

**WHITEFISH PLANNING BOARD
MINUTES OF MEETING
DECEMBER 17, 2015**

**CALL TO ORDER AND
ROLL CALL**

The regular meeting of the Whitefish Planning Board was called to order at 6:00 pm. Board members present were Chairman Ken Meckel, John Ellis, Jim Laidlaw, Rebecca Norton (arrived a few minutes late, following the vote for approval of the November 19, 2015 minutes), Melissa Picoli, Ken Stein and Councilor Frank Sweeney. Planning Director David Taylor, Senior Planner Wendy Compton-Ring and Planner II Bailey Minnich represented the Whitefish Planning and Building Department.

There were approximately three people in the audience.

**APPROVAL OF
MINUTES**

Frank moved and Jim seconded to approve the November 19, 2015 minutes. The motion passed unanimously, with Ken abstaining since he was not present at the November 19 meeting.

**COMMUNICATIONS
FROM THE PUBLIC
(ITEMS NOT ON THE
AGENDA)**

None.

**OLD BUSINESS:
6:00 pm**

None.

**PUBLIC HEARING 1:
AMENDMENT OF
WHITEFISH CITY
CODE TITLE 11,
ZONING
REGULATIONS
6:00 pm**

A request by the City of Whitefish for an amendment to Section 11-2S, WPUD, Planned Unit Development District, to clarify the blending of uses and density where a PUD overlays multiple underlying zones.

**STAFF REPORT
WZTA 15-01
(Taylor)**

Director Taylor requested a continuance until the January 21, 2016 Planning Board Meeting in order to continue working on this matter.

**BOARD QUESTIONS
OF STAFF**

None.

**APPLICANT /
AGENCIES**

None.

PUBLIC COMMENT

Don Spivey, 117 Park Knoll Lane, said he was happy to wait until the next meeting to hear about this matter.

**MOTION / BOARD
DISCUSSION**

Frank moved and Ken seconded to continue this matter to the January 21, 2016 Planning Board Meeting.

VOTE

The motion passed unanimously.

**PUBLIC HEARING 2:
CITY OF WHITEFISH
REZONE REQUEST
6:03 pm**

A request by the City of Whitefish on behalf of Philip and Belinda Mitchell for a Zone Change on parcels recently annexed into City limits. The properties are developed with residential uses. The subject properties are located at 1750 and 1770 Highway 93 West, and can be legally described as Tract 1DABA, 1D and 1DHB in S35, T31N, R22W.

**STAFF REPORT
WZC 15-05
(Minnich)**

Planner Minnich reviewed her staff report and findings.

Staff recommended adoption of the findings of fact within staff report WZC 15-05 and for **approval** to the Whitefish City Council.

**BOARD QUESTIONS
OF STAFF**

Frank said he is comfortable with this as a general proposition, but asked whether the existing structures and use of the property are consistent with the proposed zoning, so that there will not be any nonconforming uses on the property at that point. Planner Minnich replied that other than setbacks, which she has not looked at, the uses are consistent.

**APPLICANT /
AGENCIES
PUBLIC COMMENT**

None.

None.

**MOTION / BOARD
DISCUSSION**

Ken moved and Rebecca seconded to adopt the findings of fact within staff report WZC 15-05. Jim recused himself since he was appointed by the County Commissioners to serve on this Committee and this is a County Commissioner's project.

VOTE

The motion passed unanimously with Jim recusing himself. The matter is scheduled to go before the Council on January 4, 2016.

**PUBLIC HEARING 3:
AMENDMENT OF
WHITEFISH CITY
CODE TITLE 11,
ZONING
REGULATIONS
6:10 pm**

A request by the City of Whitefish for a variety of housekeeping amendments in §11-9-2, definitions, bar/lounge; §11-3-2A, Accessory Buildings; add micro-distillery to the Conditional Uses in §11-2R-3, Industrial District, §11-2L-3, General Business District, §11-2K-3, Secondary Business District, and §11-2J-3, Limited Business District, of the Zoning Code.

STAFF REPORT

Senior Planner Compton-Ring reviewed her staff report and

**WZTA 15-04
(Compton-Ring)**

findings. She also printed and distributed to the Board Members some information regarding planning for alcoholic production that Mayre Flowers emailed her today at 4:05 pm. Microbreweries and microdistilleries are processed through a Conditional Use Permit and they have the criteria in the Zoning for Conditional Use Permits. Director Taylor will be bringing back some special provision standards in January. They are not proposing to add them to any new districts; they are keeping them in the same districts they have been allowed in through Conditional Use Permits.

Staff recommended adoption of the findings of fact within staff report WZTA 15-04 and for **approval** to the Whitefish City Council.

