

## WHITEFISH CITY COUNCIL

July 18, 2106

7:10 P.M.

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

Mayor Muhlfeld called the meeting to order. Councilors present were, Feury, Barberis, Frandsen, Sweeney, and Williams. Councilor Hildner was absent. City Staff present were City Manager Stearns, City Clerk Howke, City Attorney Jacobs, Finance Director Smith, Planning and Building Director Taylor, Parks and Recreation Director Butts, Police Chief Dial, Fire Chief Page and Senior Planner Compton-Ring. Approximately 15 people were in the audience.

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

Mayor Muhlfeld asked Bruce Tate to lead the audience in the Pledge of Allegiance.

### **3) PRESENTATIONS – FY15 Audit Report – Angela Holmes of Denning, Downey, and Associates (p. 36)**

Angela Holmes with Denning, Downey and Associates thanked Finance Director Dana Smith for all of her help with the audit. They performed their audit in accordance with the generally excepted accounting standards and only provide reasonable not absolute assurance as to the financial statements. They found very few errors, which had to do with minor accruals and revenues in accounts payable. The biggest change this year was the implementation of GASB68 which added \$4.7 million to the City's liabilities as stated on page 11 of the audit report. The 2009 Increment Tax Revenue Bonds was paid off and paid down a portion for the first payment in July 2016 so that decreased the cash in that fund balance. There were no audit comments to add to the report, it was a very clean audit.

City Manager Stearns said the audit is an unqualified clean opinion due mostly to Finance Director Smith's expertise with the help of Assistant City Clerk Woodbeck. He also explained the Auditors meld and combine the Police fund into the General fund, since they are mostly supported by property tax. Manager Stearns said the State has an unfunded liability for the pension system. GASB68 requires every local government to share on the books the pension liability that is actually the States liability. This is misleading since it is a part of the governmental solution to the national pension crisis.

Director Smith said one of the things we would run into is if the City would go into bankruptcy. The State would try to collect for the contributions. It did affect our financial statements and all local governments over the United States.

### **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)**

Jeff Anderson, 550 Flint Avenue, spoke in regards to the bike path that is being built next to his house. He handed a statement to the Council that is included in the packet on the website. His

concern is the width of the path; it is scheduled to be 10-foot wide. He believes the path is too wide and poses a hazard to the structure and to the users. He was told the path would be a minimum of 4 – 5 feet from his home. A week ago Thursday, he found out the edge of the asphalt would be between 3.2 feet and 3.6 feet from his house. He is asking the bike path be narrowed, he would like 90 feet back of the easements that is on his property, putting the path at 9-foot-wide and keeping it a minimum of 4 feet from his house. Mayor Muhlfeld asked if an 8-foot path would give him a 5-foot buffer for the entire section. Jeff said yes it would.

Lani Johnson, owner of Hair Hut, asked the Council why would they entertain the idea of taking the parking lot on 3<sup>rd</sup> Street and Central Avenue and make more retail space. This parking lot is a necessary vital part of downtown and should be kept as such. She asked the Council to think long and hard about this proposal, it doesn't matter how much retail space we have, if no one can park anywhere. There are a lot of empty spaces around town for retail. The parking situation is dire. Mayor Muhlfeld replied stating during the work session, it was the Council's direction to postpone for several years' consideration of redeveloping 3<sup>rd</sup> Street and Central Avenue parking lot. If it would occur, substitute parking would be determined, purchased and developed concurrently with redevelopment of 3<sup>rd</sup> and Central and close proximity to the business district.

**5) COMMUNICATIONS FROM VOLUNTEER BOARDS - None**

**6) CONSENT AGENDA**

- a) **Minutes from July 5, 2016 Special Meeting (p. 113)**
- b) **Minutes from July 5, 2016 Regular Meeting (p. 114)**
- c) **Ordinance No. 16-11; An Ordinance rezoning approximately 4.73 acres of land located at 325 Haugen Heights Road, in Section 27, Township 31 North, Range 22 West, Whitefish, Montana, from County R-2.5 (Rural Residential District) to City WER (Estate Residential District) and adopting findings with respect to such rezone (2<sup>nd</sup> Reading) (p. 131)**
- d) **Ordinance No. 16-12; An Ordinance rezoning approximately 0.11 acres of land known as Tract 1MA in the Southeast Quarter of the Northwest Quarter (SE1/4NW1/4) Northern Portion, and Tract 1B, Tract 1-0 in the Southeast Quarter of the Northwest Quarter (SE1/4NW1/4) Southern Portion, of Section 35, Township 31 North, Range 22 West, P.M.M., Flathead County, from County RR-1 (Low Density Resort Residential District) to City WRR-1 (Low Density Resort Residential District) and adopting findings with respect to such rezone (2<sup>nd</sup> Reading) (p.138)**

