



**CITY COUNCIL WORK SESSION
CITY COUNCIL CHAMBER CONFERENCE ROOM
TUESDAY, FEBRUARY 18, 2014
5:00 TO 7:00 PM**

1. Call to Order
2. 5:00 - Mayor Muhlfeld discussion with City Councilors regarding upcoming process for annual evaluations of City Manager and City Attorney
3. 5:10 - Work session on proposed Planned Resort District Zone (documents in packet under public hearings portion of regular meeting)
4. Public Comments
5. Adjournment

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CITY COUNCIL REGULAR MEETING AGENDA

The following is a summary of the items to come before the City Council at its regular session to be held on **Tuesday**, February 18, 2014, at **7:10 p.m.** at City Hall, 402 East Second Street.

Ordinance numbers start with 14-01. Resolution numbers start with 14-04.

- 1) CALL TO ORDER
- 2) PLEDGE OF ALLEGIANCE
- 3) PRESENTATIONS – Presentation by Caryn Miske and Chas Cartwright of the Flathead Basin Commission on Aquatic Invasive Species and the results from the Coram monitoring station in 2013 (p. 16)
- 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)
- 5) COMMUNICATIONS FROM VOLUNTEER BOARDS
- 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 February 3, 2014 Council regular meeting (p. 19)
- 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) Ordinance No. 14-___; An Ordinance amending discharge time limits and penalty provisions of the Fireworks Regulations in Whitefish City Code Section 9-1-6(C) and (E) (1st Reading) (p. 30)
 - b) Ordinance No. 14-___; An Ordinance approving text amendments to the Whitefish Zoning Jurisdiction Regulations to create a new Zoning District entitled "Whitefish Planned Resort District", and adopting corresponding amendments regarding architectural standards, signage and landscaping (1st Reading) (p. 36)
- 8) COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR
 - a) Consideration of authorizing the issuance of Requests for Proposals (RFP) for design engineering consultants for the future West 7th Street reconstruction project (Baker to Karrow) – a 2015 Resort Tax project or to designate an alternative project (Three motions) (p. 101)

9) COMMUNICATIONS FROM CITY MANAGER

- a) Written report enclosed with the packet. Questions from Mayor or Council? (p.118)
- b) Other items arising between February 12th and February 18th
- c) Resolution No. 14-04; Resolution relating to \$452,300 Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2014; Authorizing The Issuance And Fixing The Terms And Conditions Thereof (p. 124)

10) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

- a) Letter from Dr. Glen Aasheim, Chair of Flathead City-County Board of Health regarding consolidating dog licensing within Flathead County (p. 170)

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



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

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

Adopted by Resolution 07-09
February 20, 2007

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February 12, 2014

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

Mayor Muhlfeld and City Councilors:

Tuesday, February 18, 2014 City Council Agenda Report

There will be a work session beginning at 5:00 p.m. on the proposed Planned Resort District Zone. Food will be provided.

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

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

- a) Minutes from the February 3, 2014 Council regular meeting (p. 19)

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

Item a is an administrative matter.

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

- a) Ordinance No. 14-___; An Ordinance amending discharge time limits and penalty provisions of the Fireworks Regulations in Whitefish City Code Section 9-1-6(C) and (E) (1st Reading) (p. 30)

From Police Chief Dial's staff report:

Over the past several years, fireworks complaints have increased significantly. Fireworks are allowed within the City Limits as specified in Title 9, Ch. 1, Sec.6 Despite our increased efforts to inform the public of the ordinance restrictions, a number of individuals choose to ignore the ordinance resulting in terrified pets, citizens losing sleep, increased vandalism and fire danger.

My staff and I have made inquiry with Judge Johnson and City Prosecutor Caleb Simpson. It is the consensus of my staff, the Judge and Prosecutor that the minimum fine for violating the ordinance should be increased and that increasing the fine will deter violations. Currently Ordinance 1-4-1 states that person may be punished by a fine of "NOT MORE THAN \$500", which in some cases have resulted in fines as low as \$50.00. Increasing the fine to \$300 for the first offense and \$500 for a second and subsequent offense will provide an enforcement and prosecution tool to reduce the number of offenses and ensure for a more tranquil setting during the 4th of July.

The City Council also recommended at the February 3rd work session that the three day period for discharging fireworks be reduced to only two days – July 3rd and July 4th and the ordinance in the packet reflects that change.

There will be no financial impact on the City.

RECOMMENDATION: Staff respectfully recommends the City Council, after considering testimony at the public hearing, adopt an Ordinance amending discharge time limits and penalty provisions of the Fireworks Regulations in Whitefish City Code Section 9-1-6(C) and (E) (1st Reading)

This item is a legislative matter.

- b) Ordinance No. 14-___; An Ordinance approving text amendments to the Whitefish Zoning Jurisdiction Regulations to create a new Zoning District entitled "Whitefish Planned Resort District", and adopting corresponding amendments regarding architectural standards, signage and landscaping (1st Reading) (p. 36)

From Planning Director Dave Taylor's transmittal memo:

Summary of Requested Action: This application is a request by the city of Whitefish to amend the zoning regulations to create a new zoning district called Whitefish Planned Resort (WPR) in Section 11-2W, Zoning Districts, as called for in the 2007 Whitefish City-County Growth Policy.

Planning Board Recommendation: The Whitefish City-County Planning Board held a work session on this item on October 17, 2013, and then a public hearing on November 21, 2013. Following this hearing, the Planning Board unanimously recommended approval of the above referenced zoning text change with two amendments and adopted the supporting findings of fact in the staff report (Anderson and Vail were absent). The amendments, which passed unanimously, were: 1) to amend 11-2W-2, A-2, to add notifying property owners with 1500 feet for a neighborhood plan update; and, 2) to move Conference Centers from Conditional Uses to Permitted Uses.

City Staff Recommendation: Staff recommended approval of the attached referenced text amendments.

Public Hearing: At the Planning Board public hearing, Chris Hyatt, 611 Somers, spoke. He approved of the new district but wanted to see more of the conditional uses moved into the permitted uses. The draft minutes of the Planning Board hearing that include the entirety of the comments are included.

RECOMMENDATION: City staff respectfully recommends the City Council, after considering testimony at the public hearing and the recommendations from staff and the Whitefish City-County Planning Board, adopt An Ordinance approving text amendments to the Whitefish Zoning Jurisdiction Regulations to create a new Zoning District entitled "Whitefish Planned Resort District", and adopting corresponding amendments regarding architectural standards, signage and landscaping (1st Reading) and approve the staff report as findings of fact.

This item is a legislative matter.

COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

- a) Consideration of authorizing the issuance of Requests for Proposals (RFP) for design engineering consultants for the future West 7th Street reconstruction project (Baker to Karrow) – a 2015 Resort Tax project or to designate an alternative project (Three motions) (p. 101)

From Public Works Director John Wilson's staff report:

The City Council considered the Resort Tax Monitoring Committee's recommendation to move forward with the West 7th Street Reconstruction Project at their last meeting on February 3rd. Three property owners provided comment in opposition to the project, while two provided comments in support. After discussion, the City Council tabled the item in order to enable more public comment and take time to consider other street reconstruction priorities.

To clarify one point we tried to make at the February 3rd Council meeting, the West 7th Street Project is the next project on the priority list adopted by the City Council in 2004. The staff memo highlighted a few fairly informal Council decisions to shift priorities since 2004 and a choice made by Public Works to defer the Woodland Place Pedestrian Path, as being more appropriate for a Parks Department expenditure of resort tax funds.

Staff's recommendation at the February 3rd Council meeting was to confirm West 7th Street as the next priority project and direct staff to move forward. There seemed to be some misunderstanding that staff is recommending a juggling of priorities, but that is not the case.

I appreciate many of the concerns people may have about reconstructing West 7th Street, because I live on a similar road that will be reconstructed this summer.

East 2nd Street is a significant east-west transportation corridor with quite a bit of bicycle and pedestrian traffic. The neighborhood east of Cow Creek enjoys a pleasant rural character, very much like West 7th Street. 2nd Street east of Cow Creek has no curb and gutter, no sidewalks, no street lights and many of the residents, including the Wilsons, like the neighborhood just as it is. But the roadway is in poor condition, the utilities need upgrading and safe accommodations for bicyclists and pedestrians are long overdue, just like West 7th Street.

East 2nd and West 7th Streets are both important corridors that carry all types of traffic to and from many neighborhoods, including the downtown core. It would be short sighted to postpone improvements on either of these streets or rebuild to a standard that denies the fact of future growth.

The City Council posed several specific questions about the standard to which a West 7th Street project might be designed and staff explained that the Council could control those decisions. Our adopted Engineering Standards call for various widths of asphalt, depending on anticipated traffic loads, curb and gutter for stormwater management, 5 foot wide sidewalks on both sides of the road and street lighting in conformance with dark skies regulations. We have numerous other standards for driveway widths, construction materials, design parameters, warranty provisions and so on, but standards for street widths, sidewalks and street lighting tend to generate the most public interest.

Those are the City's adopted standards; the word "standard" being in the context of our usual, most common or normal requirements. They can be relaxed or modified at the City Council's pleasure. Our usual preliminary engineering process, in rough chronological order, is to:

- hire an engineer,
- complete a field survey to understand conditions on the ground,
- distribute a newsletter to inform the public, provide contact information and schedule a neighborhood meeting,
- conduct a neighborhood meeting to learn about the area from the residents, hear their preferences and generate a mailing list,
- prepare a conceptual design based on a reasonable combination of the Engineering Standards, neighborhood input, physical opportunities and challenges existing on the site, and
- then present the conceptual design to the City Council and interested property owners at a public meeting, along with staff's request for confirmation and direction to proceed with final design.

Final design work begins after the Council has accepted the conceptual design and the project goes out for construction bids only after the Council has accepted the final design.

Staff is well aware some of the residents along West 7th Street, and some of the City Councilors, want to preserve that neighborhood's rural character. We have barely just begun the public involvement process and have no preliminary engineering in hand, so it would be premature to make hard and fast design decisions at this time.

But speaking in general terms, staff sees the possibility of a more urban street concept for 7th Street east of Geddes Avenue, and a more rural design west of Geddes. A transition point between urban and rural might be at another location, there might be a bike/ped trail on one side of the road in some sections, and so on.

The Resort Tax Monitoring Committee, by unanimous vote, and the Public Works Department recommend West 7th Street, between Baker Avenue and the entrance to the Grouse Mountain subdivision as our street reconstruction project for 2015. The City Council asked staff to recommend an alternate.

Continuing down the priority list adopted in 2004, the next project would be East 7th Street from Columbia to Kalispell Avenue. This priority was initially recommended in the context of a Highway 93 reconstruction project to include a bridge across the Whitefish River at 7th Street. The timing for this project and the inclusion of a 7th Street Bridge are uncertain at this time and we recommend postponing this priority until we can coordinate with the State's work.

The next priority on the list is East 2nd Street, which has already been moved up to 2014. The four projects following that are:

1. Edgewood Place from Wisconsin Avenue (more likely Colorado) to the east city limits
2. Karrow Avenue from West 2nd Street to West 7th Street
3. State Park Road from Highway 93 to the Railroad Tracks and
4. Somers Avenue from East 2nd Street to East 8th Street.

A discussion of the possibilities could go on for quite a while, but we would like to offer the following points.

