

**WHITEFISH CITY COUNCIL**

**September 8, 2015**

**7:10 P.M.**

**1) CALL TO ORDER**

Deputy Mayor Hildner called the meeting to order. Councilors present were Barberis, Frandsen, Sweeney, and Fitzgerald. City Staff present were City Manager Stearns, City Clerk Lorang, City Attorney Jacobs, Finance Director Smith, Planning and Building Director Taylor, and Public Works Director Workman, Interim Fire Chief Page and Senior Project Engineer Hilding. Approximately 7 people were in the audience.

**2) PLEDGE OF ALLEGIANCE**

Deputy Mayor Hildner asked Doug Peppmeier 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)

None.

**4) COMMUNICATIONS FROM VOLUNTEER BOARDS**

Deputy Mayor Hildner reported he attended the Pedestrian and Bicycle Path Committee meeting this morning. Survey work will be required for the park on the river by the roundhouse; the pins cannot be found since the river cleanup project. The Skye Park Bridge construction is well underway; it is a 90-day construction project so should be completed by the end of November. The stairways down to the river on E. 2<sup>nd</sup> Street are expected to be completed by the end of September. The Committee's current volunteer project is to grass-seed bare places as they have the opportunity to do so.

**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 - 38; A Resolution extending the corporate limits of the City of Whitefish, 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)**

Councilor Sweeney made a motion, second by Councilor Frandsen, to approve the Consent Agenda as presented. The motion passed unanimously.

**RESOLUTION NO. 15-38**

**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 8th DAY OF SEPTEMBER, 2015.

S/S Richard Hildner, Deputy Mayor

ATTEST:

S/S 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.

- 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)

None

7. **COMMUNICATIONS FROM PLANNING AND BUILDING DIRECTOR**

- a) **Resolution No. 15 - 39; A Resolution maintaining the cash-in-lieu payment in connection with affordable housing at the current \$8,000.00 per unit (p. 45) (CD 3:50)**

Planning Director Taylor reported that the Municipal Code requires the Cash-in-Lieu to be reviewed annually. Within the PUD (Planned Unit Development) process, a developer can design new development to fit the volunteer affordable housing unit requirement for a density bonus wherein either more units are allowed or the developer can take the option of paying Cash-in-Lieu. The value of \$8,000/unit has been established since 2012. Working with the Whitefish Housing Authority and based on the Housing Needs Study, staff is recommending the Council maintain the \$8,000/unit Cash-in-Lieu fee. Deputy Mayor Hildner and Councilor Frandsen had some questions for staff and some comments.

**Councilor Frandsen made a motion, second by Councilor Sweeney, to approve Resolution No. 15 - 39; A Resolution maintaining the cash-in-lieu payment in connection with affordable housing at the current \$8,000.00 per unit. The motion passed unanimously.**

8) **COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR** (CD 9:48)

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

Deputy Mayor Hildner welcomed Public Works Director Workman to his first Council Meeting, and welcomed the audience to the first Council meeting in the temporary offices at 1005 Baker Avenue. He called the audience's attention to the overhead screens they can view and follow presentations. Director Workman thanked him and said the community has made them feel very welcome. He is starting his third week of employment. He said he knew that the Public Works Department was very involved with the move from City Hall on E. 2<sup>nd</sup> Street to the temporary offices at Baker Avenue under the direction of Senior Project Engineer Karin Hilding and City Manager Stearns.

Senior Project Engineer Hilding reported that there has been ongoing negotiations with the property owner adjacent to the Skye Park Bridge and wastewater lift station project; the hopes were to have an agreement in place prior to construction; but it may have been that experiencing the

construction has brought the City and the landowner closer to an agreement. Upon Council's approval of the concept, staff will prepare a resolution that will be presented at a future Council meeting authorizing the final agreement which will involve land transfers and easements. In the packet on page 54, and on the overhead screens, is a diagram showing the City's proposal to grant Hagg, the adjacent property owners, a 3.24' strip of land, by deed and easement, across his frontage on Birch Point Drive in coordination with his granting land and an easement equal to the same amount of square footage of the City's grant (total of 1,128 square feet). She said the contractors on the projects; Dick Anderson Construction and Sandry Construction, both feel the land agreements will be so beneficial to the final construction and maintenance of the project that they have agreed in one case to deduct some from their total construction price; and in the other case pay for the cost of an amended plat to accommodate the land exchange. Terms of this agreement were prepared by former City Attorney VanBuskirk. She said Doug Peppmeier, from the engineering firm Thomas, Dean and Hoskins, and the engineer on the projects, is here if Council has any questions for him.