**Councilor Feury made a motion, second by Councilor Frandsen 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)
- a) **Resolution No. 16-\_\_ ; A Resolution denying a conditional use permit for a three story 81-room Marriott TownePlace Suites at 6361 Highway 93 South (p. 138) (CD 30:27)**

Senior Planner Compton-Ring gave her staff report that is provided in the packet on the website.

Mayor Muhlfeld opened the Public Hearing.

Jordan Scott, 11011 N. 92<sup>nd</sup> St., Scottsdale, Arizona, the applicant said when they went through the planning hearing in May and they were denied, they spent a lot of time designing this product type to not only satisfy his needs but also the concerns of the public. They decided to push forward with a CUP and not design two buildings for this project. He hopes to be given a second chance and gain the Council's support.

There being no further comments, Mayor Muhlfeld closed the Public Hearing and turned it over to the Council for their consideration.

**Councilor Frandsen made a motion, second by Councilor Williams to renew her motion for the July 18<sup>th</sup> meeting approving a Conditional Use Permit for the 3 story 81-room Marriott Towneplace Suites at 6361 Highway 93 South and adopting the Findings of Fact including the amendments from the July 18<sup>th</sup> meeting. The motion passed unanimously.**

**b) Resolution No. 16-30; A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City certain tracts of wholly surrounded land on West Lakeshore Drive (p. 233) (CD 36:26)**

City Manager Stearns gave his staff report that is provided in the packet on the website.

Mayor Muhlfeld opened the Public Hearing.

Bruce Tate, 1800 West Lakeshore Drive, gave a little history regarding his family in Whitefish. He referred to The Tale of Tract 4 that is provided in the packet on the website on page 260. He and his wife own Tract 3 that has their house on it, and Tract 4 that he has a garage. In the process of getting approval to build the garage on Tract 4, the County requested Bruce to agree to never develop the lot and to keep as greenspace. He went through the history of the value of Tract 4 which is also included in The Tale of Tract 4. He is asking the Council to exclude Tract 4 from annexation, due to the influence factors listed in the packet and there being no intention for development.

Theodore Roosendahl, 1624 West Lakeshore Dr. asks the Council to consider to defer annexation for a time period. Particular for vacant lots and properties that are on a septic system. He thinks it would be a fair way as opposed to hitting them hard.

Bob Peretto, 1825 West Lakeshore Dr., strongly opposes the annexation, because he is not going to be using the City's services, he gets his water from the lake and his septic is working fine. If at some point it doesn't work, he will connect to sewer and annex. He doesn't think he should be charged for services that he is not going to be using. The taxes with the State and the City adding another tax will be the last nail in the coffin. He has been there 40 years and it will be another Whitefish resident leaving the lake and somebody from out of state buying the property and living there. He feels like he is being driven out of his home with the taxes from the State and now the City.

Rebecca Norton, 530 Scott Avenue, is in favor of the annexation. People who live within the City pay 20-25% more to manage the City. She thinks any chance to include the people that can help pay for things, should be. If people, consider themselves residents of Whitefish they should be willing to do what the rest of us do to help pay the costs.

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

Councilor Sweeney thinks we need to pursue and continue to pursue annexation of these properties. Mr. Tate's issue is one he is sympathetic with, knowing it will never be connected to City services, yet at the same time it is part and parcel of the value of his home and of the property he does own and where he does live. The thing he finds most difficult with annexations is that it causes an increase in taxes for those annexed.