- The best reason to choose East Edgewood Place as an alternate to West 7th Street would be reasonable consistency with adopted priorities. It's not a heavily traveled road, although it does serve as a corridor between neighborhoods and a route to and from the City core. The primary utility need is for improved storm drainage. Bicyclists and pedestrians find reasonable accommodations with a trail along the south side of the road between the viaduct and Texas Avenue.
- The next two streets are both important transportation routes. Either a Karrow Avenue or State Park Road reconstruct should be a fine opportunity to expand our trail system and improve safety for bicyclists and pedestrians. State Park Road might benefit more from utility improvements, particularly water and storm drainage.

- Somers Avenue is the most strictly residential of the four and the roadway may be in the worst condition. An old cast iron water main runs the length of the project area and drainage is very poor. The current Street, Water and Stormwater Fund budgets include money to replace the water main and full width repaving at new grades to improve drainage. This would essentially be a repair project and does not include deep road base reconstruction, upgraded sidewalks or street lights due to budget constraints. Somers could be a candidate for full reconstruction, with its badly deteriorated roadway and utility needs, although it isn't a very heavily traveled road.

Based on adopted priorities, staff points to East Edgewood Place as a possible alternate to West 7th Street. Based on traffic loads, lack of accommodations for non-motorized traffic and benefits for the most people, we suggest State Park Road or Karrow Avenue. And if deterioration of existing infrastructure is high on your list of criteria, Somers Avenue has definite needs and there's an argument to be made for a full rebuild instead of our current plan for patchwork repairs.

RECOMMENDATION: Staff respectfully recommends the City Council designate a street reconstruction project to be built in 2015. The Resort Tax Monitoring Committee and Public Works Department specifically recommend West 7th Street between Baker Avenue and the entrance to the Grouse Mountain subdivision.

Staff further recommends the City Council direct the Public Works Department to start the engineering selection process for that project.

And finally, Staff respectfully requests designate an elected official to participate as a non-voting member of the Selection Committee. The committee's work is expected to involve three or four hours to review proposals, a one hour meeting for preliminary ranking in late March or early April and a half day for interviews later in April.

This item is a legislative matter.

COMMUNICATIONS FROM CITY MANAGER

- a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 118)
- b) Other items arising between February 12th and February 18th
- c) Resolution No. 14-04; Resolution relating to \$452,300 Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2014; Authorizing The Issuance And Fixing The Terms And Conditions Thereof (p. 124)

When the Montana Department of Transportation (MDT) initiated the Hwy 93 North reconstruction project known as the Whitefish West Project from downtown to Mountainside Drive, we knew that as part of the reconstruction project, we would want to replace and increase the capacity of the water and sewer lines underneath

Highway 93 North while it was under construction and trenches were being dug. Whitefish West Phase I which was substantially completed last year went from Lupfer Avenue to Karrow Avenue.

When MDT does a project, they typically require any City contributions for the costs of construction to be paid up front. The water line cost for Phase I was estimated to be \$663,384 and the Sewer cost was estimated to be \$629,315. We had sufficient funds and reserves in the Water Fund to pay the \$663,384 without incurring debt, however it was estimated that we would have to take on approximately \$400,000 of debt to pay a part of the Sewer cost of \$629,315. MDT allowed us to wait to pay the debt portion until we could arrange a loan through the State's Revolving Loan Fund.

The most recent estimate of our costs owed to MDT is \$415,885. With state financing and bond counsel costs of \$36,415 (8.76%), the loan/bond total will be \$452,300. The packet contains the standard bond resolution prepared by the Bond Counsel Dorsey & Whitney in Missoula. Assistant City Manager Corey Swisher and I have reviewed and revised the Bond Resolution with Dorsey and Whitney.

The total loan amount of the bond will be \$452,300. The total interest rate on the bond/loan will be 3% and payable over 20 years. We have well more than the 125% coverage requirements for Net Revenues (annual operating revenues minus annual operating costs) for repayment of this loan and no sewer rate increase is needed to pay for this bond.

RECOMMENDATION: Staff respectfully requests the City Council approve a Resolution relating to \$452,300 Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2014; Authorizing The Issuance And Fixing The Terms And Conditions Thereof.

This item is a legislative matter.

COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

- a) Letter from Dr. Glen Aasheim, Chair of Flathead City-County Board of Health regarding consolidating dog licensing within Flathead County (p. 170)

ADJOURNMENT

Sincerely,



Chuck Stearns
City Manager

"Cheat Sheet" for Robert's Rules

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

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Summary – Highway 2 at Coram boat inspection station

The Flathead Basin Commission worked with City of Whitefish, United States Bureau of Reclamation, DNRC, and Trout Unlimited to operate a watercraft inspection station on MT Highway 2 near Coram from May 24 to September 3, 2013. Oversight and training were provided by the Flathead Basin Aquatic Invasive Species Consultant. Additional oversight was provided by a Glacier National Park employee that contracted out with the FBC. Hours of operation were 9:00 a.m. to 7:00 p.m. on weekdays and most weekends. Hours were changed to noon to 10:00 p.m. on some weekends to gather data on evening boating habits.

In addition to inspecting and cleaning boats, staff collected data on boat movement, fishing, and fees associated with an ongoing aquatic invasive species program in Montana.

Findings:

Boater summary. A total of 2096 boats were inspected at the station. Boats from Montana, Idaho, Washington, Oregon, Wyoming, Alberta, and British Columbia were considered “Low Risk” and receive normal inspections. All other states were considered “High Risk” and underwent thorough, longer inspections. 77% of boats were from Montana, 16% were from other low-risk states, and 7% were from high risk states (Figure 1).

Summary of dirty boats. Native vegetation was found on 6 boats. No invasive species were found. All vegetation was removed on-site and disposed of after showing the plants to the boat owners and alerting the boaters of the dangers posed by transport of aquatic vegetation transported on boats.

Standing water was present in 43 boats where bilge tanks were not drained and plugs were left in after leaving a body of water. Inspectors were not permitted to remove plugs for liability reasons. In the cases that plugs were in, the inspectors encouraged boaters to remove plugs on-site.

Boater Survey Results. 1637 surveys were conducted over the summer. This number is less than number of boats inspected because several boaters had multiple boats.

The survey indicated that three inspected boats were last launched in lakes with zebra or quagga mussels. One was a small motorized boat and two were non-motorized (kayaks). The motorized watercraft had been out of the water for several years which was apparent during the inspection. The kayaks were thoroughly inspected and determined to be clean before leaving the inspection station.

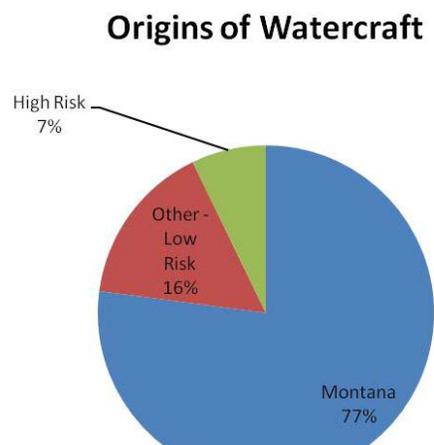


Figure 1: Origins of watercraft by level of risk.

The final survey question gauged support for a potential Aquatic Invasive Species Sticker in Montana. An aquatic invasive species sticker would be a decal purchased before launching in Montana waters. Several western states, including Idaho, Oregon, Wyoming and Nevada utilize an AIS sticker to raise funds to assist with costs associated with running inspection stations and educational materials. This question was not on the survey the first week of inspections, so 1596 interviews included the question. The AIS decal concept was greatly supported (Figure 5). Unsure boaters were predominantly concerned with increased costs associated with multiple boats. Those that were definitely against a decal were opposed for the following reasons: they already pay a guide fee (if boater is a fishing guide); an AIS sticker sounds like another tax; and boating is already expensive.

Support of an AIS sticker program in Montana

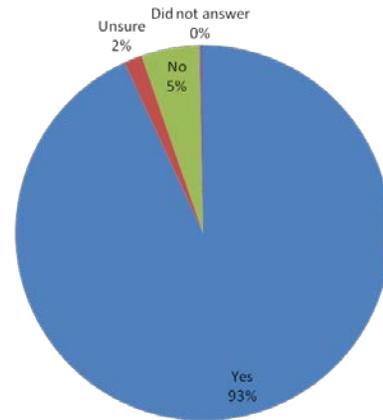


Figure 2

Administration. The Coram inspection station was supported through the following contributions:

- City of Whitefish: \$20,000 for personnel costs
- Flathead Basin Consultant Fund: \$675 est. for inspector training
- Trout Unlimited: \$2,500 for personnel costs
- Flathead Basin Commission: \$2,500 est. for personnel costs, equipment, supplies, plus in-kind for management
- DNRC: \$13,000 est. for personnel costs
- U.S. Bureau of Reclamation: \$15,000 (funds to be carried over to 2014)
- Total: \$53,675



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WHITEFISH CITY COUNCIL MINUTES

January 6, 2014

7:10 P.M.

1. CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Sweeney, Anderson, Hildner, and outgoing Councilors Mitchell, Kahle and Hyatt. Incoming Councilors Barberis and Frandsen were also present. City Staff present were City Manager Stearns, City Clerk Lorang, City Attorney VanBuskirk, Assistant City Manager/Finance Director Swisher, Planning and Building Director Taylor, Senior Planner Compton-Ring, Public Works Director Wilson, Parks and Recreation Director Cozad, Police Chief Dial, and Fire Chief Kennelly. Approximately 30 people were in attendance. Mayor Muhlfeld introduced Assistant City Manager/Finance Director Corey Swisher and welcomed him to Whitefish.

2. PLEDGE OF ALLEGIANCE

Mayor Muhlfeld delegated the task of choosing someone to Councilor Kahle who asked those who live on Creek View Drive to lead the audience in the Pledge of Allegiance.

3. PRESENTATIONS - Presentations of plaques to departing City Council members

Mayor Muhlfeld presented plaques and thanked the out-going Councilors Phil Mitchell, Bill Kahle and Chris Hyatt.

4. CONSENT AGENDA

4a. Minutes from the December 2, 2013 Council special session (p. 15)

4b. Minutes from the December 2, 2013 Council regular meeting and executive session

4c. Ordinance No. 13-11; An Ordinance for a Preliminary Plat and Planned Unit Development for Phase 3 of the Great Northern Heights Subdivision (Second Reading) (p. 34)

Councilor Mitchell offered a motion, seconded by Councilor Kahle, to approve the consent agenda. The motion passed unanimously.

5. OATHS OF OFFICE AND SEATING OF MAYOR AND COUNCIL

5a. Administration of oath of office to three (3) new City Councilors – Mayor Muhlfeld (p. 40)

Mayor Muhlfeld administered the oath of office to new Councilors Pamela Barberis and Jen Frandsen and they were seated on the Council. He said that Councilor Andy Feury was out of town on a trip, but was sworn in at City Offices last week.

5b. Election of Deputy Mayor

Councilor Sweeney offered a motion, seconded by Councilor Anderson, to appoint Councilor Hildner as Deputy Mayor.

Councilor Sweeney said Councilor Hildner has a long history of service, involvement and attendance at meetings and would do a good job as Deputy Mayor.

The motion passed unanimously.

