

WHITEFISH CITY COUNCIL

February 1, 2016

7:10 P.M.

1) CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Hildner, Barberis, Frandsen, Sweeney, and Williams. Councilor Feury was absent. City Staff present were City Manager Stearns, City Clerk Lorang, City Attorney Jacobs, Finance Director Smith, Senior Planner Compton-Ring, Planner Minnich, Public Works Director Workman, Parks and Recreation Director Butts, Police Chief Dial and Fire Chief Page and Customer Service Clerk Howke. Approximately 35 people were in the audience.

2) PLEDGE OF ALLEGIANCE

Mayor Muhlfeld led the audience in the Pledge of Allegiance.

3) PRESENTATION – CITY HALL/PARKING STRUCTURE CONSTRUCTION UPDATE – OWNER’S REPRESENTATIVE MIKE CRONQUIST (p. 58)

Mike Cronquist reported that the installation of the Rammed Aggregate Piers is complete so things are quieter downtown. Construction traffic will pick up though as the first concrete is planned to be laid this Friday in the City Hall section and should start for the Parking Structure in March or April. Site prep continues, it is nearly complete for the City Hall basement then moves over to the Parking Structure. He said all parties are still continuing to process and evaluate ways and means to save costs; however when the concrete work was rebid, there were no new bidders so that cost did not change. There is a break now in monitoring the foundation work that will resume again when needed. Some contaminants have been found and are being studied for mitigation measures. No new press releases have been issued recently; and relations and communications with the local business owners and with the community in general remain positive. City Manager Stearns inserted the contaminants are thought to be from old fuel storage from across the street. Roger Noble has been onsite doing inspections and tests; some water has also showed up so its source is being determined. The underground tank found under the old fire hall has added mitigation costs close to \$20,000. These continued new findings increases the projects total cost.

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

Tom Tornow, 309 Wisconsin Avenue, said he serves on the Government Affairs Committee for the Chamber of Commerce and addressed their concern over parking shortage during the summer season. Parking has been lost with the hotel being constructed on Block 46 and the City Hall/Parking Structure ongoing construction. They would like the City to consider allowing overflow parking on the City’s snow lot.

Rebecca Norton, 530 Scott Avenue, commented regarding Agenda Item 8a where the Council would be discussing the 7th Avenue West reconstruction project. She suggested the project get an owner’s representative to serve as a go-between the property owners and the contractor. Mayor Muhlfeld said that would be Public Works Director Workman and Ms. Norton disagreed with that as a solution.

Mayre Flowers, Citizens for a Better Flathead (CBF), said at the last County Solid Waste Board Committee meeting the recyclers gave an update. The market is down but the haulers are staying firm with the recycling programs in place. She reminded the public that proper sorting of recyclables makes the business more cost effective. She said new signage is being developed and she will forward the information to Public Works Director Workman. She held up a copy of the newly published "Go Local – Flathead Guide", it can be found on the CBF website.

Jeff Raper, 719 Kalispell Avenue, said he was here on behalf of the Chamber of Commerce, to again address the Chamber's concerns and search for parking alternatives for the summer traffic; and hoped the City's snow lot could be open for overflow parking. The Mayor said it could be discussed by Council at the end of the meeting.

5) COMMUNICATIONS FROM VOLUNTEER BOARDS

Councilor Hildner said he attended this morning's Bicycle and Pedestrian Path Advisory Committee meeting. The Committee received a report of WGM regarding their work plan for the Bicycle/Pedestrian Master Plan Update. A representative from the City-County's Health Department was also at this meeting. Councilor Hildner encouraged public attendance at the public meetings held for this update. He also said he sat in on the last Planning Board meeting, but he said nothing more because minutes of the meeting accompany related staff reports in the Council Packet.

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

- a) **Minutes from the January 19, 2016 City Council regular meeting (p. 66)**
- b) **Ordinance No. 16-03; An Ordinance amending Zoning Regulations in Whitefish City Code Title 11 to add micro-distilleries to the list of Conditional Uses in §11-2J-3, Limited Business District, §11-2K-3, Secondary Business District, §11-2L-3, General Business District, and §11-2R-3 Industrial District, amend the standards for accessory buildings in §11-3-2A, and amend the definition for a bar/lounge in §11-9-2 (Second Reading) (p. 80)**
- c) **Consideration of a revised Subdivision Improvement Agreement (SIA) with High Point on 2nd Street, LLC for High Point on 2nd Street, Phase 1 in order to reduce the amount of security required for the SIA as many of the improvements have been put in and accepted (p. 85)**
- d) **Consideration of approving final plat and documents for property exchange with John A. Hagg for Plat of Birch Point Landing No. 2 related to Birch Point Lift Station and Skye Park Bridge (p. 95)**

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

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

Mayor Muhlfeld said with consideration of the next two resolutions that pertain to the Haskill Basin Conservation Easement and project also marks the legacy of Alex Diekmann who passed away this morning after a courageous fight against cancer. He was our friend, colleague and the mastermind behind this community project. Alex will be missed. The Mayor said another friend stated that Alex's legacy will remain forever across the landscape he helped protect from the Madison River Valley to

Haskill Basin and the north end of our own Whitefish Lake. In memory of the gifts he gave to Montana and for generations to come; Mayor Muhlfeld asked for a moment of silence to remember Alex and think of his family.