**Councilor Sweeney made a motion, second by Councilor Feury to approve Resolution No. 16-30; A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City certain tracts of wholly surrounded land on West Lakeshore Drive.**

Councilor Feury said he has lived on the lake for 30 years, and also has an unbuildable lot and pays full taxes, so he is sympathetic to Bruce Tate's issue. What concerns him is it comes back to tax argument and how expensive taxes are on these properties, and yet the City is painted in the corner as being the bad people when it is the State property taxation policy that is the culprit. Of those taxes only 20% is going to the City and the rest is going to the State and the County. The boundary around the City is a mess and has always been a mess, we have tried to clean it up and it doesn't allow for the provision of services equitably or efficiently. This area has been on the Council's goals list for annexation for over two years. Also the fact that we lost our extraterritorial jurisdiction, pushes us harder into annexation because we don't have control over our boundaries, and at some point in the future, those areas will be in the City. We need to best provide for the citizenry of this community and best be able to provide services as efficient and cost effective in an equitable matter.

Councilor Frandsen agreed with Councilor Feury and was a neighbor for several years in this area and she understands and knows the position they are in. She thinks this is the best decision for the community of Whitefish and hopefully they will take the opportunity to play a role in City government.

**The motion passed unanimously.**

- 8) COMMUNICATIONS FROM PARKS AND RECREATION DIRECTOR (CD 1:13:00)**  
**a) Consideration of approving Amendment #1 to the contract with TD&H Engineering for final design, bidding, and construction services for Riverside Tennis Courts (p. 273)**

Parks and Recreation Director Butts gave her staff report that is provided in the packet on the website. Councilor Sweeney asked and Director Butts said the core sampling will be done and TD&H does not have any concerns about being able to build the tennis courts in the exact same

location. They have been there well before the 80's and now we are just starting to see the heaving and they feel that they were just not compacted well enough.

**Councilor Frandsen made a motion, second by Councilor Williams to approve Amendment #1 to the contract with TD&H Engineering for final design, bidding, and construction services for Riverside Tennis Courts in an amount not to exceed \$26,230.00. The motion passed unanimously.**

**9) COMMUNICATIONS FROM CITY MANAGER (CD 1:17:22)**

- a) **Written report enclosed with the packet. Questions from Mayor or Council? (p. 282)- None**
- b) **Other items arising between July 13<sup>th</sup> and July 18<sup>th</sup> - None**
- c) **Resolution No. 16-31; A Resolution adopting revisions to the Consultant Selection Policy (p. 297)**

Manager Stearns gave his report that is provided in the packet on the website.

**Councilor Frandsen made a motion, second by Councilor Sweeney to approve Resolution No. 16-31, A Resolution adopting revisions to the Consultant Selection Policy with the amendment of the text in Section 5, striking “and” in the second line of the second paragraph and replace with “or” to now read “to establish a list of firms interested in City work, staff will at least use firms with a business license or in the yellow pages of the telephone book”.**

**Councilor Feury made a friendly amendment to have it read “staff will at least use firms with a business license, in the yellow pages or as compiled as a result in an online search”. Councilor Sweeney being the second on the original motion agreed. The motion passed unanimously.**

**10) COMMUNICATIONS FROM CITY ATTORNEY (CD 1:31:48)**

- a) **Resolution No. 16-32; A Resolution adopting revisions to the Sanitary Sewer Connection Policy contained in the City Council Policy Manual and establishing a Deferred Annexation Policy for areas affecting Whitefish Lake with Septic Leachate (p. 308)**

City Attorney Jacobs gave her staff report that is provided in the packet on the website.

Councilor Sweeney asked and Attorney Jacobs said essentially this is to create a Resolution stating if they petition the county for RSID within 2 years the City will defer annexation for whatever the percent the Council decides of the RSID.

**Councilor Sweeney made a motion, second by Councilor Williams to approve Resolution No. 16-32; A Resolution adopting revisions to the Sanitary Sewer Connection Policy contained in the City Council Policy Manual and establishing a Deferred Annexation Policy for areas affecting Whitefish Lake with Septic Leachate.**

**Councilor Sweeney made a motion, second by Councilor Williams to amend the text in Deferred Annexation to read “In Such cases, the City shall, by resolution, agree to defer annexation for 20 years or the length of the term of the RSID, whichever is less, if the area...”**

and also to read “...(1) that the City will not attempt to annex the area, subdivision or neighborhood for 20 years or upon expiration of the term of the RSID, whichever is less; and ...”