- 6. 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)

Steve Thompson, 545 Ramsey Avenue, thanked the outgoing Councilors and the incoming Councilors for their service. He said the process for the new City Hall has been going well and he likes the design by Mosaic. He urged the Council to take a long term view and establish, early in the process, some principles for design that include energy conservation and LEED standards. He said it may cost a little more up front, but it will be offset with lower energy costs in the future. It makes sense for the Council to be firm up front with these standards.

Turner Askew, 3 Ridge Crest Court, told the new Councilors they are in for an interesting ride. He said last week he read a paper about City Hall that is 797 pages long. He encouraged them to go through it. He said Aspen, CO is the only other city this size with a new City Hall and they have a much different tax base. He said they also charge \$1.50/hour to park. In the same study it tells you about parking meters and the fact is; Whitefish removed parking meters several years ago. He said he used to be a real estate developer and he worries about the unintended consequences. He wondered if the consultants were stating that they were really going to have to charge for parking.

Joan Vetter Ehrenberg, 744 Hidden Valley Drive, thanked the outgoing Councilors for their service to the community. She asked the Council to consider addressing how they clean the streets in Whitefish. She said there are unpleasant things left on the streets and sidewalks around the bars. She hopes they can do something, perhaps with a private/public partnership, to clean up the streets. She said there is also a great need for a hall that is family friendly. She wondered if the new City Hall could have a room that could be used for double purposes, like an alcohol free location for a high school party as well as City meetings.

7. COMMUNICATIONS FROM VOLUNTEER BOARDS

Councilor Hildner said the Bike/Ped Committee met and they will request approval for installation of stairs to Miles Avenue on the NE corner of the bridge near Kay Beller Park. He said they had a tentative bid just over \$10,000 but it doesn't include the concrete slab. He said Karin Hilding will start working on this process. He said they are working on the design of the lift station at Skye Park. He said the Building Active Communities Grant will hold a workshop in Bozeman and then visit Whitefish to walk the trails and make recommendations. The grant allows the City to send five people to the workshop.

- 8. 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)

8a. Resolution No. 14-01; A Resolution amending Resolution No. 13-10 to extend the duration of the Highway 93 West Corridor Plan Steering Committee through June 30, 2014 (p. 42)

8b. Consideration of approving the final plat for Dear TRACS subdivision, a 2-lot subdivision located at 6348 Highway 93 S (p. 43)

Councilor Sweeney offered a motion, seconded by Councilor Hildner, to approve the consent agenda. The motion passed unanimously.

9. 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)

9a. Consideration of an application from Brendan Whitcomb for a Conditional Use Permit to have an accessory apartment on the 2nd floor of a recently constructed garage at 637 Somers Avenue (p. 73)

Senior Planner Compton-Ring said Brendan Whitcomb is requesting approval of a Conditional Use Permit to have an accessory apartment at 637 Somers Avenue. The property is currently developed with a single family home and recently constructed garage. The property is zoned WR-2 (Two-Family Residential District). It is reviewed according to the Growth Policy which designates this property as "Urban". It is served by all City services and utilities. There are two existing off-street parking spaces and two in the garage. There are already several accessory apartments in the neighborhood, so it is consistent with uses in the neighborhood.

The Whitefish City-County Planning Board met on December 19, 2013 and considered the request. Following the hearing, the Planning Board unanimously recommended approval. She noted that one standard condition states that the accessory apartment cannot be rented out unless the property owner lives in the main residence.

Mayor Muhlfeld opened the public hearing. No one wished to speak and Mayor Muhlfeld closed the public hearing.

Councilor Hildner said at the Planning Board meeting Ken Stein asked about the applicant building the garage with an upstairs without a conditional use permit and he too wondered if that was appropriate. Planner Compton-Ring said this project has evolved as the applicant talked with staff and she thinks it is fine.

Councilor Sweeney offered a motion, seconded by Councilor Anderson, to approve the Whitcomb Conditional Use Permit to construct an accessory apartment on the 2nd floor of a recently constructed garage at 637 Somers Avenue subject to 6 conditions, adopting the Staff Report (WCUP 13-15) with Findings of Fact and Conditions of Approval. The motion passed unanimously.

10. COMMUNICATIONS FROM PLANNING AND BUILDING DIRECTOR

10a. Consideration of application from Colin and Teri Sellwood for a preliminary plat and approval for the Sellwood subdivision, a two lot subdivision at 3930 Highway 40 (p. 95)

Senior Planner Compton-Ring reported that this application is a request for preliminary plat approval of a two-lot subdivision with an existing single family home and existing commercial building.

This is a minor subdivision. This property was included in the rezone for the Whitefish Business Service District in 2009. As part of the rezone, an application for a site plan was required. This site plan is on page 5 of the staff report.

The property is located on the south side of Highway 40 west of Conn Road. The subject property is 2.199-acres in size and the lots are 1.189 and 1.010 acres. Current zoning is WBSD, Business Service District, intended to “create defined areas that are appropriate for non-retail limited commercial services and light industrial uses. This district is restricted to those areas identified as business service center in the growth policy. The property is served by the Columbia Falls Fire District.

A notice was mailed to adjacent land owners within 150-feet of the subject parcel on December 9, 2013. A sign was posted on the property on December 16, 2013. Advisory agencies were noticed on December 9, 2013 and have submitted several comments. The Columbia Falls Fire Chief had some comments on access and asked for a 20-foot all weather access and t-turnaround. Each lot will have access off Montana State Highway 40 via a shared private driveway/easement ending in a suitable emergency turn around. As this access is now changing to a joint use access with two uses, the Montana Department of Transportation requests a new approach permit. This is included as a recommended condition of approval. The existing home and commercial building are served by an on-site well and septic system. Flathead County Environmental Health requires a new Certificate of Subdivision. This will be added as a recommended condition of approval.

No park and open space is required. The Whitefish City Growth Policy designates this area as Business Service District. As required in the WBSD zone, a site plan was established showing where future development will take place. The zoning chapter has an administrative process to make minor modifications to the site plan and major changes are reviewed and approved by the City Council.

While the lot area and lot width meet the minimum standards in the zone, staff would like to point out a possible future concern with the side yard setbacks. As indicated in the staff report, the setbacks are increased to 30-feet if the use of the adjacent lot is residential. Currently, Lot 1 will be used for commercial purpose and Lot 2 is both residential and commercial purposes which is permitted according to the WBSD. If Lot 2 were to be only a residential use, the side yard setback to the east would increase to 30-feet. As the lot width of Lot 1 near the structure is 82-feet once the 30-foot side yard setbacks is subtracted from both the east and west sides, the developable area would only be 22-feet wide. The applicants’ long-term plan is to completely eliminate the residential use and devote Lot 2 to a commercial enterprise according to the site plan approved in 2009. This isn’t a concern with this application, but could pose challenges in the future depending on how Lot 2 ultimately is developed.

Staff recommends approval with 9 conditions and she reviewed the conditions for approval, noting that the two lots will be sharing the driveway so they will need an HOA for maintaining that driveway.

Councilor Frandsen asked about the current septic service and Planner Compton-Ring said an engineer will have to get an updated certificate of subdivision. She noted that there are two septic, one for each building. The staff report incorrectly said there was only one. Councilor Sweeney asked if there is an existing easement for lot two to access the lot and Planner Compton-Ring said there will be an easement with this plat. Councilor Hildner asked about the setback concern and wondered if there should be an added condition addressing it. Planner Compton-Ring said there didn’t need to be a condition, staff just wanted to point it out. Councilor Anderson asked if they could have a road user agreement so they don’t have to an HOA and Planner Compton-Ring said that was a good idea.

Councilor Anderson offered a motion, seconded by Councilor Frandsen, to amend Condition #8 to state: “A Road Owners’ Agreement, signed by all users and recorded with the Flathead County Clerk and Recorders Office, indicating all owners shall be responsible for the long-term maintenance of the shared driveway including snow removal.” The amendment passed unanimously.

Councilor Anderson offered a motion, seconded by Councilor Frandsen, to approve the preliminary plat for the Sellwood subdivision, a two lot subdivision at 3930 Highway 40, adopting the Staff Report (WPP 13-11) with Findings of Fact and Conditions of Approval as amended. The motion passed unanimously.

11. COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

11a. Consideration of contract award for an articulated wheel loader for Public Works (p. 109)

Public Works Director Wilson said the Public Works Department has published an Advertisement for Bids for an Articulated Wheel Loader and received bids from two local companies. He recommends that the City Council approve the purchase of a 2014 Case 521F wheel loader from Titan Machinery of Columbia Falls in the amount of \$92,775.

Councilor Frandsen asked if this came in well under budget and Director Wilson said it did. Councilor Sweeney asked and Director Wilson said they posted the bid request in the Daily Interlake. Councilor Hildner asked if it was a different size than the City’s 20-year old loader and Director Wilson said he did not know, he leaves those details up to his Construction and Maintenance Supervisor. Anderson said the budget was \$138,000 and he was pleased that it came in so much lower.

Councilor Sweeney offered a motion, seconded by Councilor Barberis, to approve the contract award for a 2014 Case 521F wheel loader from Titan Machinery of Columbia Falls in the amount of \$92,775 and return bid security at the appropriate time. The motion passed unanimously.

12. COMMUNICATIONS FROM CITY MANAGER

12a. Written report enclosed with the packet. Questions from Mayor or Council? (p. 113)

Councilor Sweeney appreciated the update of the City Hall design and asked about the next step. City Manager Stearns said the design team will work with Kimley-Horn Engineering. He said the initial action will be to select the firm and give authority for contract negotiations. However, before the contract, staff will bring information back to the Council regarding projected assessments for Operations and Maintenance of the parking structure. Councilor Sweeney said the recommendation of a design firm should include input from the Council about the parking structure. Manager Stearns said the design competition didn’t lock in any design—it was conceptual and allowed them to gather ideas from all four firms. He said the Mosaic firm will be recommended by the committee. The final design may be much different than the design competition presentations. The design team will work with staff, the committee, the public and the Council to gather ideas for the final design.

12b. Other items arising between January 1st and January 6th

Manager Stearns pointed out the map on page 52 of the packet for the Deer Tracks subdivision picturing a conceptual street system in the South Whitefish Neighborhood that was approved back in 2000. He said staff proposed the idea of the need for an east-west connector over to Karrow Avenue several years ago. This is an issue that needs to be addressed by the City and he wanted to point it out to the Council.

12c. Resolution No. 14-02; A Resolution approving a Definite Term Lease Agreement with BNSF Railway Company, for the Whitefish landing, a non-motorized boat launch, located along the Whitefish River, south of the BNSF Roundhouse, Line Segment 0036, Mile Post 1219.55, Whitefish, Montana (p. 122)

Manager Stearns said he and Mayor Muhlfeld met this past summer in June with Allen Stegman, General Director Environmental for BNSF, Barbara Ranf, State Governmental Affairs for BNSF, and Rob Hagler of Kennedy/Jenks Consultants, BNSF environmental consulting firm regarding BNSF's offer of a lease of land on the Whitefish River for use as a public river access point. BNSF wanted to offer the lease of this land, at no cost to the City, as a thank you to the community for enduring three plus years of river closures and river clean-up. Then a public dedication and ribbon cutting for the access point and celebration of the end of the river cleanup was held on August 1st. This is a non-motorized access and there is no boat ramp, so it will be used primarily by kayaks, canoes and paddle boards.