- a) **Resolution No. 16-08; A Resolution approving the terms of a Municipal Water System Easement and Road Access Easement with F.H. Stoltze Land & Lumber Company (p. 107) (CD 17:55)**
- b) **Resolution No. 16-09; A Resolution authorizing the transfer of parcels of land in Haskill Basin totaling 2.569 acres of land to F.H. Stoltze Land & Lumber Company in exchange for 41.68 acres of perpetual easements allowing the City to access, maintain and use its municipal water system (p. 155)**

City Manager Stearns reported these two resolutions were on the last agenda, for the January 19th meeting, when the Council approved five other resolutions relating to the Haskill Basin Conservation Easement and project. He said as the two resolutions are related; he will combine the information for both in one report. The two resolutions that are before the Council for their consideration tonight were delayed at the last meeting and moved to tonight while the City was waiting for the appraisal report on the 2.569 acres that the City is proposing to exchange to F.H. Stoltze Land & Lumber Company for 41.68 acres of perpetual easements plus three one-acre parcels at each of our three water sources so the City can access and maintain its municipal water system. The City has received the appraisal report. The City's 2.569 acres (contained in two 'orphan' parcels), is valued at \$30,000.00; and the easements and access to our water supply plus the three one-acre tracts, also included, that the City is getting in exchange is valued at \$412,125.00. The City is receiving a lot more in value than it is giving up. The first proposed resolution approves the terms of a perpetual easement and access agreement with the three one-acre parcels; and the following resolution authorizes the exchange of the City's two parcels equaling 2.569 acres in exchange for the perpetual easements.

Mayor Muhlfeld opened the public hearing for both Resolutions 16-08 and 16-09.

Rebecca Norton, 530 Scott Avenue, spoke highly of this public process and the people who get involved. She said she has always been concerned about the safety and protection of the City's water supply; and credited Alex Diekmann for getting this project done. She thanked all involved who helped and said "one person really does make a difference."

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

Councilor Frandsen made a motion, second by Councilor Hildner, to approve Resolution No. 16-08; A Resolution approving the terms of a Municipal Water System Easement and Road Access Easement with F.H. Stoltze Land & Lumber Company. The motion passed unanimously.

Councilor Hildner made a motion, second by Councilor Sweeney, to approve Resolution No. 16-09; A Resolution authorizing the transfer of parcels of land in Haskill Basin totaling 2.569 acres of land to F.H. Stoltze Land & Lumber Company in exchange for 41.68 acres of perpetual easements allowing the City to access, maintain and use its municipal water system; and to correct all documents to read the accurate number of acres of easement to be 41.68. The motion, including the correction, passed unanimously.

Mayor Muhlfeld acknowledge that Chuck Roady from Stoltze Land & Lumber Co was in the audience and said Thanks Again, on behalf of all of us – it has been a pleasure.

c) Consideration of an application from the Reisch Family Partnership for a Conditional Use Permit to operate a bar within an existing commercial building, zoned WB-1 at 845 Wisconsin Avenue (WCUP 15-20) (p. 165) (CD 28:40)

Planner Minnich said this Conditional Use Permit application is to operate a bar serving beer and wine (no restaurant) within an existing commercial building, is in a location formerly occupied by The Dire Wolf, The Place for Steak, and most recently by the Cowboy Antique Shop. There will be some interior remodeling but no remodeling on the exterior is planned. The project was publically noticed as required. Planner Minnich highlighted a couple of the criteria required for approval; Parking and Landscaping. A total of 46 parking spaces are required to fulfill needs of that size of building that will include the bar, a small retail space, and a small apartment on the second floor. Existing parking is 27 spaces so a condition of approval requires an additional 19 spaces. Landscaping is required for commercial projects in the WB-1 zoning, and additional landscaping is required within the parking lot. The project design includes over 7,000 square feet of landscaping which is over minimal requirements. Per a condition of approval, the applicant must work with the Public Works Department on stormwater requirements and management. They will open their business at 11:00 am each day and close at 9:00 pm except Fridays and Saturdays when they will close at 10:00 pm. The staff and the Planning Board both recommend approval of the application subject to eleven conditions of approval that are provided in the staff report.

Mayor Muhlfeld opened the public hearing.

Mark Johnson, 680 Stone Street in Kalispell, spoke as the applicant's representative and the architect for the project. He said he didn't have anything to add; the staff report is comprehensive, all of the conditions of approval will be met easily. The building is an adequate size for their use, and has a fire-sprinkling system that is operational; and exits meet requirements. There is adequate space for all the parking and landscaping that is required, and room for snow storage.

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

Councilor Sweeney made a motion, second by Councilor Frandsen, to approve WCUP 15-20 along with the Findings of Fact in the staff report and the eleven (11) conditions of approval as recommended by the Whitefish Planning Board. The motion passed unanimously.

d) Ordinance No. 16-___; An Ordinance amending Zoning Regulations in Whitefish City Code Title 11, Chapter 2, Zoning District, Article S, WPUD Planned Unit Development District, Section 3, Standards of Development, and Section 5, Deviations from Standards, to clarify the maximum average density where a PUD overlays more than one underlying zone (First Reading) (WZTA 15-01) (p. 200) (CD 37:54)

Senior Planner Compton-Ring said the Staff Report was prepared by Planning and Building Director Taylor but she would give the presentation in his absence. This is a request by the City of Whitefish to amend a portion of the PUD standards to clarify the maximum average density where a PUD overlays more than one underlying zone. The amendment is intended to formalize how PUDs have been implemented and approved by Council for a number of projects over the past ten-plus years. Recently, the method of calculating density has caused concern. Staff was directed to address the issue

and considered an expanded review of PUD regulations but decided to address just this one issue at this time. The Planning Board had an initial public hearing in January of 2015, but postponed action directing staff to the expanded review; however following a work session in June of 2015 the Planning Board directed staff to just do a quick fix of this particular aspect and do a major review at another time.