**Councilor Feury made a motion, second by Councilor Sweeney to include language “..., unless annexation is mutually agreeable to the City and the neighborhood...”.**

Discussion followed between Councilor Frandsen and Manager Stearns stating typical RSID’s or SID’s are twenty years.

**The motion to amendment #1 passed unanimously.**

**The motion to amendment #2 passed unanimously.**

Councilor Frandsen asked and City Attorney Jacobs said if an RSID is not obtained or petitioned and the property was contiguous to the City we would annex.

**Councilor Frandsen made a motion, second by Councilor Sweeney to amend the language to read “the annexation deferral period shall begin from the date of the County’s Resolution creating the RSID”. The motion passed unanimously.**

**The original motion passed unanimously.**

**11) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS (CD 1:47:33)**

- a) Resolution No. 16-33; A Resolution expressing support for and solidarity with the City of Whitefish Police Department and other emergency service providers in the area (forthcoming from Councilor Sweeney – not in packet)**

Councilor Sweeney said he has been stirred and moved given the violence that has occurred in the last several weeks of the apparent hunting of our Police Officers of this country. He said our police officers need and deserve confidence from the community that recognizes the risk they take, the good work they do, and that they have our support.

Councilor Frandsen asked, since it was not provided in the packet for Councilor Sweeney to read the Resolution for the listening public. Councilor Sweeney read the Resolution provided below.

**RESOLUTION NO. 16-33**

**A Resolution of the City Council of the City of Whitefish, Montana, declaring its support for the Whitefish Police Department and Emergency Responders, and recognizing the support from the Community in light of violence against police elsewhere in recent weeks.**

WHEREAS, many members of the Whitefish Community have requested that we recognize the good work of our Police and their clear and unwavering respect for the lives of the citizens of Whitefish and all inhabitants and visitors; and

WHEREAS, our Police and Emergency Responders have served our Community with great professionalism and unwavering regard for all members of the public they serve; and

WHEREAS, our Community and this Council recognize the need for an effective Police force and are grateful to have one; and

WHEREAS, our Community and this Council applaud our Police force for its equal treatment of all members of the public regardless of their race, gender, creed, sexual orientation or socio-economic status; and

WHEREAS, we deplore the recent unconscionable violence against Police and first Responders in other communities and we recognize their right to do their work free from fear of targeted violence; and

WHEREAS, it is in the best interests of the City of Whitefish, Montana, and its inhabitants to adopt this Resolution.

THEREFORE, BE IT RESOLVED by the City Council of the City of Whitefish, Montana, and its inhabitants, as follows:

Section 1: The Community of Whitefish stands with its Police and first Responders, applauds their professionalism, good work, effective protection of our community, and rejects any act or threat of violence directed against them by anyone.

Section 2: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS 18TH DAY OF JULY, 2016.

/s/ John M. Muhlfeld

John M. Muhlfeld, Mayor

ATTEST:

/s/ Michelle Howke

Michelle Howke, City Clerk

**Councilor Sweeney made a motion, second by Councilor Frandsen to approve Resolution No. 16-33; A Resolution expressing support for and solidarity with the City of Whitefish Police Department and other emergency service providers in the area. The motion passed unanimously.**

- b) **Consideration of making appointments to volunteer boards, committees, and commissions not made during special session earlier tonight (p. 1) -The committee appointments were made during the special session.**

Council Comments (CD 1:52:47)

Councilor Frandsen would like the Council to address Jeff Anderson's issue with the bike path next to his home. Manager Stearns said what was reported from Jeff tonight was different from what Director Workman has reported. Attorney Jacobs said the Council would be setting a precedence that any homeowner could ask for the width of the path be decreased. Councilor Frandsen said she would hope we could back off the house a little bit even if it is to put up a fence, she would be okay with 8-foot-wide along the 45-foot length of the house. Councilor Sweeney agrees with Councilor Frandsen, it would be more than adequate and it would address virtually all of the issues and would be consistent of being a good neighbor.