Manager Stearns said that he and Attorney VanBuskirk have worked with BNSF representatives and attorneys on a lease of the land. There were many issues to work through because this lease was different than a normal BNSF lease where the City typically has to accept all of the legal conditions that BNSF requires. Most of these issues deal with insurance, liability, and indemnification. Staff was finally able to work through all of those issues to find a lease acceptable to the staff of both BNSF and the City of Whitefish.

The packet includes a lease agreement for 20 years, although it does allow BNSF to terminate the lease with 30 day's notice. There are some other less than desirable conditions in the lease, mostly dealing with insurance, liability, and indemnification, but staff got BNSF to move on many of those issues as far as they can. He said they would not indemnify BNSF for any environmental issues down there. He said they think that the City can live with the current lease proposal which is Exhibit 1 of the subject resolution. BNSF does reserve the right to use the river landing for their necessary launches of motorized boats and barges associated with any cleanup work.

Councilor Frandsen asked about Section 3a. which says it is a picnic area and allows launching for only canoes and kayaks. Manager Stearns said use of other non-motorized vehicles like paddle boards is implied. He would rather not go back to BNSF with any changes. He thinks paddleboards are within that sort of definition. Councilor Frandsen asked about the insurance and asked if there would be a cost to the City. Manager Stearns said the City has an umbrella insurance policy on land and buildings. He said there are no structures here so they are just insuring vacant land. On liability, they probably assume a little liability. He said governmental immunity statutes protect the City. City Attorney VanBuskirk said it is \$750,000 or \$1.5 million and the contract includes the limit of their liability.

Councilor Sweeney noted that 2b. says if BNSF withdraws the contract the City must remove anything they have on the property within 30 days. Manager Stearns said they aren't planning a lot of improvements and probably will only take picnic benches down there. He said they had an issue with a 20-year lease that BNSF can terminate in 30 days, but they think they can work with this agreement. Councilor Sweeney asked if there will be any improvements they'll need to perform to make the property usable and Manager Stearns said the existing concrete landing may take a little work. He said BNSF language requires that if they do any capitol improvements they have to obtain a special insurance policy. Section 18E lists the insurance requirement. They've had to purchase the insurance before when they wanted to do a Public Works project and the only place you can get it is through BNSF and it was expensive. The City incurs no direct cost for this lease unless they initiate any improvements to the property. Also, the BNSF Foundation has pledged \$25,000 for improvements at the landing (however, much of this grant may be required for a special BNSF insurance policy covering any improvements). Any costs the City incurs will be approved by the City Council in a budget or as approved by the Park Board and/or the City Council.

He said it is a great new riverfront access and that is good, even though the contract isn't perfect. Councilor Sweeney asked about 10b. and Manager Stearns said it is standard language in the BNSF contracts. If the County or anyone imposed special assessments on them then the City agrees to pay that new assessment. Councilor Frandsen asked for clarification for Section 31 regarding public record. Manager Stearns said it means the City won't record it, they just keep it in the City records. Mayor Muhlfeld said he acknowledged and thanked the BNSF team and Manager Stearns and Attorney VanBuskirk for their work on this project.

Councilor Frandsen offered a motion, seconded by Councilor Sweeney, to enact a Resolution 14-02 approving a Definite Term Lease Agreement with BNSF Railway Company, for the Whitefish landing, a non-motorized boat launch, located along the Whitefish River, south of the BNSF Roundhouse, Line Segment 0036, Mile Post 1219.55, Whitefish, Montana. The motion passed unanimously.

13. COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

13a. Appointments of City Council Members to Various Boards, Commissions, and Committees (p. 144)

i) Park Board – Mayor or Mayor's Designee – Chris Hyatt was previous designee; (p. 152)

Councilor Anderson offered a motion, seconded by Councilor Hildner, to appoint Councilor Sweeney to this position. The motion passed unanimously.

ii) Resort Tax Monitoring Committee – Mayor or Councilor – Bill Kahle was previous appointee (p. 156)

Councilor Sweeney offered a motion, seconded by Councilor Frandsen, to appoint Councilor Anderson to this position. The motion passed unanimously.

iii) Montana West Economic Development Board – Previously was Bill Kahle and Turner Askew was Alternate (p. 160)

Councilor Sweeney offered a motion, seconded by Councilor Hildner, to appoint Councilor Frandsen to this position. The motion passed with Councilor Anderson abstaining.

Councilor Hildner offered a motion, seconded by Councilor Sweeney, to appoint Councilor Feury as the alternate. The motion passed with Councilor Anderson abstaining.

iv) Architectural Review Committee – Ex-officio member was Phil Mitchell; ex-officio member not provided for in ordinance nor required (p. 162)

The Council agreed to eliminate this position at the recommendation of City Attorney VanBuskirk.

v) Pedestrian & Bicycle Path Advisory Committee – Mayor or Councilor; currently Richard Hildner (p. 166)

Councilor Sweeney offered a motion, seconded by Councilor Frandsen, to appoint Councilor Hildner to this position. The motion passed unanimously.

vi) Whitefish Tree Advisory Committee - Mayor or Councilor; previously was Phil Mitchell (p. 172)

Councilor Sweeney offered a motion, seconded by Councilor Anderson, to appoint Councilor Barberis to this position. The motion passed unanimously.

vii) Ice Rink Advisory Committee – Mayor or Councilor; currently Frank Sweeney (p. 176)

Councilor Hildner offered a motion, seconded by Councilor Anderson, to appoint Councilor Sweeney to this position. The motion passed unanimously.

viii) Weed Control Advisory Committee – City Councilor; currently Richard Hildner (p. 179)

Councilor Anderson offered a motion, seconded by Councilor Sweeney, to appoint Councilor Barberis to this position. The motion passed unanimously.

ix) Impact Fee Advisory Committee – City Councilor; previously was Chris Hyatt (p. 182)

Councilor Sweeney offered a motion, seconded by Councilor Anderson, to appoint Councilor Frandsen to this position. The motion passed unanimously.

x) Flathead County Regional Wastewater Study Committee –currently John Anderson with Chuck Stearns as staff/alternate (p. 185)

Manager Stearns said Joe Brenneman got a grant in the past to work on regionalization on wastewater systems. They will meet in February to determine if the committee will continue or not. It is has been a good way to improve communication in the valley.

Councilor Sweeney offered a motion, seconded by Councilor Barberis, to appoint Councilor Anderson to this position. The motion passed unanimously.

xi) 9-1-1 Administration Board – Currently Chief Dial; alternate is Turner Askew; has to be elected officials or designees (p. 187)

Mayor Muhlfeld recommended that they keep Chief Dial in this position.

Councilor Hildner offered a motion, seconded by Councilor Sweeney, to appoint Chief Dial to this position. The motion passed unanimously.

Councilor Frandsen offered a motion, seconded by Councilor Sweeney, to appoint Councilor Anderson as the alternate to this position. The motion passed unanimously.

xii) Insurance (Medical) Committee – Two City Councilors as Ex-Officio members; currently is John Anderson and Frank Sweeney (p. 199)

Councilor Anderson offered a motion, seconded by Councilor Sweeney, to appoint Councilor Feury to this position. The motion passed unanimously.

Councilor Anderson offered a motion, seconded by Councilor Barberis, to appoint Councilor Sweeney to this position. The motion passed unanimously.

xiii) Whitefish Arts Council – was Bill Kahle

Councilor Sweeney offered a motion, seconded by Councilor Anderson, to appoint Councilor Frandsen to this position. The motion passed unanimously.

xiv) Real Estate Advisors – Mayor and One Councilor; currently is Mayor Muhlfeld and Frank Sweeney;

Councilor Hildner offered a motion, seconded by Councilor Frandsen, to appoint Mayor Muhlfeld and Councilor Feury to this position. The motion passed unanimously.

xv) Legacy Lands Advisory Committee – Mayor and one Councilor or two Councilors; currently John Anderson, and Frank Sweeney (p. 205)

Councilor Hildner offered a motion, seconded by Councilor Frandsen, to appoint Councilors Anderson and Sweeney to this position. The motion passed unanimously.

xvi) City Hall Steering Ad-Hoc Committee – Mayor and One City Councilor; currently is Mayor Muhlfeld and Councilor was Phil Mitchell (p. 211)

Councilor Frandsen offered a motion, seconded by Councilor Barberis, to appoint Councilor Hildner to this position. The motion passed unanimously.

xvii) Whitefish Lake Institute Board – one City elected official; currently is Frank Sweeney;

Councilor Anderson offered a motion, seconded by Councilor Sweeney, to appoint Councilor Barberis to this position. The motion passed unanimously.

xviii) Mountain Trails Park Master Plan Committee – two City Councilors; (p. 214)

Councilor Anderson offered a motion, seconded by Councilor Barberis, to appoint Councilor Frandsen to this position. The motion passed unanimously.

Councilor Anderson offered a motion, seconded by Councilor Sweeney, to appoint Councilor Hildner to this position. The motion passed unanimously.

Manager Stearns said Director Taylor reminded him that they will also need to add to the Highway 93 committee Council representative, but they can do that at the next meeting.

Councilor Comments:

Councilor Barberis said she was in Kalispell talking with someone who said Whitefish always gets a lot done, so she is excited to be part of the Council.

Councilor Anderson welcomed the new Councilors.

Councilor Frandsen thanked everyone. She is excited to be on the Council and she hopes they get a lot done and build a good relationship with good community involvement.

Councilor Hildner welcomed the new Councilors. Councilor Sweeney echoed those sentiments and thanked the outgoing Councilors—they did a great job for the City.

Mayor Muhlfeld thanked the Parks Department for keeping the trails plowed and available for the public.

14. 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 8:30 p.m.

Mayor Muhlfeld

Jane Latus Emmert, Recording Secretary

Attest:

Necile Lorang, City Clerk

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ORDINANCE NO. 14-_____

An Ordinance of the City Council of the City of Whitefish, Montana, amending discharge time limits and penalty provisions of the Fireworks Regulations in Whitefish City Code Section 9-1-6(C) and (E).

WHEREAS, the regulations regarding provisions restricting the sale and use of fireworks within the City limits of the City of Whitefish were adopted by the City Council by Ordinance No. 02-34 on November 18, 2002, and amended by Ordinance No. 09-20 on October 19, 2009; and

WHEREAS, the City of Whitefish initiated an effort to amend the Fire Regulations to limit discharge days and implement stricter penalties; and

WHEREAS, at a lawfully noticed public work session on February 3, 2014, the Whitefish City Council received an oral report and written report from City staff with respect to adopting amendments to the discharge time limits and penalty provisions of the Whitefish City Code Regulations regarding fireworks; and

WHEREAS, at a lawfully noticed public hearing on February 18, 2014, the Whitefish City Council received an oral report and written report from City staff, invited public comment, and approved the text amendments, attached as Exhibit "A;" and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to adopt amendments to the days of discharge and stricter penalties for violation of the fireworks regulations.

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

Section 1: The amendments to Title 9, Chapter 1 of the Whitefish City Code, attached hereto as Exhibit "A" and incorporated herein by reference, with insertions shown underlined and deletions shown with strikethrough, are hereby adopted.

Section 2: In the event any word, phrase, clause, sentence, paragraph, section or other part of the Ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid, and the remaining provisions thereof shall continue in full force and effect.

Section 3: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, THIS _____ DAY OF _____, 2014.