From packet page 233, the staff report explains the WPUD overlay provides a mechanism allowing a developer flexibility to respond to property characteristics and area housing needs and is allowed to address these by varying standards of the underlying zone. There can be a variety of mutual benefits between the developer and the City if approved by the Council. A PUD is an overlay zone over a land parcel that, when approved, has one set of unified applicable development requirements superseding boundaries and development standards of underlying zoning. The staff report gave examples of 5 projects recently approved with PUDs that span multiple underlying zones and mix density and uses. The amendment proposes new provisions with a formula considering the area of each of the lands with more than one zone and the total area to calculate an average maximum density. The Planning Board held a public hearing on this proposal on January 21, 2016 and the draft minutes are in the packet. Several people spoke to the issue; most of them spoke in opposition and recommended a more comprehensive revision of the PUD process. Following the public hearing the Planning Board denied the proposal on a vote of four to two. Additionally, a motion was made to forward to Council a recommendation to rewrite the entire PUD chapter and recommend a moratorium on density averaging until that is finished. Staff is still recommending approval as brought forward in the staff report; and Director Taylor did note in his staff report that the City Council could also consider directing staff to pursue a more comprehensive rewrite of the PUD chapter per the Planning Board's recommendation.

The Mayor said there is a large audience tonight here to speak during the public hearing. Several letters and emails have been sent in early enough to be included in the packet and he asked if those same people were speaking again, limiting their comments to three minutes would be appreciated; or if they agree with another's comments, if they could limit their comments to agreement instead of restatement, that would be appreciated. Mayor Muhlfeld opened the public hearing.

Tom Tornow, 309 Wisconsin Avenue, said he was here representing Barbara Morris who lives on 1 Rock Creek Court. He spoke in opposition to the proposed text amendment, and in support of the Planning Board's recommendation that the entire PUD ordinance be rewritten, and in support of the moratorium on blending until that rewrite is complete. He also supported a committee of citizens and professionals to spearhead the rewriting of the PUD ordinance. Tornow spoke from his letter starting on packet page 270 and said the WF Zoning Code does not provide for blending or transfer of density between zones; but specifically prohibits it. This text amendment also creates increased conflicts within the city's code and he cited those in his letter. He addressed a letter in the packet from Bruce Boody (packet page 240), wherein Boody supports the text amendment; and Tornow disagrees with him and said Boody refers to different part of the zoning code incorrectly and was misreading it. Tornow said the proposed text amendment would allow, through the PUD process, increased densities potentially in all zones, without the public process that goes with re-zoning properties. Tornow pointed out when zoning was placed on property with specific densities it was based on overall community planning and growth management. That increased density is what could potentially happen to his client who lives in a WR-1 Zone, and the property adjacent to her is zoned WR-1. In front of the neighboring property is a parcel that extends to Hwy 93 S and is zoned WB-2. If a developer is allowed to have a PUD over both properties with the "blended density" as proposed by this text amendment; suddenly the property formerly zoned WR-1 will be developed with increased density. That becomes a direct impact to the adjoining WR-1 properties. When residents buy property, they can check out the zoning of adjacent

properties and should be able to have the assurances with their knowledge and can make assumptions how the adjacent properties can be developed. They would also be aware that there is a public process for rezoning property; but they could not be aware that through a PUD process the density of a development could be greatly increased if this text amendment was approved. Tornow said this text amendment does not include the review criteria required by zone change regulations. Tornow said the City's staff report (on page 233-234) talks about the city getting community benefits such as increased critical area buffering, trails, affordable housing, infill, transportation network improvements, street construction, etc., but none of those benefits are required or tied to the transfer of the density he said. Tornow said David Hunt who is in the audience and will speak later to some models that do. A rewrite of the PUD ordinance could include these provisions. Tornow repeated his position that he stated at the beginning of his testimony.

Don Spivey, 117 Park Knoll Lane, spoke in opposition of the proposed text amendments and in support of the Planning Board's denial of the text amendment and their recommendation to forward to Council a recommendation to rewrite the entire PUD chapter and recommend a moratorium on blending until that is finished. Spivey had written comments in opposition to the text amendment starting on page 274 in the packet; and had additional comments which he submitted to the Council which have been appended to the 2-1-2016 Council Packet as after packet materials. He disagreed with the premises of two Whereas clauses in the proposed ordinance, on page 200 in the packet, regarding the dates February 19, 2015 and June 18, 2015, but instead he thought in both cases staff had been directed to rewrite the PUD ordinance. He said he does not oppose development, PUD's or density transfer – blending; but does feel like the PUD ordinance should be rewritten with specific ground rules; the ordinance needs to be clearer and the legal irregularities cleaned up. Spivey listed some examples in his supplemental letter. Whitefish, since it is a great place to live, will grow, but the growth should be managed for preservation of the character of this community. He said both Flathead County and Kalispell had more effective regulations for PUDs and copies of those regulations were included with his letter in tonight's packet; see page 278. Spivey said the rewrite should better address Affordable Housing to make sure there are mechanisms in place that ensure the goal is realized. He agreed with the narrative from Tornow regarding the serious impact for adjacent homeowners with the proposed blending text amendment. Spivey supported a committee be established representing a cross-section of interests in our community who are concerned and the time to commit as approved by the Council. The committee can put forward a plan to address the rewrite, and on approval by Council, proceed with their plan to establish a draft for review that would eventually move forward through the necessary processes; hopefully a 6 month or less timeframe from beginning to end. Spivey supported a moratorium and said the Council could consider either a moratorium on all PUD activities, or as the Planning Board recommended: a moratorium on blending until the rewrite is finished.