Engineer Peppmeier said Mr. Hagg contacted him looking for solutions and all the parties now agree this is within the capabilities of the City to grant, and will be beneficial to all properties. Mr. Hagg had originally wanted access over land owned by BNSF, but of course that was not the City's to give. Deputy Mayor Hildner asked if the Anderson Construction Company might consider more of a contract reduction since this agreement is really to their advantage and Engineer Peppmeier said he spoke with them about that today but has not received their answer. Manager Stearns said the long negotiations may have been an element of delay of this project, but there was also a delay while the City was obtaining a river permit for construction from DNRC. Whatever was the cause of the delay – there have been increased costs to the City. After long negotiations Mr. Hagg has agreed with the terms of the City's proposal, and Manager Stearns said the Public Works staff agrees this will be beneficial for City access for construction and maintenance. Deputy Mayor Hildner asked and Manager Stearns said that any encroachment so far in the construction has been upon agreement between the contractor and the property owner, the City was not involved with that agreement.

**Councilor Frandsen made a motion, second by Councilor Fitzgerald, authorizing staff to prepare the resolution finalizing the land transfer and easement agreements for the Hagg property on Birch Point Drive, to be brought back to the Council at a future meeting. The motion passed unanimously.**

## **9. COMMUNICATIONS FROM CITY MANAGER (CD 32:28)**

### **a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 57)**

None. Manager Stearns said he had planned to officially welcome Public Works Director Workman here but that was done earlier.

### **b) Other items arising between September 2<sup>nd</sup> and September 8<sup>th</sup>**

Manager Stearns reported on the auction of obsolete property that was held on site of the old City Hall at 418 E. 2<sup>nd</sup> Street on Saturday, September 5<sup>th</sup>. The auction was successful with \$30,917 gross proceeds. Immediately following the auction items starting being removed off of and from the inside of the building. That process continued Sunday and Monday of the long weekend, and even some removal is still going on today. Net proceeds to the City after the auctioneer's 15% plus some other expenses for advertising costs, cashier, etc. should be around \$25,000 to \$26,000. Manager Stearns itemized some of the sales of the notable items. Deputy

Mayor Hildner said he was there and agreed it was successful and thanked Manager Stearns for all his time and effort spent on that project to help make it so successful.

**c) Resolution No. 15-40; 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) (CD 36:50)**

Manager Stearns said the proposed amendment to the aforementioned lease has been brought about subsequent to the City's construction of public restrooms attached to the south side of the O'Shaughnessy Center last year. The executive director of the O'Shaughnessy Center has been concerned with increased utility costs. The hours of operation of the restrooms (until 10 pm each night), and their cost of heat, electric, and water and sewer has increased. Earlier this year the City paid the first six month-pro-ration of the utility bills, and have since estimated a pro-ration for a full year of utilities for the bathrooms at an annual cost of \$2,400. Manager Stearns said that is about the same as the annual water bill for the entire Center, so he suggested to Gayle MacLaren, WCT Executive Director, that the City takes over paying their annual water. Director MacLaren took that proposal to their Board, and the Board has approved it. The amended lease provides that the City will take over paying the monthly water bills for the entire O'Shaughnessy Center and WCT will continue paying for the natural gas, electricity, and sewer/garbage for the entire building. In answer to a question from Councilor Frandsen, Manager Stearns didn't think the WCT's current expansion includes additional bathrooms or fixtures; but all improvements to the building must be reviewed and approved by Council, because it is the City's building.

**Councilor Fitzgerald made a motion, second by Councilor Frandsen, to approve Resolution No. 15-40; A Resolution approving an amendment to the I.A. O'Shaughnessy Cultural Arts Center Building Lease between the City and the Whitefish Theatre Company. The motion passed unanimously.**

**10. COMMUNICATION FROM MAYOR AND CITY COUNCILORS (CD 42:10)**

**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)**

Brad Seaman addressed the Council. The letter from the WAVE Board was enclosed in the packet and he said he would answer any questions from Council. Manager Stearns offered to report some history of the property that led up to the WAVE request. Manager Stearns noted for the Council and the public's benefit; under the City's lease and agreement with the WAVE, the City Manager is a permanent member on their board, and he is also representing the City's interest in this issue as City Manager. The subject property is one that had gone through the preliminary plat process, subdividing this Lot 4 into three lots, and the infrastructure, the south end of O'Brien Avenue, was put in place. Before the developer could get the final plat, the property was taken over by the bank and subsequently sold and purchased by The WAVE. Now The WAVE owns a lot which includes a public roadway, is used by the public, and would be in the City's and the public's best interest to keep it a public road and not have it closed off due to private ownership. It is a major connecting access to western and northwestern Whitefish. The WAVE also sees it as a liability issue. An aerial photograph is on page 82 in the packet and Manager Stearns put it up on the overhead screens, which clearly showed the boundary of the lot purchased by The WAVE, and shows O'Brien Avenue traversing along and inside the westerly boundary of their lot. It is the City's policy to accept roads only if they are compliant with City Standards. The road was built to City Standards with sidewalks, sod and street trees; but the sod and trees have died, and the street