John M. Muhlfeld, Mayor

ATTEST:

Necile Lorang, City Clerk

Exhibit "A"

Title 9 - FIRE REGULATIONS Chapter 1 – Fire Prevention Section 6 - Fireworks

9-1-6: FIREWORKS

A. Definitions:

FIREWORKS: Includes any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and includes skyrockets, Roman candles, helicopters, daygo bombs, blank cartridges, toy cannons, toy canes or toy guns in which explosives other than toy paper caps are used; the type of balloons which require fire underneath to propel the same; firecrackers, torpedoes, sparklers or other fireworks of like construction; and any fireworks containing any explosive or flammable compound or any tablets or other device containing any explosive substance. Nothing in this section shall be construed as applying to toy paper caps containing not more than twenty five hundredths (0.25) of a grain of explosive composition per cap, nor to the manufacture, storage, sale or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, nor apply to the military or navy forces of the United States or of this state, or to peace officers, nor as prohibiting the sale or use of blank cartridges for ceremonials or theatrical or athletic events.

B. Public Displays; Permit And Insurance:

1. The city shall have the power to grant permits for supervised public displays of "fireworks", as defined herein, to be held therein by the city, fair associations, amusement parks and other organizations or groups of individuals.
2. Each such display shall be handled by a competent operator to be approved by the city fire marshal or by the city council and shall be of such character and so located, discharged or fired as, in the opinion of the chief of the fire department or such other officer as may be designated by the city council, after proper inspection, shall not be hazardous to property or endanger any person or persons.
3. Application for permits shall be made in writing at least fifteen (15) days in advance of the date of the display.
4. After such privilege shall have been granted, sales, possession, use and distribution of fireworks for such display shall be lawful for that purpose only.

5. No permit granted under this section shall be transferable.
6. The city may require a policy of liability insurance in an amount deemed adequate by the city to ensure against those damages which may be caused either to a person or persons or to property by reason of the licensed display, and arising from any acts of the licensee, his agents, employees or subcontractors.

C. Sale And Discharge Time Limits:

1. Sales: It shall be lawful for an individual, adult, firm, partnership, corporation or association to possess for sale, sell or offer for sale at retail within the city limits those and only those permissible fireworks enumerated, described and defined in Montana Code 50-37-105 between the hours of twelve o'clock (12:00) noon and eight o'clock (8:00) P.M. each day from July 2 through July 4 each year.
2. Discharge: It shall be lawful for an individual, adult, minor child, firm, partnership, corporation or association to possess and discharge within the city limits those and only those permissible fireworks enumerated, described and defined in Montana code 50-37-105 between the hours of eleven o'clock (11:00) A.M. and ten o'clock (10:00) P.M. each day from July ~~2~~ 3 through July 4 of each year.

D. Prohibited Acts:

1. Sales: It shall be unlawful for any individual, firm, partnership, corporation or association to possess for sale, sell or offer for sale at retail or discharge within the city any "fireworks", as defined herein, except as specifically permitted in this section.
2. Discharge: It shall be unlawful to discharge any "fireworks", as defined herein, within the boundaries and/or within the immediate vicinity of any city park that the city owns and/or maintains and all public thoroughfares and public rights of way.
3. Minors: It shall be unlawful for any parent, guardian or custodian of any minor child to permit or consent to the possession or discharge by the minor child in his charge or custody of any "fireworks", as defined herein, except as specifically permitted herein. Possession or discharge by any minor child of any fireworks within the city shall be presumed to be with the permission and consent of such parent, guardian or other person having the custody of such minor child.
4. Location: It shall be unlawful to offer for sale, expose for sale, sell at retail or wholesale or discharge any "fireworks", as defined herein, within three hundred feet (300') of any service station or other premises storing,

handling, using or offering for sale distillations, or other combustible explosive petroleum products within the city limits.

- E. Penalty: Any individual, firm, partnership, corporation or association violating the provisions of this section shall be ~~punishable as set forth in the general penalty in section 1-4-1 of this code~~ punished by a fine of three hundred dollars (\$300.00) for the first offense, and five hundred dollars (\$500.00) for the second or subsequent offense, payable to the city, or by imprisonment not to exceed six (6) months, or by both such fine and imprisonment. Each day that a violation continues shall be deemed to be a separate offense. In addition, any individual, firm, partnership, corporation or association violating the provisions of this section shall be deemed to have committed a municipal infraction, the penalty for which is set forth in section 1-4-4 of this code. For each separate incident, the city shall elect to treat the violation as a misdemeanor or a municipal infraction, but not both. If a violation is repeated, the city may treat the initial violation as a misdemeanor and the repeat violation as a municipal infraction, or vice versa.

MEMORANDUM

To: Mayor John Muhlfeld and City Councilors

From: Bill Dial, Chief of Police

Re: Staff Report- Amendment to Fireworks Ordinance

Date: January 27, 2014

Introduction and History

Over the past several years, fireworks complaints have increased significantly. Fireworks are allowed within the City Limits as specified in Title 9, Ch. 1, Sec.6 (See attached). Despite our increased efforts to inform the public of the ordinance restrictions, a number of individuals choose to ignore the ordinance resulting in terrified pets, citizens losing sleep, increased vandalism and fire danger.

Current Report

My staff and I have made inquiry with Judge Johnson and City Prosecutor Caleb Simpson. It is the consensus of my staff, the Judge and Prosecutor that the minimum fine for violating the ordinance should be increased and that increasing the fine will deter violations. Currently Ordinance 1-4-1 states that a person may be punished by a fine of "NOT MORE THAN \$500", which in some cases has resulted in fines as low as \$50.00. Increasing the fine to \$300 for the first offense and \$500 for a second and subsequent offense will provide an enforcement and prosecution tool to reduce the number of offenses and ensure for a more tranquil setting during the 4th of July.

Financial Requirement

There will be no financial impact on the City.

Recommendation

Staff requests the City Council approve the amendment to Title 9, Ch.1 Sec. 6 of the Whitefish City Code. Should the Council pass the recommended amendment, the police department will conduct a media campaign including radio, television, print and City/Police Web page to make citizens and visitors aware of the ordinance and the subsequent fines.

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ORDINANCE NO. 13-__

An Ordinance of the City Council of the City of Whitefish, Montana, approving text amendments to the Whitefish Zoning Jurisdiction Regulations to create a new Zoning District entitled "Whitefish Planned Resort District", and adopting corresponding amendments regarding architectural standards, signage and landscaping.

WHEREAS, through an extensive public process, residents of the City and the extraterritorial area developed the 2007 Whitefish City-County Growth Policy (2007 Growth Policy) as a statement of the community's goals, public policies addressing growth and development issues and recommended actions for achieving those goals; and

WHEREAS, the 2007 Growth Policy recommended the creation of a new zoning district classification to be known as the Whitefish Planned Resort District, which contemplates for future land uses, a master planned, dense, mixed and multi-use destination resort complex; and

WHEREAS, in response to the 2007 Growth Policy's recommendation, Planning staff met with the Whitefish City-County Planning Board at a work session at its October 17, 2013 meeting, reviewed the proposed text amendment to create the Whitefish Planned Resort as a new zoning district classification, and thereafter the Planning Board recommended that a final version of the proposed text amendments, with one additional provision, be prepared for their review and approval; and

WHEREAS, in response to such request, Planning staff prepared the proposed text amendments including the additional provision and Staff Report WZTA-13-02, dated November 21, 2013; and

WHEREAS, at a lawfully noticed public hearing on November 21, 2013, the Whitefish City-County Planning Board received an oral report and written Staff Report WZTA-13-02 from Planning staff, invited public comment, and thereafter voted to recommend staff proceed with draft text amendments with two amendments (adding a 1500 ft noticing requirement and newspaper notices on the neighborhood plan and moving conference centers to the permitted uses); and

WHEREAS, at a lawfully noticed public hearing on December 2, 2013, the Whitefish City Council received an oral report and written Staff Report WZTA-13-02 by Planning staff, reviewed the Whitefish City-County Planning Board's recommendation, invited public input, and thereafter approved the text amendments, attached as Exhibit "A;" and

WHEREAS, it will be in the best interests of the City of Whitefish and its inhabitants to adopt the proposed text amendments.

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

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

Section 2: Amended Staff Report WZTA-13-02 is hereby adopted as Findings of Fact.

Section 3: Whitefish City Code Section 11-2, is hereby amended as shown on Exhibit "A", attached hereto and incorporated herein by reference.

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

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

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, THIS _____ DAY OF _____, 2013.

John M. Muhlfeld, Mayor

ATTEST:

Necile Lorang, City Clerk

EXHIBIT "A"
Title 11 – ZONING REGULATIONS
Chapter 2 - Zoning Districts

11-2-1: ZONING DISTRICTS ESTABLISHED:

WPR Planned resort district

11-2-4: APPLICABILITY OF REGULATIONS:

11-2W-1: INTENT AND PURPOSE: The WPR district is intended for destination resort purposes and to provide for the development of high density resort uses, including lodges, hotels, motels, resort condominiums and townhouses, indoor and outdoor recreation uses, and other similar uses oriented toward recreation and resort businesses. This district may also provide meeting rooms, convention and/or conference facilities, bars, lounges, restaurants, and retail and commercial service uses intended primarily for the guests and residents of the resort facilities.

It is further the purpose of the WPR district to provide a mechanism to allow the developer and design professionals the flexibility to respond to the physical and environmental characteristics of a site, the character of the surrounding neighborhood, and the changing market demands and needs of the Whitefish community. In return for this increased flexibility, it is the intent of the WPR that the proposed planned resort provides extraordinary community benefits toward the stated goals of the Growth Policy and includes such things as affordable housing and employee housing, preservation of community/neighborhood character, preservation and/or enhancement of natural resources, provision of open space, or essential and/or desirable community infrastructure.

11-2W-2: REVIEW PROCEDURE:

- A. Review Process. Review and approval of a Planned Resort shall consist of the follow steps:
1. A pre-submission conference with staff prior to submitting any applications.
 2. A neighborhood meeting with those property owners likely to be affected by the Planned Resort development after notification of all property owners within 1500 feet of the proposed site, a public notice in the local newspaper and a press release at least two weeks prior.
 3. Adoption of a neighborhood plan consistent with the Whitefish Growth Policy and Montana State Law.
 4. Approval of a zoning map amendment to WPR, along with a binding Site Plan for the site.
 5. Approval of necessary land divisions.
 6. Approval of necessary conditional use permits.

7. Approval of necessary architectural review.
 8. Obtain building permits, as necessary.
- B. Basis for Consideration. Consideration for approval, conditioning, or denial shall be based on and interpreted in light of the conformance of the development with the intent and requirements of this ordinance, the adopted Whitefish Growth Policy, and the adopted Neighborhood Plan. These standards and requirements are minimums only. The city may request more stringent standards based on the specific and unique nature of the site and the surrounding areas in order to protect the health, safety and welfare of the citizens and to further the purpose and intent of this ordinance and the city's Growth Policy.
- C. Neighborhood Plan. Prior to submitting an application for WPR zoning, and after conducting at least one neighborhood meeting inviting property owners and residents affected by the proposal, the applicant shall submit an amendment to the Growth Policy in the form of a Neighborhood Plan. The Neighborhood Plan shall comply with and help implement the Growth Policy. The plan shall also demonstrate the following:
1. That the proposed plan is a refinement and implementation of the Growth Policy.
 2. That the proposed plan provides extraordinary community benefits toward the stated goals of the Growth Policy, including the following items where possible:
 - a. Preservation and/or enhancement of environmentally sensitive areas of the site.
 - b. Preservation of crucial wildlife habitat and/or daily or seasonal migration corridors.
 - c. Provision of usable open space.
 - d. Preservation and protection of the character and qualities of existing neighborhoods.
 - e. Making efficient use of infill property.
 - f. Provision of effective buffers or transitions between potentially incompatible uses of land.
 - g. Facilitation of street continuity and connectivity, and attractive high quality streetscapes.
 - h. Provision of pedestrian and bicycle facilities and transportation alternatives.