**BOARD QUESTIONS
OF STAFF**

Regarding No. 2, Accessory Buildings, John asked Compton-Ring whether accessory buildings have to meet the setback requirements no matter what size they are and Compton-Ring replied yes. John also asked if there is anything that requires the City of Whitefish to adopt the International Building Code and Compton-Ring replied the City already has. The State of Montana adopts it and then the cities adopt it, so this is an inconsistency between the zoning and our Building Code. John asked whether there is anything that says our Zoning Code has to be consistent with the International Building Code; perhaps the City could decide that we have small lots and 200 feet is a big building in the City of Whitefish, whereas it might not be in a big building in some other international place. Director Taylor replied we have already adopted the Building Code that exempts accessory buildings up to 200 square feet and we need to make it consistent. John said so the point at which we should have decided that we did not want to go to 200 would have been when we did or did not adopt the Building Code rather than now, and Director Taylor confirmed and reiterated that it always has to meet the setback requirements.

Frank said there is a benefit to folks getting a Building Permit even if a small building is involved, just to be sure they do not encroach on their neighbors' property. He asked if we have a definition for a microdistillery and Director Taylor replied not currently but it is part of the Highway 93 West implementation. Frank wanted to make sure Highway 93 West is currently not set up for having microbreweries and Director Taylor said that is correct, but it is being added into the new transitional zone.

Melissa pointed out a typo on Page 2, Section 3, of WZTA 15-04,

"We have considered it similar enough ..." instead of "We have consider it similar enough ...".

Rebecca said she did not know we actually have sexually-oriented businesses in town and Compton-Ring replied we do not but by law, we have to provide some place for them in at least one district.

**APPLICANT /
AGENCIES**

None.

PUBLIC COMMENT

Mayre Flowers, 35 4th Street West, Kalispell, speaking on behalf of Citizens for a Better Flathead, appreciated the fact that there are some housekeeping aspects to what is being proposed, but requested removal of the provision for microdistilleries. She feels it is premature to move ahead with that until there are standards which is one of the reasons she asked that the Board be given a comprehensive overview of what the American Planning Association has put together to look at the issues. Across the Country it is not only Montana that is seeing a boom in microdistilleries and breweries, it is everywhere, and has become an issue. There has not been a set of template of standards that communities have looked at to really make sure that these businesses, which are very important to our economy, are located in areas that are appropriate, that have adequate services and that do not impact neighborhoods, in particular. She thinks it's high time that rather than simply make an amendment that would allow this to continue on, we step back and look at both microbreweries and microdistilleries and really look at overall standards and where these are most appropriate. She recognizes that they are put in as conditional uses, but when you do not have standards, you do not have the ability to look at the appropriateness of these uses. She thinks the comprehensive document she provided deserves some workshop session to try to look at making some more comprehensive recommendations that will address the proliferation of these. When you start to get a lot of these coming into a concentrated area, she does not think we have standards to address that. Some areas are appropriate, such as the downtown, but when you start to spread out into the fringes, we may need better standards to address it. Her request is that that portion be broken out of the consideration and to take more time to look at that.

**MOTION / BOARD
DISCUSSION**

Frank said his background and training would dictate that you would not insert a term of art into a provision of anything unless that term had a definition to it or a set of standards that was

associated with it so you knew what you were talking about. Are we in that position now? Director Taylor replied none of these could get approved without state approval. Microbrewery/microdistillery are already defined under state law. That is why we did not add a definition when we added microbrewery. It does not hurt to have our own definition, but if the state's definition changes, we will need to change our Code. Frank thinks one of the things that will make it palatable for the City of Whitefish and its residents and neighborhoods where these might go in is to have some certainty as to what a microdistillery or microbrewery is because they have a specific definition. If the state enlarges that, or makes them larger, or allows more production, because they can do that, that might have changed our minds as to whether or not we wanted microdistilleries of that size and nature in these neighborhoods. Whereas, if we set a standard, whether we adopt the state standard or whatever, and the state changes their standard, we can no longer rely on our standard or definition of what a microbrewery is that would go into a particular area? Director Taylor said he thought we could. That is one of the things talked about in the work sessions when they discussed nanobreweries versus microbreweries. A nanobrewery that might produce 200 barrels a year might be much more appropriate than a microbrewery, or more of an industrial production like the Great Northern Brewery. We can have our own standards on what type is appropriate in what location. In the past, microbreweries were lumped in with light manufacturing uses. Of our three commercial zones, the only one that maybe has a question about putting a major production brewery would be the WB-1 zone out on Wisconsin. There are enough protections in there that look at it broadly enough that nothing will slip through the cracks; it all has to go through the public process. They are going to create some standards and bring them to the Planning Board in January.

Rebecca wants to review the information provided by Ms. Flowers before proceeding on the issue as there is a lot of information and other issues that might come up. She asked if it would hurt anything if the Planning Board voted to delay approving No. 3 until next month so Board members could review the information given by the public. Director Taylor replied no, that if someone comes in with an application for a microdistillery, it would still be brought through under microbrewery since that is the way it has been handled.

