayle MacLaren, WCT Executive Director, and I estimated the annual cost at \$2,400. That estimate is just about the same as the annual water bill for the entire O’Shaughnessy Center, so I suggested that the City just take over paying for their annual water bill and Gayle would not have to do all the tracking, comparing, and pro-rating of all the utility bills. Gayle and the WCT Board thought that was a great idea. The WCT Board has approved this amended lease.

So the attached amended lease that we are proposing would do just that – the City would take over paying for the monthly water bills for the entire O’Shaughnessy Center and WCT would continue paying for the natural gas, electricity, and sewer/garbage for the entire building.

Financial Requirement

The current annual cost is estimated at \$2,400. This cost would be absorbed by the Parks and Recreation Department which has responsibility for the Depot Park bathrooms.

Recommendation

Staff respectfully recommends the City Council approve a Resolution approving an amendment to the I.A. O'Shaughnessy Cultural Arts Center Building Lease between the City and the Whitefish Theatre Company.

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**Brad Seaman
162 Pinnacle Road
Kalispell, Montana
59901**

August 10, 2015

To: Mayor John Muhlfeld &
Whitefish City Council

Re: Roadway, Lot 4, Baker Commons

Dear Mayor Muhlfeld and Council Members,

Recently, The Wave completed the purchase of Lot 4 in Baker Commons-Phase 2, a parcel located adjacent to our facility. While the Wave Board of Directors has no immediate plan for the property, we intend to hold it for use in the future expansion of our facility.

As part of our due diligence in making this purchase, we were made aware that a portion of O'Brien Avenue is contained within the property boundaries. It was apparently the intent of the original developer to turn this roadway over to the City upon completion of the Baker Commons development. As you are probably aware, bankruptcy forced Freedom Bank to take back the property and development ceased.

At our June meeting, the Wave Board of Directors voted to offer to give the portion of Lot 4 which contains O'Brien Avenue to the City of Whitefish. Normally, of course, a roadway must meet certain standards before the City will accept it and that, lacking street lights and completed landscaping, this portion of O'Brien Avenue does not meet those standards. We feel, however, that this situation is unique and ask that the Council consider accepting the roadway in "as is" condition.

There is an obvious public benefit to maintaining O'Brien Avenue as a through street to Flathead Avenue. Emergency fire and police vehicles have increased access to the new developments on O'Brien, and residents in those homes have easy ingress/egress from that area

travelling south. The Wave, on the other hand, derives little or no benefit from the roadway. Thus, it seems unreasonable to require that The Wave, a non-profit, bear the cost of improving the roadway to City standards. We hope the Council will agree.

The Wave has always maintained a very close partnership with the City of Whitefish. During our decade of operations we have built, expanded, expanded again, and gifted to the City a first-rate aquatic and health center worth many millions of dollars – all while improving the health and well-being of our community. It is our privilege to offer to give part of our new property to the City to protect public and emergency access via O'Brien Avenue. I look forward to discussing this matter with the Council further, at your convenience.