David Hunt, 113 Park Knoll Lane, spoke in opposition to the proposed text amendment, and spoke in support of the Planning Board's recommendation to deny the text amendment and their recommendation to rewrite the entire PUD chapter and their recommendation for a moratorium on blending until the rewrite is finished. Hunt spoke from his letter in the packet that starts on page 301. The current PUD ordinance not only has lingering legal questions but allows land to be developed inconsistent with present densities and character of existing neighbors. It is against the first lines of the Vision of the Growth Policy which states: "The citizens of Whitefish value the scale, character, and small town feel of the community and will preserve those values as the community grows. We as a community will preserve and enhance our open spaces, wildlife habitat, scenic vistas and traditional neighborhoods that make Whitefish special." Hunt said elements of the PUD ordinance threaten that vision statement, as evidenced by recent development proposals. The threat to traditional neighborhoods, Hunt said, is mentioned in the Growth Policy on page 50; "Through use of the planned unit development (PUD), densities up to 12 units per acre, and up to 18 per acre with affordable

housing, are possible by code. And while such densities are not usually granted in predominantly single-family area, the threat of erosion of the existing scale and character remain very real.” A second example, again from the Growth Policy while discussing affordable housing bonuses on page 113; “...if a developer tried to increase the gross density in a WR-1 or WR-2 project by up to 50%, the resulting PUD would be sufficiently dense that it may be detrimental to the character or the surrounding neighborhood, and therefore, not meet PUD criteria.” Similar to what was discussed earlier by Tornow regarding impact to the River’s Edge Subdivision, in 2014 there was a proposed PUD on land zoned WLR, normally 2.5 unit density per acre; with a proposed increase to 14.7 unit density per acre, a 6-fold increase. He said this type of an increase would not be within the normal expectations of property owners in lands zoned single family residential. He said in both these instances there was blending proposed between adjacent parcels that had commercial zoning and residential zoning; and there is the potential of similar development being proposed. Hunt referred back to comments from Spivey where he talked about PUD provisions in the County and Kalispell, and Hunt said none of those provisions allowed blending commercial and residential density blending in a residential PUD; and he included examples in his letter in the packet. He said the implied problems are multiple. He repeated his positions that he first stated and agreed with both Spivey’s and Tornow’s suggestions on a collaborative committee rewrite of the PUD ordinance.

Mayre Flowers, Citizens for a Better Flathead, (CBF) spoke in opposition to the proposed text amendment, and spoke in support of the Planning Board’s recommendation to deny the text amendment and their recommendation to rewrite the entire PUD chapter and their recommendation for a moratorium on blending until the rewrite is finished. She read from material that she submitted tonight that has been appended to the 2-1-2016 packet as after packet materials. CBF states that a PUD, is a tool offering a developer flexibility while providing public benefit; but the regulations are outdated and causing confusion and problems. In light of testimony from Tornow, Hunt and Spivey giving examples of recent apparent problems in the existing ordinance reflects the need to CBF for an update of the ordinance to address the following:

- More clearly and measurably define public benefits
- Be legally compliant with other aspects of your code and state law
- Secure the type and quality of affordable housing the city actually needs (as opposed to just high-rise apartments) and
- Provide greater predictability for both developers and neighbors, all while ensuring that the character and charm of this special city is retained.

CBF commented the Council will have another large zoning issue before them in two weeks when they consider the implementation of the Westside Corridor Plan; which could lead to more questions and concerns how PUDs could be applied within that corridor. It is another reason to step back from new action at this time and give time for further review. CBF spoke to the committee makeup for the rewrite of the PUD ordinance; no outside consultant is needed. Instead let the committee be made up of self-selected volunteers to work with the City Planning Staff; and either a draft plan or a number of alternatives should be ready for the Council’s consideration within 6 months. Mayre Flowers called attention to a letter submitted after the packet from Susan Prillman that has been appended to the 2-1-16 packet and was distributed to the Council before the meeting tonight; who wrote against the passage of the proposed text amendment and for a rewrite of the PUD ordinance.

Judy Spivey, 117 Park Knoll Lane, spoke in support of the recommendation to rewrite the PUD ordinance and establish a moratorium on blending; or, she said, she thought it would be better to place a moratorium on all PUDs until the rewrite is complete. She quoted the same as Hunt did previously from the Growth Policy “The citizens of Whitefish value the scale, character, and small town feel of the community”. Spivey said not all development is right for Whitefish, but growth and change are

inevitable but should only move forward with thoughtful and deliberate planning to keep this community special. It is a challenging and difficult task for staff and elected officials.

Barbara Morris, 1 Rock Creek Court, spoke from her letter in the packet starting on page 265, that she said represented her neighboring homeowners at River's Edge Subdivision. She said many of her neighbors wrote emails earlier that are included in the packet and some of them and several others were in attendance tonight and she asked them to raise their hands. She said she was speaking in opposition to the proposed text amendment and in support of the Planning Board's recommendation to rewrite the entire PUD chapter and their recommendation for a moratorium on blending until the rewrite is finished. She referred to Tornow's comments the process residents go through when they buy property, they check out the zoning of adjacent properties and have an expectancy that with their knowledge they can make assumptions how the properties adjacent to them can be developed. That process can either make, or possibly break, a deal. So all of her neighbors in the subdivision she lives in were alarmed and concerned when they learned of the possible development next door that could be developed with increased density due to blending. The neighborhood has talked about this development with staff, with the developers, with the Housing Authority, and it has always been their position that they support the affordable housing aspect of the development if it was consistent with existing zoning, which would have meant that the high density would have remained on the commercially zoned property with highway frontage. She said the proposed amendment invites developers to utilize a practice that is clearly to the developer's advantage and a disadvantage and expense to neighboring homeowners without due process. The neighboring residential owners are almost forced to hire professionals to defend their position. For current and future landowners, they need to know how reliable and how predictable the zoning will be. She has always felt Whitefish was respectful of its homeowners' interests and it is their request that respect to homeowners continues; it makes Whitefish a special place. Morris repeated her position that she stated at the beginning of her testimony.