lighting was never completed. This road, however, seems to have special circumstances and it is a privately owned street being used by the public. It is possible that The WAVE could decide to resell the lot to a new owner who might decide to dig up the street and sidewalks and it would be closed to the public, or The WAVE could decide to close it. Manager Stearns asked, and Interim Fire Chief Page agreed it is an important emergency route and safer than traveling up Baker Avenue which continues to receive heavy traffic. Estimates for the City to bring the road up to Standards run between \$45,000 and \$60,000, but that could be less as four used light poles have already been donated and installed; so possibly bringing it up to Standards would be only about \$10,000 to \$15,000 and it would come out of the Tax Increment Fund. Manager Stearns felt it is The WAVE's intention to give the City all the right and responsibility of the right-of-way; it will be up to the City to maintain new trees, sod, and sidewalk. Brad Seaman said the Board wants to give this right-of-way to the City, it is of better benefit to the City than to keep it under private ownership. Manager Stearns said it was intended, at development, to become public right-of-way; it just never got to the point of dedication to the public with the final plat.

**Councilor Frandsen made a motion, second by Sweeney, to direct staff to accept, as a gift from The WAVE, that portion of O'Brien Avenue that traverses their Lot 4, and that the City shall bring up that portion of O'Brien Avenue up to City Standards; albeit the cost of improvement becomes a cost to our taxpayers, but it is for the greater good keeping the road accessible to the public.** Manager Stearns said there will be a cost to prepare and plat a boundary line adjustment and Brad Seaman said their Board's motion was to share the cost of surveying. Manager Stearns said the City could initiate that process. **Councilor Frandsen amended the motion to include that The WAVE has agreed to share the cost of surveying; the second of the motion accepted the amendment. The motion, as amended, passed unanimously.**

#### COUNCIL COMMENTS:

Councilor Fitzgerald asked for an update on the County's rezoning the county properties just outside of the City's boundaries. Director Taylor said the County Planning Board is holding a public hearing Wednesday, September 9<sup>th</sup>, on this very issue. He said the County is attempting to either rezone those properties with a current County Zone similar to the Whitefish zone it previously had; and if the County didn't have anything similar to the Whitefish zone, they are creating new County zones as similar as possible, including our Highway Business zone and Resort zones on Big Mountain. Not all of their zones match Whitefish size standards; but several options are being considered. Subject properties have all been notified of the public hearing. He is sure there will be public comment regarding the issues; and staff has submitted comments as well. Councilor Fitzgerald said she has concerned with their treatment of agricultural lands and retail allowed in the Whitefish former WB-2 zone. A second comment from Councilor Fitzgerald was to thank the Parks and Recreation for the new pickleball courts in Memorial Park; she said they are fabulous and getting a lot of use.

Councilor Frandsen said she had a comment from Jan Metzmaker regarding enforcement of the sign code on some A-frame signs downtown designed as reader boards. Jan had reported the non-compliance to the City but they are still being used.

Councilor Sweeney said to Director Taylor that he has heard concerns that the County's stream and waterbody setbacks are not adequate per Fish, Game, Wildlife and Parks standards. Director Taylor said the County has those setbacks in their code but they are not specific to zoning districts. He can bring up the issue, but it is not specific to the current public hearing they have

scheduled. Councilor Sweeney said it is a particular concern with those areas right around Whitefish, and felt it should be brought up to the County; Director Taylor said staff would support that.

Deputy Mayor Hildner said he goes along with the other comments Council made tonight regarding input from Whitefish at the County's public hearing, including opposition to strip commercial development, lot sizes, and water quality protection. In addition and not brought up tonight, are signs codes that he hopes will be consistent with current Whitefish Standards.

Deputy Mayor Hildner thanked all City Employees for their herculean efforts getting City Hall moved out of the old offices to its temporary location here on Baker Avenue. He specifically recognized City Manager Stearns as the organizer and keeping everybody on task. But he said again, he felt everyone who works for the City did a great job, and he asked that word be spread to everybody. Manager Stearns said he would do that and he said he agreed, everybody was involved, many working extra hours to get the job done. Because of everyone's efforts it went fairly smoothly without many hitches.

And a final comment from Deputy Mayor Hildner encouraging citizens to pick up their apples that are falling on the ground to minimize wildlife attractants.

**11. ADJOURNMENT** (Resolution 08-10 establishes 11:00 p.m. as end of meeting unless extended to 11:30 by majority)  
(CD 1:42:52)

Deputy Mayor Hildner adjourned the first meeting of the Council in its temporary quarters at 8:30 p.m.

  
Deputy Mayor Richard S. Hildner

Attest:

  
Necile Lorang, Whitefish City Clerk