- i. Provision of green building practices, energy efficiency, and sustainable design, including minimizing impervious surfaces.
 - j. Provision of affordable housing and employee housing.
 - k. Provision of recreational opportunities to the local community as well as to the visiting public.
 - l. Implementation of essential or desirable community infrastructure.
3. The plan shall include general site characteristics, types of development, recommended densities, transportation circulation, and general areas of open space.
4. The following items shall be addressed, in a narrative format, with supporting plans, drawings, renderings, photos, or in other formats as appropriate:
 - a. An overall description of the goals and objectives for the development of the planned resort.
 - b. The extent to which the plan deviates from zoning, subdivision regulations and/or "Standards for Design and Construction" (public works standards) as outlined in Sec 11-2W-6 below.
 - c. A description of the public benefit for such departures including how they further the intent and purpose of the zoning as set forth in Sec. 11-2W-1.
 - d. The nature and extent of all open space in the project and the provisions for maintenance and conservation of the common open space; an assessment of the adequacy of the amount and function of the open space in terms of the land use, densities, and dwelling types proposed in the planned resort.
 - e. The manner in which services will be provided such as water, sewer, storm water management, schools, roads, traffic management, pedestrian access, recreational facilities and other applicable services and utilities.
 - f. The relationship of the planned resort to the adjacent and surrounding neighborhoods. Specifically address any potential adverse impacts and how they may be avoided or effectively mitigated.
 - g. How the plan provides reasonable consideration to the character of the neighborhood and the particular suitability of the property for the proposed use.
 - h. How the development plan will further the goals, policies and objectives of the Whitefish Growth Policy and the adopted Neighborhood Plan.

- i. Describe how the project addresses the community's need for affordable housing and housing for resort employees.
- j. Submit site plans, drawings and schematics with supporting narratives where needed that include general locations for various proposed uses, environmentally sensitive areas, open spaces, recreational amenities, motorized and non-motorized circulation routes, as well as the general location, type, and density of proposed residential uses in dwelling units per acre.
- k. If the development involves the division of land for the purpose of conveyance, a preliminary plat shall be prepared in accordance with the requirements of the subdivision regulations.
- l. The approved final binding site plan, together with the conditions and restrictions imposed, shall be adopted and recorded as part of the development requirements during the adoption of the WPR zoning district. No construction can occur or building permit issued for a structure within the district unless such structure conforms to the provisions of the site plan.

D. Re-zoning Application. The application for zoning or rezoning to a WPR district shall be executed by the individual(s) whose successors and/or assignees shall be responsible for carrying out the requirements and obligations of the district. The application may be accompanied by the preliminary plat for joint review. A binding site plan and draft covenants and conditions shall also be submitted. Any submittal requirements set forth herein that are found to be not applicable to a particular project or site may be waived or deferred by the planning and building department.

- 1. The required binding site plan shall consist of maps, graphics, and text that specify major developments, design features, and services for the entire site. It shall also include the following:
 - a. Complete land development program to include:
 - 1) Total gross acreage;
 - 2) Total undevelopable acreage;
 - 3) Total net acreage;
 - 4) Total area covered by buildings;
 - 5) Total floor area of buildings, heights, and floor area ratio (FAR);
 - 6) Total area dedicated to parking, loading, drive aisles, and other paved surfaces; and

- 7) Total area of landscaping/open space and landscape ratio (LSR);
 - b. Present zoning classification and zoning classification of all surrounding properties;
 - c. Property boundary locations and setback lines;
 - d. Location, size, height, and number of stories, and the use or uses to be contained in each existing or proposed structure;
 - e. Layout of residential uses, including identification, building types, and density of single family through multifamily development;
 - f. Special design standards, materials and/or colors;
 - g. Covenants, conditions and restrictions (CC&Rs);
 - h. Location, width, surfacing and layout of all streets, parking areas, and pedestrian walks;
 - i. Vehicle, emergency and pedestrian access, traffic circulation and control, including pedestrian and bikeway linkages to existing and/or proposed trails beyond project boundaries;
 - j. Location and number of proposed parking spaces;
 - k. Location, size, height and orientation of all signs with the exception of directional signage;
 - l. Location and height of all fences, walls, and plantings for buffering and screening purposes;
 - m. Location and maintenance plans for all open spaces, common spaces and facilities;
 - n. Location of the mean high water mark of all adjacent streams, lakes, storm water conveyances, and wetlands;
 - o. Proposed landscaping;
 - p. Notation of all proposed deviations from standards; and
 - q. Any other information that may be deemed relevant for review.
2. All documents included in the site plan shall include space for certification of approval in accordance with the form used for subdivision platting.
3. The applicant shall furnish:

- a. The proposed time schedule for the completion of the development, or a detailed phasing plan if phasing is projected;
 - b. A copy of all proposed covenants, restrictions, easements, articles of incorporation and bylaws of any corporation and/or homeowners association to be formed;
 - c. When including an affordable housing component, the developer shall provide a description of the deed restrictions or other mechanism to ensure "long term affordability" as defined in this title. To ensure long term affordability, the developer will need to partner with an organization that specializes in affordable housing such as the Whitefish Housing Authority, Glacier Affordable Housing Foundation, or Habitat for Humanity through a written agreement. This affordable housing agreement is a legally binding agreement between the developer, nonprofit organization and the city of Whitefish. The agreement establishes among other things number of units proposed as affordable, location of units, affordability tenure, terms and conditions of the affordable units, and unit production schedule. Following the approval and execution of the agreement by all parties, the relevant terms and conditions would be recorded as separate deed restrictions or regulatory agreements on the project's affordable lots and/or units. The approval and execution of the agreements shall occur prior to the final plat and shall be recorded upon final plat recordation;
 - d. Any other information that the zoning administrator, planning board, or the city council may deem necessary; and
 - e. Written justification for any proposed deviations from standards.
4. The preliminary plat (if required) shall be prepared in accordance with requirements of the subdivision regulations and shall include space for certification of approval by the city council.
- E. Approval Process. Approval of a planned resort zoning district shall be based upon a finding that the proposed project is in compliance with the growth policy, that it substantially achieves the intent of the district as set forth in section 11-2W-1 of this article, and that there is a clear benefit and proper justification for any proposed deviations from standards.
- 1. The rezone may be denied upon a finding that it is not compliant with the growth policy and/or does not substantially achieve the intent of the district, and/or deviations from standards are neither beneficial to the neighborhood or community at large, nor properly justified.
 - 2. The city council shall approve a planned resort zoning by ordinance, and such approval shall incorporate by reference the site development plan, all conditions, and all related documents.

3. Because the site planning and design issues involved with a Planned Resort can be complex, there is no time limit for final action by the city council.
4. When appropriate, a final plat shall be submitted to and approved by the city council and properly recorded with Flathead County.

11-2W-3: PERMITTED USES:

- Accessory apartments.
- Art galleries.
- Bed and breakfast establishments.
- Boarding houses
- Coffee shops, snack bars, bakeries, candy shops, etc.
- Conference centers and facilities.
- Convenience food stores.
- Curio shops.
- Day care centers.
- Dwellings: one through eight-plex dwelling units, including resort and recreational condominiums, townhouses, time sharing and interval ownership residences or vacation units and other multiple ownership arrangement residential uses, allowing overnight accommodations and ancillary uses for the use of occupants and guests.
- Emergency medical clinics.
- Educational and cultural facilities such as museums, schools, theaters.
- Financial institutions.
- Gas stations.
- Grocery stores (maximum 3,000 square feet).
- Health clubs.
- Hotels and motels (including restaurants, lounges or bars integral to the facilities).
- Laundromats.
- Multi-use structures containing permitted uses.
- Offices, public and private, including but not limited to professional, medical, real estate, travel, government and post office.
- Parking lots, commercial.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Recreation facilities, commercial, with the exception of those listed under 11-2W-4, Conditional Uses.
- Recreational facility accessory structures and amenities, such as ski trails and lifts, hiking and biking trails, tennis courts, swimming pools, etc.
- Repair facilities as an accessory use for the on-site maintenance and repair of resort rental equipment.
- Restaurants.

- Retail sales, service, and rental of items of a minor character relating to the resort, including but not limited to: gift shops, clothing stores, photo labs, barber and beauty salons, boating supplies, ski equipment, sports equipment sales and rental. This does not include sales of major recreational vehicles, self-contained campers, boats, jet skis, or snow machines.
- Transportation facilities such as car rentals, bus terminals, and mass transit terminals.
- Vendors (see special provisions in section 11-3-23 of this title).

11-2W-4: CONDITIONAL USES:

- Amusement parks and water parks;
- Bars, lounges and taverns;
- Boat launching ramps and docks (subject to the standards of Title 13 Lake and Lakeshore Protection Provisions);
- Cellular towers;
- Churches and other places of worship;
- Convention centers and facilities;
- Dwellings: nine-plex or greater multi-family dwelling units;
- Golf courses;
- Marinas (subject to the standards of Title 13, Lake and Lakeshore Protection Regulations);
- Microbreweries and distilleries;
- Parking structures, commercial;
- Recreational vehicle parks and campgrounds; and
- Ski areas (downhill) and facilities.

11-2W-5: PROPERTY DEVELOPMENT STANDARDS: The following property development standards shall apply to land and buildings within this district:

Bulk and Scale: When not shown on the initial plan required for rezoning, all new structures with a building footprint of 10,000 square feet or greater, existing structures where an addition causes the total footprint to be 10,000 square feet or greater, and additions to structures where the footprint already exceeds 10,000 square feet or greater, are subject to a conditional use permit unless developed in accordance with the original approved site development plan.

Minimum District Size: 5 acres

Minimum Lot Area: N/A

Minimum Lot Width: N/A

Maximum Density: 15 units per gross acre. Gross acreage shall exclude all lands set aside for commercial activities and associated accessory uses.

Minimum Yard Spaces:

Front: 15 feet, except when fronting on a public right of way where there shall be a front yard of not less than 25 feet of landscaped greenbelt area. Vehicle and pedestrian ingress and egress may be allowed in this area up to a maximum of 40 percent of the greenbelt area.

Side: 10 feet

15 feet if there are three or more units

30 feet when non-residential uses abut a residential or agricultural use or zone

Rear: 20 feet

30 feet when non-residential uses abut a residential or agricultural use or zone

Lakeshore setback: 30 feet horizontally from the mean high water line

Maximum height: 35 feet

Permitted lot coverage: 60 percent

Off street parking: See Chapter 6 of this title

Accessory buildings: Accessory buildings conforming to the definition in section 11-9-2 of this title are allowed subject to the standards set forth in section 11-3-2 of this title. Accessory buildings with footprints not exceeding 600 square feet shall be set back a minimum of 6 feet from the side and rear property lines that do not border a street, lake, any intermittent or perennial stream, or the front ½ of any adjoining lot. Setbacks for accessory buildings with footprints exceeding 600 square feet shall be the same as those for the principal structure.