**Councilor Frandsen made a motion, second by Councilor Williams to direct Public Works to address the bike path at 550 Flint Avenue that is 10 feet wide and appears to be within a couple feet of the home, to now be 8 feet wide to allow a wider buffer against the home.**

**Councilor Feury made an amendment to the motion to direct Public Works to work with the homeowner to provide clearance. Councilor Williams being the second to the original motion agreed.**

**Councilor Frandsen withdrew her motion, Councilor Williams agreed.**

**Councilor Feury made a motion, second by Councilor Frandsen to direct Public Works to work with Mr. Anderson about the setback of the bike path knowing what is presently engineered is too close to the structure and to allow for as much of a buffer as possible. The motion passed unanimously.**

Mayor Muhlfeld asked Director Taylor regarding the County's update to their own lakeshore protection regulations. They are trying to bring the county regulations into conformant with Whitefish regulations and to have a unified application process. Commissioner Krueger made an amendment not to account for impervious surface area that may be approved by Whitefish in terms of what they will allow for total constructive impervious area within their own jurisdiction which concerns him given the fact that they can technically be substantially increasing the amount of contractible surface area within lakeshore protection zone around Whitefish Lake.

Director Taylor said that is the proposal. Next Monday meeting they will have a draft of all the changes they make before formally adopting the changes. One of the changes is they wouldn't count any constructed area of anything that is outside their jurisdiction which would include portions of docks, depending on where the water level is, anything below the mean water line is within our jurisdiction. Part of that is an administrative nightmare for whoever has to figure out what is the constructed area and where that boundary is. He has had discussion with Mark Musman, Planning Director about coming up with a joint permit application or administrative permits, where the City and the County would sign off.

Mayor Muhlfeld said this sets us up for an applicant who is allowed under the County lakeshore regulations a certain amount of impervious surface area given what is owned. The

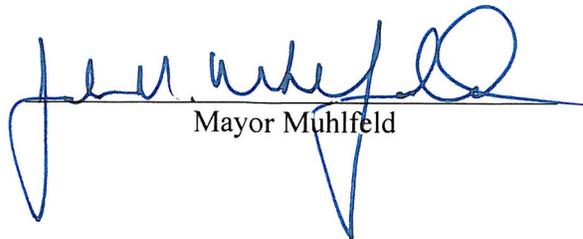
applicant would have to get a permit through the County and then also the City. The only way to address it is to delegate the dock permitting over to the County and the City retain buoys, water line and other administrative permits. Director Taylor said right now it is administrative approval for docks under 60 feet, water lines and buoys. Water lines, docks and buoys over 60 feet the Council has ultimate approval on. Would the Council like to relinquish that?

Councilor Frandsen is not sure why we would relinquish the permitting process on our end. Mayor Muhlfeld said only for docks and gangways because then the area comprised by docks and gangways that are below low water would be accounted for in the total allowable constructed area, dictated by the County regulations. Councilor Feury said then we amend our lakeshore regulations to include anything that is below the low water as part of the constructed area, we control it on our end. Director Taylor said we already count that on our end. If they have already maximized the allowable constructed area through their county permit, they wouldn't get anything. The typical homeowner or applicant is not going to know this, and puts them in a bad situation. If the City were to consider relinquishing jurisdiction over docks and gangways below low water, he might be comfortable with that. Director Taylor said he doesn't know if there is a solution other than sitting down and talking about it and come up with something we can agree on.

Councilor Sweeney asked what is our trigger to maintain the integrity of the lakeshore regulations as we have now? He doesn't want us to lose control of it on a go forward basis by the County increasing what they unilaterally allow. We would want our regulations to be effectively respected unless we change them. Mayor Muhlfeld wanted some feedback from the Council and he will continue to talk with Commissioner Mitchell regarding this issue

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

Mayor Muhlfeld adjourned the meeting at 9:25 pm.



Mayor Muhlfeld

Attest:



Michelle Howke, Whitefish City Clerk

PUBLIC HEARINGS

PLEASE SIGN IN TO SPEAK ON A SPECIFIC PUBLIC HEARING 7-18-16

NAME AND ADDRESS	7a) Res. 16-___; denying CUP- Marriott	7b) Res 16-___; Wholly annexation W. Lakeshore Dr	
DANIEL TATE		✓	
THEODORE ROSENDAHL		✓	
Bob Peretto 1826		✓	
Bob Boyd		✓	
Jim LAIDLAW		✓	
Juan		✓	
Rebecca MURPHY		✓	

Please return to Michelle

\* CUP=Conditional Use Permit