Sincerely,

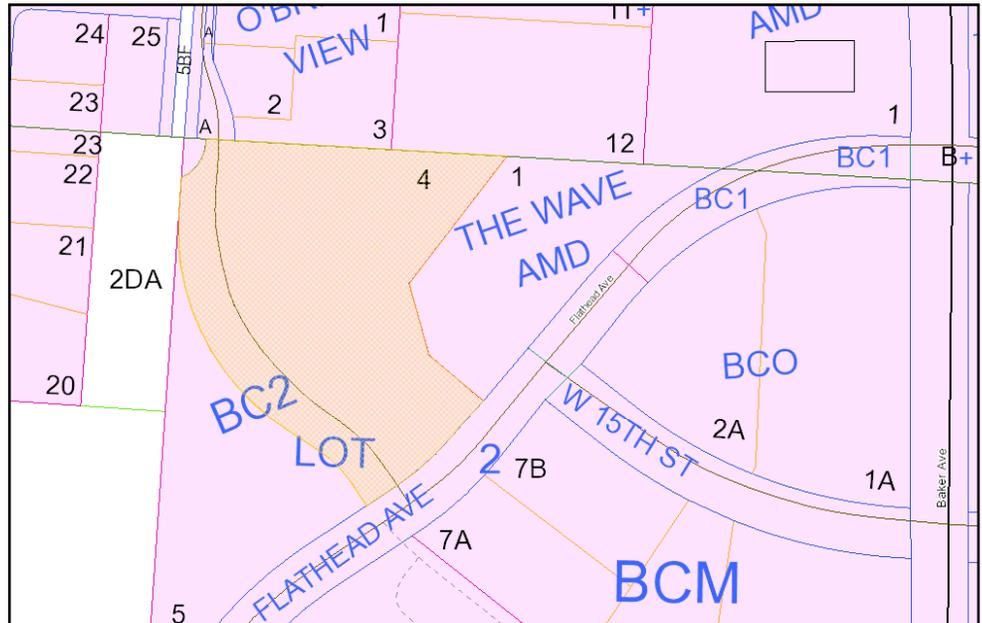
Brad Seaman
President, Board of Directors
The Wave
406-755-4748

Chuck Stearns

From: Wendy Compton-Ring <wcompton-ring@cityofwhitefish.org>
Sent: Monday, May 11, 2015 11:00 AM
To: Chuck Stearns; Karin Hilding
Cc: 'Mary VanBuskirk'; David Taylor; 'Randy Reynolds'; Jason; 'Maria Butts'; Greg Acton
Subject: Lot 4, Baker Commons

Chuck and Karin:

Last Thursday I met with Brad Seaman and Dan Weinberg (Wave Board members). The Wave Board purchased Lot 4 of Baker Commons a couple of weeks ago. A road was constructed on Lot 4, but never dedicated to the City. The construction of this road was part of a 3-lot preliminary plat that expired before the owner dedicated it to the City. The lot, along with the road, was eventually returned to the bank, which is who the Wave bought this from.



I had Randy do an inspection of the road to see what, if anything, needed to be done to complete the road according to the approved engineering plans. Randy found the street lights (4 lights) and wiring for the street lights missing and there is no electrical to the lot. Jason had a tree inventory completed last fall. The street trees are in pretty poor shape. There are 26 trees along the frontage; 12 of the trees are in fair to excellent condition, 9 are dead, and 5 are in the very poor to poor condition. The evaluation recommends 9 trees be replaced, 4 trees be monitored and pruning for the remainder of the trees. Also, there is no sod/grass in the planter strip area – it is full of weeds.

Both Brad and Dan indicated that the Wave doesn't want to do any work, they just want to give the city the road ASAP.

The city doesn't typically take a public road until all the improvements are in and inspected (or bonded). How would you like to handle this? Would you like to sit down and talk about the improvements and next steps? Would a cost estimate for getting this work done be helpful for our discussion?

Wendy Compton-Ring, AICP
Senior Planner
City of Whitefish
406-863-2418

Chuck Stearns

From: Wendy Compton-Ring <wcompton-ring@cityofwhitefish.org>
Sent: Wednesday, May 27, 2015 10:24 AM
To: drbrad@centurytel.net; dan.weinberg1524@gmail.com
Cc: Chuck Stearns; David Taylor; Karin Hilding; 'Maria Butts'; Jason
Subject: Wave Road Transfer

Brad & Dan – I had City staff conduct inspections of the road to see what improvements are still outstanding. As I mentioned at our meeting, the City doesn't accept road dedications until all improvements are completed and accepted. The following items need to be completed:

1. Four street lights have not been installed – this includes the wiring for the street lights. It was also noted that there is no electrical to the lot.
2. A street tree evaluation was completed last summer – 9 trees along the road need to be replaced, 4 need to be monitored and the remaining need to be pruned.
3. Sod needs to be installed in the planter strip
4. The planter strips are full of weeds which need to be eradicated.