Charles McCarty, 725 Clearwater Drive in the River's Edge Subdivision, said he was in agreement with comments from Mayre Flowers; and he agreed with Barbara Morris' comments that suddenly, the homeowners in their subdivision have found it necessary to become defensive of what they had counted on what was their rights; he wasn't sure why that is happening. His position, and his wife is in agreement, is that they are opposed to the proposed text amendment, and are in support of a complete rewrite the entire PUD chapter and their recommendation for a moratorium on blending until the rewrite is finished; but to put a timeline on that rewrite so it doesn't go on forever – a 6-month timeline should be fine. McCarty submitted his letter and it has been appended to the 2-1-16 packet as after packet material.

Wendy Coyne, 3 Rock Creek Court in River's Edge Subdivision, said she has been a homeowner in Whitefish for 16 years; and in River's Edge since 2009. She said she had a letter in the packet (page 258) and she repeated part of that letter where she was relating the story of talking to a potential home buyer who was here from out of town looking for property; but decided against any purchase here because she was told by one of the local realtors that she could not be assured that the residential zoning wouldn't change because the City has been changing zoning laws to suit the needs of a developer. Coyne said that is what has happened to her and her neighbors; they all knew they lived next to land zoned for single family dwellings but suddenly became aware that it could be changed to a development with higher density when they got a letter in the mail and attended a public meeting. Their immediate reaction was that all their property rights had been violated. She said the remainder of her letter in the packet was in agreement with other public comments made here tonight. Coyne read from a letter from neighbors who were not here tonight, Cynthia Klein and John Lowell at 9 Rock Creek Court, and said they are business owners, moved here to bring their business here, and employ local employees. The letter was in opposition to the proposed text amendments and included in their

statement requesting that the City not approve regulations that harm home values or quality of life to an extent that drives away people that have a positive impact to the community.

Peggy Taylor, 722 Clearwater Drive in River's Edge Subdivision, said she was also speaking for her husband Gregory. Her position was that the City Council maintain the integrity of the zoning process and oppose the proposed zoning text amendment. She said they are retirees who purchased their land here as their getaway place, they own a business on the East Side (of Montana); and they chose to live here because they liked both natural and community amenities of Whitefish. They knew Whitefish would continue to grow, but knew there were guidelines and regulations to manage orderly growth. They are not against affordable housing but have concerns about the proposed zone changes that came along with the adjacent proposed development. Taylor said zoning is put in place for good reasons and should not be easily changed. Taylor thought it appropriate to have multifamily in the commercial zone as established; with single family residences as the zoning is established on the property closest to the river.

Rhonda Fitzgerald, 412 Lupfer Avenue, stated she thought it was heart breaking to hear citizens having to defend their property rights to the City. The Growth Policy talks about protection of neighborhood integrity and community character; and people believe that is the guiding document; then they suddenly find themselves in a situation where they have to band together, spend money to hire lawyers, rally all their neighbors to come and defend their way of life. The assumption is that the City will work for them. She asked the Council to put a stake in the ground that this is not how it will continue in Whitefish where there has to be a rally to defend the quality of the place and the things that have been agreed upon about how things will be. There are all sorts of zones that back up to commercial zones because this is such a small town and people have to believe that a commercial zone doesn't suddenly spring up beside their single family home. Fitzgerald said it is not right to have to be constantly fighting the fight, but she knows that the Mayor and Council all know that. She supported a moratorium on PUDs and get it right and she wants to believe that the people doing the planning for this community is on the communities' team.

Mayor Muhlfield closed the public hearing and turned the matter over to the Council for their consideration.

Councilor Frandsen made a motion, second by Councilor Hildner, to deny the ordinance amending Zoning Regulations in Whitefish City Code Title 11, Chapter 2, Zoning District, Article S, WPUD Planned Unit Development District, Section 3, Standards of Development, and Section 5, Deviations from Standards, to clarify the maximum average density where a PUD overlays more than one underlying zone.

Councilor Hildner made a motion, second by Councilor Frandsen, to amend the motion to place a 4-month, or so, time frame for completion, or to be done by July 1st, for a rewrite of Article S. WPUD Planned Unit Development District along with a moratorium on blended zoning. Staff and other members of the Council had questions regarding this amendment, after which the amendment was withdrawn by the maker and the second.

Councilor Hildner made a motion, second by Councilor Frandsen, to amend the motion and direct the City Attorney to prepare an ordinance declaring a moratorium on blended density. The amendment passed on a four to one vote, Councilor Barberis voting in the negative.

Councilor Frandsen stated to her original motion that much of tonight's public comment goes back to the issue of not in my back yard; and locations for affordable housing will have to be addressed

and a solution found during a rewrite of the PUD ordinance; as many times affordable housing is provided through the PUD process.

The vote on the motion denying the ordinance amending the Zoning Regulations, as amended, was approved unanimously.

Mayor Muhlfeld called for a recess at 9:10 and the Council reconvened at 9:25 p.m.

e) Ordinance No. 16-04; An Ordinance amending Title 11, Zoning Regulations, Title 12, Subdivision Regulations, Title 13, Lake and Lakeshore Protection Regulations, and Title 14, Flood Control in the Whitefish City (First Reading) (WZTA 16-01) (p. 314) (CD 2:00)

Planner Compton-Ring gave the staff report; this is a series of housekeeping text amendments.

- 1) Updating an outdated term. Changing ‘servant quarters’ to ‘domestic worker quarters’ in zoning districts with residential provisions.
- 2) Adding a definition of domestic worker; and adding a definition of building footprint, a term used in the zoning regulations but not defined.
- 3) Adding “In all proceedings and hearings, and in all application and submittal materials, the burden of proof shall rest with the applicant, permittee or appellant, as applicable” to the Zoning Code, the Subdivision Regulations, the Lakeshore Regulations and the Floodplain Regulations. It had been recently pointed out to the Planning Office this provision relating to the applicant’s responsibility to prove they are meeting City regulations; so this is proposed to be included.
- 4) Address screening of rooftop mechanical equipment in § 11-2-3B(5) with a cross reference to §11-2L-4.
- 5) Add a new review criterion to §12-3-7A, Preliminary Plat Review Process; Minor Subdivisions, Waiver of Preliminary, to address instances for very minor subdivisions that meet certain criteria for City administratively issuing a preliminary plat approval after notice to immediate neighbors; with clarification regarding subdivision variances and compliance with the Whitefish Subdivision Regulations.