Melissa asked what Ms. Flowers wanted the Planning Board to do with the documents - whether it has to do with the term "microdistillery" and whether the Planning Board should allow

them at all, or it is from the standpoint of what areas they should be put in. She does not feel WZTA 15-04 and what has been submitted really correlate.

Ms. Flowers replied she does not feel we should not allow microdistilleries, but she wants a definition and standards in place. Since those are being brought to the Planning Board apparently in January for some further discussion, it seems premature to go ahead and insert microdistilleries at this time. She wants them to look at what other communities have for standards for noise, odor, outdoor screening size, storage, and appropriate locations. Maybe it should be added within the standards that they be a certain distance from a residential neighborhood.

Melissa said when Spotted Bear came through, the Planning Board really looked at the state ordinance and definitions and what the state is proposing for microdistilleries. She feels this is out of the Planning Board's scope to have that big of a definition as the state already defines that. Her understanding is that if someone is given a microdistillery permit by the state, there is a very specific definition of what that is and she feels the state has already done this. Part of the Planning Board's role would be to decide what part of town and proximity to things like schools would be appropriate. Ms. Flowers said the issue that Frank and Director Taylor had in their discussion is the Planning Board has the option of setting and enforcing standards that are different from what the state has. She thinks that the Planning Board should look at options that other communities have adopted, since some of them have done that, rather than just go with the blanket definition the state has.

Melissa said if that is the case, maybe we should find something to review that is more appropriate, since the smallest community addressed in the handout is 55,000 people. Chances are what is in the handout would be less than applicable to the City of Whitefish.

Ken said when an applicant comes in for a Conditional Use Permit, the Planning Board has the opportunity to decide whether the proposed location is appropriate for the use so he thinks all this is mute.

Rebecca said part of the Planning Board's job is integrating public comment in its decision-making so that they know they are doing the will of the people, and asked what is wrong with taking time with this and looking at what was presented before moving

forward.

Melissa agreed the Planning Board really should look at all of the information, but that the conversation has been put off and the Board needs to move forward with it.

Chairman Meckel said what is being proposed here is a small, limited housekeeping issue, simply adding microdistilleries along with microbreweries, in the appropriate zone. Director Taylor said they look at microbreweries and microdistilleries the same, all they are trying to do is qualify that in the Code so it is clear for someone who wants to propose a microdistillery that there is a place for them within our Code.

Chairman Meckel said we are also going to revisit this under the Highway 93 W project in January, so the Planning Board will get that opportunity to tackle it at that time with this information. Compton-Ring also pointed out that in the Limited Business District, WB-1, out on Wisconsin Avenue, they did add another standard when they addressed microbreweries that it is only for parcels with frontage on arterials. Some of the WB-1 zones are deep and go back into those neighborhoods, but they are only permitted on the arterials, which is Wisconsin.

Rebecca moved and Frank seconded for purposes of discussion to adopt the findings of fact within staff report WZTA 15-04, with the exclusion of No. 3 to be continued to the next Planning Board Meeting. Rebecca does not feel comfortable passing things forward when the Planning Board has information from the public that none of them have read.

Frank said he hears what Rebecca is saying and feels it is a fair way to look at some of these things. Sometimes, however, it is appropriate to deal with the information that has been given to you in other settings. What has been placed before us here is about creating standards for microdistilleries or microbreweries. It is not at this point about whether or not they belong in some of these zones where they are already existing and where we already allow them as a conditional use. All we are doing is inserting, or correcting, what our practice has been on an ongoing basis. He would not be prepared to make a decision this evening regarding standards without having fully gone through the information provided by Ms. Flowers. Nor would he warrant that by placing this in there that he is not going to place additional standards and conditions on when these can go in there. He thinks that is the Planning Board's next project.

There being no further discussion, Frank called for the question.

VOTE

The motion failed with a six to one vote, with Rebecca voting in favor.

Frank moved with a second by John to adopt the findings of fact within staff report WZTA 15-04 and the text amendments to the Code. The motion passed with a six to one vote; Rebecca was opposed. The matter is scheduled to go before the Council on January 19, 2016.

NEW BUSINESS

6:40 pm

None.

GOOD AND WELFARE

6:40 pm

1. Matters from Board. Rebecca asked if the December 16, 2015 memorandum to the Planning Board distributed from City Attorney Angela Jacobs was just for the Board members to read through and Compton-Ring replied yes.

2. Matters from Staff. None.

3. Poll of Board members available for the next meeting on January 21, 2016. All indicated they thought they would be available.

ADJOURNMENT

John made a motion and Frank seconded to adjourn the meeting at approximately 6:45 p.m. The motion passed unanimously. The next regular meeting of the Whitefish Planning Board will be held on January 21, 2016, at 6:00 pm, at 1005 Baker Avenue.

/s/ Ken Meckel

Ken Meckel, Chair of the Board

/s/ Keni Hopkins

Keni Hopkins, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 1-21-2016