Landscaping: See Chapter 4 of this title.

11-2W-6: DEVIATIONS FROM STANDARDS: In order to provide flexibility in the design approach, the Planned Resort zoning district allows deviations from certain standards as well as from certain standards in the "Standards for Design And Construction" (Public Works design manual). Any proposed deviations from adopted standards must be justified as a clear

public benefit, and shall directly relate to the purpose and intent of the zoning as set forth in section 11-2W-1 of this article.

A. The following standards may be deviated from through approval of a Planned Resort:

1. Setbacks;
2. Building height;
3. Lot coverage;
4. Minimum lot size;
5. Lot width and/or frontage;
6. Any other lot standards set forth in the subdivision regulations;
7. Street design;
8. Storm water management;
9. Sidewalks, except that fee in lieu of sidewalks may not be waived except by the city council for just cause;
10. Landscape standards, except for required buffers; and
11. Parking and loading standards.

B. Standards that may not be deviated from through a development plan include, but are not necessarily limited to, the following:

1. Density standards as set forth in this chapter.
2. Permitted and conditional uses as set forth in this zoning district or as approved in a neighborhood plan, with the exception that certain proposed uses may be evaluated on a case by case basis by the Zoning Administrator where justification can be derived on the basis that the use will be compatibly and harmoniously incorporated into the unitary design of the planned resort development.
3. Lakeshore protection standards;
4. Utility standards for construction, installation, sizing, etc.;
5. Fire and building code requirements such as through access, specific access and circulation requirements, hydrant locations, and sprinkling; and
6. Any and all fees and charges except as set forth in this chapter.

11-2W-7: ENFORCEMENT AND MODIFICATION:

- A. Any substantive modification or deviation from the site plan adopted by the planned resort development ordinance shall be by amendment to the zoning district using procedures for a PUD amendment (11-2S-8). Substantive modification includes, but is not necessarily limited to, an increase in number of units and/or density, reduction in open space, alteration of buffers, additional deviations from standards, further encroachment into environmentally sensitive areas or buffers, major changes in access and/or circulation, or reduction of project amenities.
- B. Minor modifications from the site development plan may be approved by the zoning administrator upon written notice that any proposed modifications are inconsequential to the proposed development, that impacts associated with a proposed project are unchanged or diminished, and that no other issues associated with Planned Resort approval are compromised.
- C. Any other modification or deviation from an approved site plan not otherwise authorized under this section shall constitute a violation of the ordinance establishing the zoning district, and the owner, lessee, or occupant of the area or building in violation shall be subject to the penalties and remedies imposed by this code.

11-2W-8: ABANDONMENT OR EXPIRATION:

Planned resort developments may be abandoned or expire if not developed within a reasonable time frame as described below:

- A. A planned resort development, the approval of which is contingent upon, or requires the approval of a subdivision plat, shall terminate or expire if the preliminary plat of the subdivision lapses or the final plat fails to be recorded. In a phased development, those portions of the development that did receive final plat approval shall remain in effect. Those portions of the phased development which fail to receive final plat approval, and/or the preliminary plat lapses, shall terminate or expire.
- B. Planned resort developments, or portions of planned resort developments which do not require subdivision approval, shall be required to proceed in accordance with an approved time frame. The owner/applicant shall be notified by the city of any noncompliance to the adopted time frame. The owner may petition the city council for an amended completion schedule. The city council may amend the completion schedule if it finds this action to be in the best interest of the city.
- C. Abandonment shall be deemed to occur when no improvements have been made pursuant to the approved planned resort development plan for a period of three (3) years, or upon expiration of the completion schedule approved or amended as part of the planned resort approval process. Improvements, as defined in this section, include actual construction and do not include design work or the activities of securing financing. Upon abandonment, future development of the site will require the review process to start again with a new neighborhood plan or amendment per 11-2W-7(A) unless new development is consistent with the originally approved neighborhood plan and binding site plans.

EXHIBIT "A"

Title 11 – ZONING REGULATIONS Chapter 2 - Zoning Districts

11-2-1: ZONING DISTRICTS ESTABLISHED:

WPR Planned resort district

11-2-4: APPLICABILITY OF REGULATIONS:

11-2W-1: INTENT AND PURPOSE: The WPR district is intended for destination resort purposes and to provide for the development of high density resort uses, including lodges, hotels, motels, resort condominiums and townhouses, indoor and outdoor recreation uses, and other similar uses oriented toward recreation and resort businesses. This district may also provide meeting rooms, convention and/or conference facilities, bars, lounges, restaurants, and retail and commercial service uses intended primarily for the guests and residents of the resort facilities.

It is further the purpose of the WPR district to provide a mechanism to allow the developer and design professionals the flexibility to respond to the physical and environmental characteristics of a site, the character of the surrounding neighborhood, and the changing market demands and needs of the Whitefish community. In return for this increased flexibility, it is the intent of the WPR that the proposed planned resort provides extraordinary community benefits toward the stated goals of the Growth Policy and includes such things as affordable housing and employee housing, preservation of community/neighborhood character, preservation and/or enhancement of natural resources, provision of open space, or essential and/or desirable community infrastructure.

11-2W-2: REVIEW PROCEDURE:

- A. Review Process. Review and approval of a Planned Resort shall consist of the follow steps:
1. A pre-submission conference with staff prior to submitting any applications.
 2. A neighborhood meeting with those property owners likely to be affected by the Planned Resort development after notification of all property owners within 1500 feet of the proposed site, a public notice in the local newspaper and a press release at least two weeks prior.
 3. Adoption of a neighborhood plan consistent with the Whitefish Growth Policy and Montana State Law.

4. Approval of a zoning map amendment to WPR, along with a binding Site Plan for the site.
 5. Approval of necessary land divisions.
 6. Approval of necessary conditional use permits.
 7. Approval of necessary architectural review.
 8. Obtain building permits, as necessary.
- B. Basis for Consideration. Consideration for approval, conditioning, or denial shall be based on and interpreted in light of the conformance of the development the intent and requirements of this ordinance, the adopted Whitefish Growth Policy, and the adopted Neighborhood Plan. These standards and requirements are minimums only. The city may request more stringent standards based on the specific and unique nature of the site and the surrounding areas in order to protect the health, safety and welfare of the citizens and to further the purpose and intent of this ordinance and the city's Growth Policy.
- C. Neighborhood Plan. Prior to submitting an application for WPR zoning, and after conducting at least one neighborhood meeting inviting property owners and residents affected by the proposal, the applicant shall submit an amendment to the Growth Policy in the form of a Neighborhood Plan. The Neighborhood Plan shall comply with and help implement the Growth Policy. The plan shall also demonstrate the following:
1. That the proposed plan is a refinement and implementation of the Growth Policy.
 2. That the proposed plan provides extraordinary community benefits toward the stated goals of the Growth Policy, including the following items where possible:
 - a. Preservation and/or enhancement of environmentally sensitive areas of the site.
 - b. Preservation of crucial wildlife habitat and/or daily or seasonal migration corridors.
 - c. Provision of usable open space.
 - d. Preservation and protection of the character and qualities of existing neighborhoods.
 - e. Making efficient use of infill property.

- f. Provision of effective buffers or transitions between potentially incompatible uses of land.
 - g. Facilitation of street continuity and connectivity, and attractive high quality streetscapes.
 - h. Provision of pedestrian and bicycle facilities and transportation alternatives.
 - i. Provision of green building practices, energy efficiency, and sustainable design, including minimizing impervious surfaces.
 - j. Provision of affordable housing and employee housing.
 - k. Provision of recreational opportunities to the local community as well as to the visiting public.
 - l. Implementation of essential or desirable community infrastructure.
3. The plan shall include general site characteristics, types of development, recommended densities, transportation circulation, and general areas of open space.
4. The following items shall be addressed, in a narrative format, with supporting plans, drawings, renderings, photos, or in other formats as appropriate:
- a. An overall description of the goals and objectives for the development of the planned resort.
 - b. The extent to which the plan deviates from zoning, subdivision regulations and/or "Standards for Design and Construction" (public works standards) as outlined in Sec 11-2W-6 below.
 - c. A description of the public benefit for such departures including how they further the intent and purpose of the zoning as set forth in Sec. 11-2W-1.
 - d. The nature and extent of all open space in the project and the provisions for maintenance and conservation of the common open space; an assessment of the adequacy of the amount and function of the open space in terms of the land use, densities, and dwelling types proposed in the planned resort.
 - e. The manner in which services will be provided such as water, sewer, storm water management, schools, roads, traffic management, pedestrian access, recreational facilities and other applicable services and utilities.

- f. The relationship of the planned resort to the adjacent and surrounding neighborhoods. Specifically address any potential adverse impacts and how they may be avoided or effectively mitigated.
 - g. How the plan provides reasonable consideration to the character of the neighborhood and the particular suitability of the property for the proposed use.
 - h. How the development plan will further the goals, policies and objectives of the Whitefish Growth Policy and the adopted Neighborhood Plan.
 - i. Describe how the project addresses the community's need for affordable housing and housing for resort employees.
 - j. Submit site plans, drawings and schematics with supporting narratives where needed that include general locations for various proposed uses, environmentally sensitive areas, open spaces, recreational amenities, motorized and non-motorized circulation routes, as well as the general location, type, and density of proposed residential uses in dwelling units per acre.
 - k. If the development involves the division of land for the purpose of conveyance, a preliminary plat shall be prepared in accordance with the requirements of the subdivision regulations.
 - l. The approved final binding site plan, together with the conditions and restrictions imposed, shall be adopted and recorded as part of the development requirements during the adoption of the WPR zoning district. No construction can occur or building permit issued for a structure within the district unless such structure conforms to the provisions of the site plan.
- D. Re-zoning Application. The application for zoning or rezoning to a WPR district shall be executed by the individual(s) whose successors and/or assignees shall be responsible for carrying out the requirements and obligations of the district. The application may be accompanied by the preliminary plat for joint review. A binding site plan and draft covenants and conditions shall also be submitted. Any submittal requirements set forth herein that are found to be not applicable to a particular project or site may be waived or deferred by the planning and building department.
- 1. The required binding site plan shall consist of maps, graphics, and text that specify major developments, design features, and services for the entire site. It shall also include the following:

- a. Complete land development program to include:
 - 1) Total gross acreage;
 - 2) Total undevelopable acreage;
 - 3) Total net acreage;
 - 4) Total area covered by buildings;
 - 5) Total floor area of buildings, heights, and floor area ratio (FAR);
 - 6) Total area dedicated to parking, loading, drive aisles, and other paved surfaces; and
 - 7) Total area of landscaping/open space and landscape ratio (LSR);
- b. Present zoning classification and zoning classification of all surrounding properties;
- c. Property boundary locations and setback lines;
- d. Location, size, height, and number of stories, and the use or uses to be contained in each existing or proposed structure;
- e. Layout of residential uses, including identification, building types, and density of single family through multifamily development;
- f. Special design standards, materials and/or colors;
- g. Covenants, conditions and restrictions (CC&Rs);
- h. Location, width, surfacing and layout of all streets, parking areas, and pedestrian walks;
- i. Vehicle, emergency and pedestrian access, traffic circulation and control, including pedestrian and bikeway linkages to existing and/or proposed trails beyond project boundaries;
- j. Location and number of proposed parking spaces;
- k. Location, size, height and orientation of all signs with the exception of directional signage;
- l. Location and height of all fences, walls, and plantings for buffering and screening purposes;

- m. Location and maintenance plans for all open spaces, common spaces and facilities;
 - n. Location of the mean high water mark of all adjacent streams, lakes, storm water conveyances, and wetlands;
 - o. Proposed landscaping;
 - p. Notation of all proposed deviations from standards; and
 - q. Any other information that may be deemed relevant for review.
2. All documents included in the site plan shall include space for certification of approval in accordance with the form used for subdivision platting.
3. The applicant shall furnish:
- a. The proposed time schedule for the completion of the development, or a detailed phasing plan if phasing is projected;
 - b. A copy of all proposed covenants, restrictions, easements, articles of incorporation and bylaws of any corporation and/or homeowners association to be formed;
 - c. When including an affordable housing component, the developer shall provide a description of the deed restrictions or other mechanism to ensure "long term affordability" as defined in this title. To ensure long term affordability, the developer will need to partner with an organization that specializes in affordable housing such as the Whitefish Housing Authority, Glacier Affordable Housing Foundation, or Habitat for Humanity through a written agreement. This affordable housing agreement is a legally binding agreement between the developer, nonprofit organization and the city of Whitefish. The agreement establishes among other things number of units proposed as affordable, location of units, affordability tenure, terms and conditions of the affordable units, and unit production schedule. Following the approval and execution of the agreement by all parties, the relevant terms and conditions would be recorded as separate deed restrictions or regulatory agreements on the project's affordable lots and/or units. The approval and execution of the agreements shall occur prior to the final plat and shall be recorded upon final plat recordation;
 - d. Any other information that the zoning administrator, planning board, or the city council may deem necessary; and
 - e. Written justification for any proposed deviations from standards.