Planner Compton-Ring reported that the Planning Board held a public hearing on the proposed text amendments on January 21, 2016 and following the hearing voted to approve the Staff recommendation by a five to one vote. As part of the Board’s recommendation for approval they directed staff to provide definitions of the terms in § 11-2-3B(5) – (ref: #4 above); and review if terms might be outdated. That list is included in tonight’s packet as Exhibit ‘B’ to the staff report on page 338. Staff has reviewed them, and can see no justification for their removal from the height exemptions. Some are architectural features, but others are necessary for HVAC, fire safety, roof access or telecommunications. There were some questions from Council that Planner Compton-Ring clarified.

Mayor Muhlfeld opened the public hearing. There being no public comment, Mayor Muhlfeld closed the public hearing and turned the matter over to the Council for their consideration. Prior to making a motion there were additional questions from Council that Planner Compton-Ring clarified.

Councilor Sweeney made a motion, second by Councilor Williams, to approve Ordinance No. 16-04; An Ordinance amending Title 11, Zoning Regulations, Title 12, Subdivision Regulations, Title 13, Lake and Lakeshore Protection Regulations, and Title 14, Flood Control in the Whitefish City, on its first reading. The motion passed unanimously.

- f) **Resolution No. 16-10; A Resolution to revise fees currently charged and establish new fees for various services provided by the Whitefish Planning & Building Department (p. 361)**
(CD 2:11:15)

From page 364 in the packet, Planner Compton-Ring gave the staff report; this proposed fee increase is due to a change in State Law. State Law no longer allows Flathead County to provide “address lists” (listed used for notification to neighbors regarding land use permits) to the general public; the request has to come now from the City. The County’s fee for address lists is \$75. The Planning and Building Fee Schedule included in the packet reflects the additional \$75 to cover the additional fee now required to be paid by the City, as Staff’s recommendation for approval to the City Council.

Mayor Muhlfeld corrected a typo in the fee schedule; the line for Minor Subdivision (Waiver, referred to Council) will increase from \$740 + \$75 = \$815, not \$810 as shown.

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

Councilor Hildner made a motion, second by Councilor Frandsen, to approve Resolution No. 16-10; A Resolution to revise fees currently charged and establish new fees for various services provided by the Whitefish Planning & Building Department, with the correction of changing \$810 to \$815 in the fourth line of the fee schedule. The motion passed unanimously.

8) COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

- a) **Presentation and review of design and cost estimates for the West 7th Street Reconstruction project, a 2016 Resort Tax road reconstruction project, and authorization to proceed to bidding (p. 367)** (CD 2:14:14)

Public Works Director Workman said his staff report includes both agenda items a and b. Brandon Theis and Ryan Mitchell from Robert Peccia & Associates (RPA) are here in the audience tonight if Council has questions for them. The W. 7th Street reconstruction is a large capital improvement project, reconstructing W. 7th Street from Baker Avenue to Fairway Drive; a Resort Tax Fund project in FY16 and FY17 with construction scheduled to begin in May and be completed in September. Director Workman referenced Rebecca Norton’s earlier comment tonight when she requested an owner’s representative be appointed for W. 7th homeowners, because of problems that came up during the W. 6th Street reconstruction project a few years ago. Being aware of those concerns and in early anticipation of improving the process; the City and construction team have held a series of public meetings while planning this project (beginning in December 2014) and involved citizen’s in all those meetings who were able to take an active role in designing this project. Citizens were able to give final comments and voted on the final design prior to bringing the design concept to the Council in April 2015. At that same meeting the Council authorized RPA to proceed with the final project designs without burying the existing overhead utilities due to the high additional cost. Director Workman reviewed the design drawings in the packet from pages 373 – 378. Along with the road bed reconstruction will be some sections of curb, gutter and storm drain, an off-street improved bicycle/pedestrian path, and some water and sewer line replacement and extensions as shown on the chart on page 369 in the packet. At Geddes Street the 10’ft asphalt bike path (from Karrow Avenue) goes north through the gully to connect with the W. 6th Street path; then the off-street path that continues east on W. 7th becomes an 8’ concrete sidewalk. One of the main objectives of this project is improvement of driver’s and pedestrian’s safety; including improvement of ‘landing areas’ at the intersections, by reducing the grade just prior to each intersection. The plan includes making O’Brien

Avenue one-way north from W. 8th Street to W. 7th Street because of limited right-of-way; it was also the preference of the residents in this area. Lighting improvements are included as they have been in other reconstruction projects with the standard decorative lighting. Staff has included provisions in the plans for experimentation to move forward with some LED technology that will hopefully lead to significant energy savings in this and future projects. Within that provision, spacing of fixtures changes from the current standards. Staff is asking Council's permission to have leeway with this experiment. Staff is also asking for Council's permission to have pedestrian scale bollard lighting along the gully path; the design includes wiring for the standard decorative lighting so that either way – conduit and wiring will be in place for whatever the final decision will be. Councilor Sweeney questioned the lighting planned; he thought residents in that area did not support the standard decorative lighting but Director Workman said with the pedestrian features being added, lighting will be mandatory. It has been designed to be minimal but to be sufficient for required safety measures. Further discussion followed about lighting options between Council and staff and the RPA engineers. Director Workman pointed out there is a final public informational meeting scheduled in April where these specifics can be discussed; and he will keep the Council informed. Director Workman addressed the Financial Requirements. The original cost estimates in 2014 were just over \$2.4M; that was updated in March 2015 for the Council's April 6, 2015 meeting to \$2,817,620 as shown on the chart on page 371 in the packet. Staff feels this is a good time of the year to request bids. Regarding item b on the agenda; staff recommends approval for Manager Stearns to execute Contract Amendment #3 with RPA for this project; it will provide the engineering necessary to see the project through construction.