After conferring with staff, we see the Wave has two options:

1. Make the improvements and once the improvements are installed and inspected, the City would accept dedication of the road; or
2. Make a case to the City Council for the City to accept the substandard street and have the City make the improvements.

Either way, you will need to work with a surveyor to dedicate the road to the City. Looks like RPA was the surveyor of the original plat so they might be a good starting point to obtain an estimate for the surveying work and dedication.

Please let me know if you would like to discuss these options further. It might be helpful to include the Public Works director and the City Manager in these discussions.

Wendy Compton-Ring, AICP
Senior Planner
City of Whitefish
406-863-2418

Chuck Stearns

From: Karin Hilding <khilding@cityofwhitefish.org>
Sent: Wednesday, May 27, 2015 3:20 PM
To: Chuck Stearns
Cc: Wendy Compton-Ring; Mark Heider
Subject: Re: Wave Road Transfer

Chuck,

The main improvement cost is for the decorative lights. For installation of the four street lights Mark Heider estimated a cost of between \$15,000 and \$20,000. However, he also mentioned that the public works department has 4 poles and 2 lights at the city shop that could be used for this street. We also have all the wiring and fuses up at the shop. If we used those available materials the lighting installation costs would be much lower.

Thanks,
Karin

Karin Hilding, PE, LEED AP
Interim Public Works Direct/City Engineer
City of Whitefish
(406) 863-2450
khilding@cityofwhitefish.org

On 5/27/2015 10:23 AM, Wendy Compton-Ring wrote:

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Chuck Stearns

From: Maria Butts <parksadm@cityofwhitefish.org>
Sent: Monday, June 29, 2015 4:56 PM
To: 'Chuck Stearns'
Subject: RE: Wave Road Transfer

Chuck,

Each replacement tree will cost \$250 for both the tree and planting. Pruning, if done by city staff, would cost at most \$100. Essentially, it would cost \$25 per hour. Sod would cost \$3,300 and would need to be watered every day for at least 3 weeks to make sure that it became established. Weed spraying would cost \$125-\$175.

If you have any questions, please feel free to let me know.

Thanks,
Maria

From: Chuck Stearns [mailto:cstearns@cityofwhitefish.org]
Sent: Friday, June 19, 2015 2:18 PM
To: 'Wendy Compton-Ring'; 'Mark Heider'; 'Maria Butts'
Cc: 'Hilding, Karin'
Subject: FW: Wave Road Transfer

Wendy, Mark, and Maria: (cc: Karin)

Please see Wendy's email below. As City Manager, I am a member of the WAVE Board. The Board voted, with me abstaining, to ask the City Council to accept the sub-standard street and have the City complete the improvements – see Wendy's option #2 below. That request has not yet been received, but for the Mayor and City Council to make an informed decision, we should provide cost estimates for four improvements which Wendy lists below. So Mark and Maria, can you obtain cost estimates for your respective improvements below and let me know what they are?

Thanks.

Chuck Stearns
City Manager
City of Whitefish
P.O. Box 158
418 E. 2nd Street
Whitefish, MT 59937-0158
406-863-2406
Fax 406-863-2419



From: Wendy Compton-Ring [<mailto:wcompton-ring@cityofwhitefish.org>]