Responding to a question from Councilor Hildner, Parks and Recreation Director Butts said the path from Karrow to Geddes that continues through the gully to W. 6th is not part of the main bike path therefore will not be maintained by city personnel, but is privately maintained by property owners. Councilor Barberis supported LED options from Geddes to Baker, but not from Karrow to Geddes.

Councilor Frandsen made a motion, second by Councilor Barberis, to approve the design and cost estimates for the West 7th Street Reconstruction project, a 2016 Resort Tax road reconstruction project, and authorization to proceed to bidding. Councilor Sweeney said he was willing to approve authorization to proceed to bidding; but not willing to approve the design because of issues with lighting. Director Workman said the contract does include some flexibility regarding lighting fixture purchases and hopes that they can minimize any change order costs. **The motion passed on a vote of four to one with Councilor Sweeney voting in opposition.**

b) Consideration of Amendment #3 to the engineering consulting contract with Robert Peccia and Associates for the West 7th Street Reconstruction project for bidding, construction inspection, and post-construction services (p. 381)

Councilor Barberis made a motion, second by Councilor Williams, to approve Amendment #3 to the engineering consulting contract with Robert Peccia and Associates for the West 7th Street Reconstruction project for bidding, construction inspection, and post-construction services. The motion passed unanimously.

9) COMMUNICATIONS FROM CITY MANAGER (CD 2:56:13)

- a) Written report enclosed with the packet. Questions from Mayor or Council? (p.421)-None**
- b) Other items arising between January 27th and February 1st**

Manager Stearns repeated the information reported during the owner's representative's report from Mike Cronquist that there were no new bids on the concrete rebidding last week so no savings in that area.

c) Consideration of approving the sale of buildings from the James R. Bakke Reserve property (p. 424)

Manager Stearns said the City received only one bid to purchase one of the six buildings at the property that were available. The bid received from Mark Duff of Whitefish was for \$300.00 for building #6, a small shed.

Councilor Hildner made a motion, second by Councilor Sweeney, to award the bid to Mark Duff of Whitefish for building #6 from the James R. Bakke Reserve. The motion passed unanimously.

d) Resolution No. 16-06; A Resolution relating to up to \$9,800,000 Tax Increment Urban Renewal Revenue Bonds, Series 2016, Authorizing the Issuance and Private Negotiated Sale Thereof (p. 436) (CD 3:00:26)

Manager Stearns said his staff report for this resolution begins on packet page 440. This is a preliminary resolution setting up the terms for action to follow at the Council's next meeting; authorizing the Mayor and staff to execute Bond Purchase Agreements with First Interstate Bank and Glacier Bank for the Tax Increment Bond of \$9.8M as part of the financing for the City Hall/Parking Structure Project. The Bond Purchase Agreements will lock in the interest rate which is anticipated to be close to 2.4%, but it provides and allows for up to a maximum of 3.25%. Prior authorization for this financial arrangement was approved by Council at their April 20, 2015 meeting as explained in detail in the staff report. A cash flow report for the TIF fund is on page 446 in the packet.

Councilor Frandsen made a motion, second by Councilor Sweeney, to approve Resolution No. 16-06; A Resolution relating to up to \$9,800,000 Tax Increment Urban Renewal Revenue Bonds, Series 2016, Authorizing the Issuance and Private Negotiated Sale Thereof. The motion passed unanimously.

e) Resolution No. 16-07; A Resolution relating to \$8,219,500 Water System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Taxable Series 2016; Authorizing The Issuance And Fixing The Terms And Conditions Thereof (p. 447) (CD 3:06:03)

Finance Director Smith gave the staff report from page 498 in the packet, including that two corrections have been made after release of the packet which have been distributed to the Council. The resolution in the packet on page 451, the last Whereas will now read: "Whereas, the DNRC will fund the 2016 Loan with Recycled Money (as hereinafter defined)." The second change is on the next page of the resolution, page 452 in the packet, where a definition of Recycled Money has been added: "Recycled Money" means payments and prepayments of principal of loans made under the Program, and any other amounts transferred to the Principal Subaccount in the Revenue Subaccount in the State Allocation Account (as such terms are defined in the Indenture). Director Smith said this is the Haskill Basin Water Revenue Bond; related to all of the recent Council actions (including two actions tonight) completed for the provisions of the Haskill Basin Conservation Easement (CE) and Project. Debt service will be paid from a portion of the proceeds of the additional 1% Resort Tax increase approved by voters on April 28, 2015. The \$8,219,500 loan through the Montana State Revolving Fund (SRF) loan programs includes the \$7.7M purchase price of the CE and related costs as required by the loan program and detailed in the staff report and in Appendix A of the resolution, and on page 487 in the packet. Director Smith called the Council's attention to two provisions in the Resolution; (1) "the City

Council has investigated the facts necessary and hereby finds, determines, and declares it to be necessary and desirable for the Borrower to issue the Series 2016 Bond to evidence the 2016 Loan,” and (2) “no free service shall be provided to any person or corporation.” The interest rate on this loan is 2.5% and the final payment is due on January 1, 2025, just before the Resort Tax is set to expire on January 31, 2025. Director Smith reviewed the Financial Requirements as detailed in the staff report, currently no water rate increase is required to issue this bond. Staff recommends approval. Manager Stearns added that “Resort Tax Growth Estimates and Ability to Pay 9-year SRF Loan” is shown on a chart on page 505 in the packet.

Councilor Frandsen made a motion, second by Councilor Hildner, to approve Resolution No. 16-07; A Resolution relating to \$8,219,500 Water System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Taxable Series 2016; Authorizing the Issuance and Fixing the Terms and Conditions Thereof, with the two corrections of text in the resolution as distributed and explained by staff. The motion passed unanimously.

f) Review of Mid-year financial report – City Finance Director (p. 506) (CD3:15:34)

Director Smith reported this is an important review of the year to date City Financials, and gives us indications for financial management between now and yearend, (June 30, 2016). In summary of her detailed report, Director Smith said cash in property tax supported funds is a little lower than this time last year but generally tracking as expected; including the General Fund. The Parks & Recreation Fund has a negative cash balance which is typical for this time of year; anticipated payments for Parks Programs, the rink management contract, and other income are expected to offset that a bit; however there will be a loss due to the transition of the ice rink management and unexpected rink equipment repair costs. Good news; The Columbia Falls Building Code Contract revenues are already at 84% at this ½ year point. License and permit revenues in the Building Code is down some compared to last year but the City Hall/Parking Structure/Retail space permit will be coming through soon and it is estimated that will bring the Fund back to expectations. Impact Fee revenue is currently at 71% budgeted; and again with the impact fees from the City Hall/Parking Structure/Retail space permit, along with other projects going on in the city, will bring that fund up higher. The Ambulance Service Charges are down, due to staff still getting caught up with the billing that got delayed due to the preparation, packing, and moving of City Hall and relocating and resetting up in the interim location. Staff has been working diligently to get caught up and the fund should look better by the end of the third quarter. Director Smith said her report includes other details on funds that she continues to monitor. She had questioned Public Works Director Workman regarding an increased expenditure from both Lighting Districts under repair and maintenance and he explained they did a large bulk purchase of supplies to benefit from discounts available; purchases throughout the remainder of the year should be minimal. Enterprise Funds are detailed starting on page 514 and tracking as expected and show stability. A Debt Summary is on page 515. Overall, the City’s Financial Status is good; areas that need monitoring are being done so by Administration and Department Directors.

Mayor Muhlfeld thanked Finance Director Smith for her report.

10) COMMUNICATION FROM MAYOR AND CITY COUNCILORS (CD 3:24:30)

Council and Staff discussed the request made during public comments tonight about consideration of rewriting the PUD ordinance and it was decided to place it on the agenda for the next meeting when Planning and Building Director Taylor would be present.

Councilor Barberis spoke in appreciation for Alex Diekmann, and extended condolences to his

family.

Councilor Hildner said he agreed with Councilor Barberis extending condolences to Alex's family.

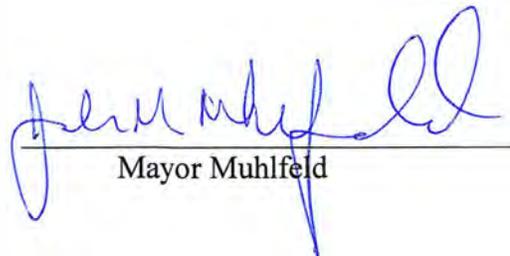
Mayor Muhlfeld said he would pass along those condolences to the family. Mayor Muhlfeld said dates and locations for the Council Retreat are yet to be determined; it is planned for March.

Councilor Frandsen also offered condolences to Alex's family and hoped something will be done in honor of his gifts to the community. She asked Manager Stearns to have a conversation with the Chamber regarding their request to have the City's snow lot be available next summer for overflow parking. Manager Stearns said he has been talking with the Construction Manager of the City's project about what they need next summer at that location, and discussed it with Director Workman; looks like some of the lot would be available. Manager Stearns asked Director Workman to look into the amount of millings we have available. A caution, he said, is that once parking is offered – it is hard to take it back; and in previous conversations he has said once all available street parking is filled each day, this could be an option. The Council will have to consider and decide about regulations and expenditures for required landscaping; and the time frame for this use.

Councilor Sweeney said we have a request for support from Citizen's for a Better Flathead (CBF) regarding their lawsuit with the Board of County Commissioners, now under appeal, on the Shaw litigation (greenbelt zoning) because it could have implications regarding our city and others in the state on future land use issues. City Attorney Jacobs said she could write a letter to the Montana League of Cities requesting that it submit an amicus brief in support of CBF, if that was supported by Council. Upon clarification that an amicus brief is a 'friends of the court' brief and it can be submitted if allowed by the appellant court; then the brief explains the importance and advice on an issue. In this case it would give weight to the Court on the importance of the issue. All the Council indicated their agreement. Councilor Sweeney said it has been a tough snow and ice season and he asked if there could be more attention paid to code enforcement; especially in some areas of downtown.

11) ADJOURNMENT (Resolution 08-10 establishes 11:00 p.m. as end of meeting unless extended to 11:30 by majority)
(CD 3:34:42)

Mayor Muhlfeld adjourned the meeting at 10:58 p.m.



Mayor Muhlfeld

Attest:



Necile Lorang, Whitefish City Clerk

Please return to Necile

PUBLIC HEARINGS

PLEASE SIGN IN TO SPEAK ON A SPECIFIC PUBLIC HEARING 2/1/16

PLEASE PRINT NAME and ADDRESS

| | Two Resolutions: Haskill Basin/ Access to Water Supply & Parcel Exchange | App for CUP*- Reisch - Bar Existing Commercial Building at 845 Wisconsin Avenue | Zoning Text Amendments Planned Unit Development Density Standards-Blending | Five 'Housekeeping' Various Zone Text Amendments | Resolution Various Planning Fees |
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*CUP = Conditional Use Permit