Sent: Wednesday, May 27, 2015 10:24 AM

To: drbrad@centurytel.net; dan.weinberg1524@gmail.com

Cc: Chuck Stearns; David Taylor; Karin Hilding; 'Maria Butts'; Jason

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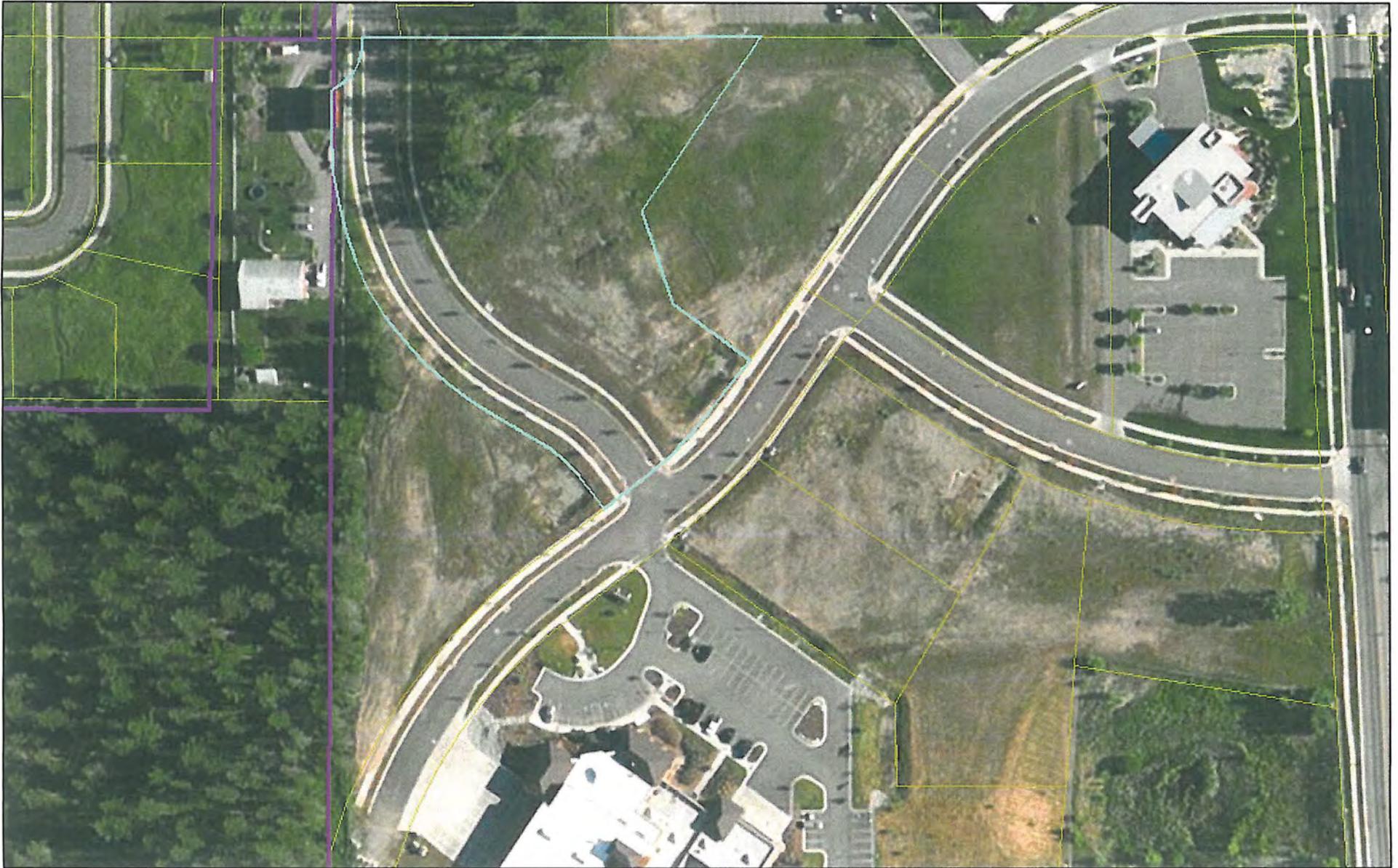
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Wendy Compton-Ring, AICP
Senior Planner
City of Whitefish
406-863-2418

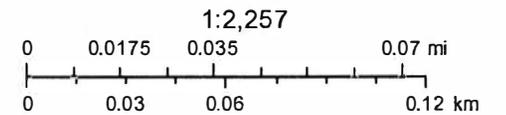
Lot 4 obrien ave



April 1, 2015

Whitefish City Limits

Parcel Polygons



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and