4. The preliminary plat (if required) shall be prepared in accordance with requirements of the subdivision regulations and shall include space for certification of approval by the city council.

E. Approval Process. Approval of a planned resort zoning district shall be based upon a finding that the proposed project is in compliance with the growth policy, that it substantially achieves the intent of the district as set forth in section 11-2W-1 of this article, and that there is a clear benefit and proper justification for any proposed deviations from standards.

1. The rezone may be denied upon a finding that it is not compliant with the growth policy and/or does not substantially achieve the intent of the district, and/or deviations from standards are neither beneficial to the neighborhood or community at large, nor properly justified.
2. The city council shall approve a planned resort zoning by ordinance, and such approval shall incorporate by reference the site development plan, all conditions, and all related documents.
3. Because the site planning and design issues involved with a Planned Resort can be complex, there is no time limit for final action by the city council.
4. When appropriate, a final plat shall be submitted to and approved by the city council and properly recorded with Flathead County.

11-2W-3: PERMITTED USES:

- Accessory apartments.
- Art galleries.
- Bed and breakfast establishments.
- Boarding houses
- Coffee shops, snack bars, bakeries, candy shops, etc.
- Conference Centers and facilities
- Convenience food stores.
- Curio shops.
- Day care centers.
- Dwellings: one through eight-plex dwelling units, including resort and recreational condominiums, townhouses, time sharing and interval ownership residences or vacation units and other multiple ownership arrangement residential uses, allowing overnight accommodations and ancillary uses for the use of occupants and guests.
- Emergency medical clinics.
- Educational and cultural facilities such as museums, schools, theaters.
- Financial institutions.
- Gas stations.

- Grocery stores (maximum 3,000 square feet).
- Health clubs.
- Hotels and motels (including restaurants, lounges or bars integral to the facilities).
- Laundromats.
- Multi-use structures containing permitted uses.
- Offices, public and private, including but not limited to professional, medical, real estate, travel, government and post office.
- Parking lots, commercial.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Recreation facilities, commercial, with the exception of those listed under 11-2W-4, Conditional Uses.
- Recreational facility accessory structures and amenities, such as ski trails and lifts, hiking and biking trails, tennis courts, swimming pools, etc.
- Repair facilities as an accessory use for the on-site maintenance and repair of resort rental equipment.
- Restaurants.
- Retail sales, service, and rental of items of a minor character relating to the resort, including but not limited to: gift shops, clothing stores, photo labs, barber and beauty salons, boating supplies, ski equipment, sports equipment sales and rental. This does not include sales of major recreational vehicles, self-contained campers, boats, jet skis, or snow machines.
- Transportation facilities such as car rentals, bus terminals, and mass transit terminals.
- Vendors (see special provisions in section 11-3-23 of this title).

11-2W-4: CONDITIONAL USES:

- Amusement parks and water parks;
- Bars, lounges and taverns;
- Boat launching ramps and docks (subject to the standards of Title 13 Lake and Lakeshore Protection Provisions);
- Cellular towers;
- Churches and other places of worship;
- Convention/~~conference~~ centers and facilities;
- Dwellings: nine-plex or greater multi-family dwelling units;
- Golf courses;
- Marinas (subject to the standards of Title 13, Lake and Lakeshore Protection Regulations);
- Microbreweries and distilleries;
- Parking structures, commercial;
- Recreational vehicle parks and campgrounds; and

- Ski areas (downhill) and facilities.

11-2W-5: PROPERTY DEVELOPMENT STANDARDS: The following property development standards shall apply to land and buildings within this district:

Bulk and Scale: When not shown on the initial plan required for rezoning, all new structures with a building footprint of 10,000 square feet or greater, existing structures where an addition causes the total footprint to be 10,000 square feet or greater, and additions to structures where the footprint already exceeds 10,000 square feet or greater, are subject to a conditional use permit unless developed in accordance with the original approved site development plan.

Minimum District Size: 5 acres

Minimum Lot Area: N/A

Minimum Lot Width: N/A

Maximum Density: 15 units per gross acre. Gross acreage shall exclude all lands set aside for commercial activities and associated accessory uses.

Minimum Yard Spaces:

Front: 15 feet, except when fronting on a public right of way where there shall be a front yard of not less than 25 feet of landscaped greenbelt area. Vehicle and pedestrian ingress and egress may be allowed in this area up to a maximum of 40 percent of the greenbelt area.

Side: 10 feet

15 feet if there are three or more units

30 feet when non-residential uses abut a residential or agricultural use or zone

Rear: 20 feet

30 feet when non-residential uses abut a residential or agricultural use or zone

Lakeshore setback: 30 feet horizontally from the mean high water line

Maximum height: 35 feet

Permitted lot coverage: 60 percent

Off street parking: See Chapter 6 of this title

Accessory buildings: Accessory buildings conforming to the definition in section 11-9-2 of this title are allowed subject to the standards set forth in section 11-3-2 of this title. Accessory buildings with footprints not exceeding 600 square feet shall be set back a minimum of 6 feet from the side and rear property lines that do not border a street, lake, any intermittent or perennial stream, or the front ½ of any adjoining lot. Setbacks for accessory buildings with footprints exceeding 600 square feet shall be the same as those for the principal structure.

Landscaping: See Chapter 4 of this title.

11-2W-6: DEVIATIONS FROM STANDARDS: In order to provide flexibility in the design approach, the Planned Resort zoning district allows deviations from certain standards as well as from certain standards in the "Standards for Design And Construction" (Public Works design manual). Any proposed deviations from adopted standards must be justified as a clear public benefit, and shall directly relate to the purpose and intent of the zoning as set forth in section 11-2W-1 of this article.

A. The following standards may be deviated from through approval of a Planned Resort:

1. Setbacks;
2. Building height;
3. Lot coverage;
4. Minimum lot size;
5. Lot width and/or frontage;
6. Any other lot standards set forth in the subdivision regulations;
7. Street design;
8. Storm water management;
9. Sidewalks, except that fee in lieu of sidewalks may not be waived except by the city council for just cause;

10. Landscape standards, except for required buffers; and
 11. Parking and loading standards.
- B. Standards that may not be deviated from through a development plan include, but are not necessarily limited to, the following:
1. Density standards as set forth in this chapter.
 2. Permitted and conditional uses as set forth in this zoning district or as approved in a neighborhood plan, with the exception that certain proposed uses may be evaluated on a case by case basis by the Zoning Administrator where justification can be derived on the basis that the use will be compatibly and harmoniously incorporated into the unitary design of the planned resort development.
 3. Lakeshore protection standards;
 4. Utility standards for construction, installation, sizing, etc.;
 5. Fire and building code requirements such as through access, specific access and circulation requirements, hydrant locations, and sprinkling; and
 6. Any and all fees and charges except as set forth in this chapter.

11-2W-7: ENFORCEMENT AND MODIFICATION:

- A. Any substantive modification or deviation from the site plan adopted by the planned resort development ordinance shall be by amendment to the zoning district using procedures for a PUD amendment (11-2S-8). Substantive modification includes, but is not necessarily limited to, an increase in number of units and/or density, reduction in open space, alteration of buffers, additional deviations from standards, further encroachment into environmentally sensitive areas or buffers, major changes in access and/or circulation, or reduction of project amenities.
- B. Minor modifications from the site development plan may be approved by the zoning administrator upon written notice that any proposed modifications are inconsequential to the proposed development, that impacts associated with a proposed project are unchanged or diminished, and that no other issues associated with Planned Resort approval are compromised.
- C. Any other modification or deviation from an approved site plan not otherwise authorized under this section shall constitute a violation of the ordinance establishing the zoning district, and the owner, lessee, or occupant of the area or building in violation shall be subject to the penalties and remedies imposed by this code.

11-2W-8: ABANDONMENT OR EXPIRATION:

Planned resort developments may be abandoned or expire if not developed within a reasonable time frame as described below:

- A. A planned resort development, the approval of which is contingent upon, or requires the approval of a subdivision plat, shall terminate or expire if the preliminary plat of the subdivision lapses or the final plat fails to be recorded. In a phased development, those portions of the development that did receive final plat approval shall remain in effect. Those portions of the phased development which fail to receive final plat approval, and/or the preliminary plat lapses, shall terminate or expire.
- B. Planned resort developments, or portions of planned resort developments which do not require subdivision approval, shall be required to proceed in accordance with an approved time frame. The owner/applicant shall be notified by the city of any noncompliance to the adopted time frame. The owner may petition the city council for an amended completion schedule. The city council may amend the completion schedule if it finds this action to be in the best interest of the city.
- C. Abandonment shall be deemed to occur when no improvements have been made pursuant to the approved planned resort development plan for a period of three (3) years, or upon expiration of the completion schedule approved or amended as part of the planned resort approval process. Improvements, as defined in this section, include actual construction and do not include design work or the activities of securing financing. Upon abandonment, future development of the site will require the review process to start again with a new neighborhood plan or amendment per 11-2W-7(A) unless new development is consistent with the originally approved neighborhood plan and binding site plans.

The next five pages are the minutes of the public hearing at the December 2, 2013 City Council meeting.

The motion passed 3-2 with Councilors Hyatt and Kahle voting in opposition.

Later on in the meeting Planner Compton-Ring noted that an ordinance takes four votes to pass. Between Agenda Items 8a and 8b; Attorney VanBuskirk suggested that the Mayor redirect the Council back to their decision for additional action or discussion because four votes are required to pass an ordinance.

Councilor Hyatt said if they remove the garage forward design condition then he would vote for it.

Councilor Hyatt offered a motion, seconded by Councilor Kahle, to approve Ordinance 13-11 approving a Preliminary Plat and Planned Unit Development for Phase 3 of the Great Northern Heights Subdivision – an application from Rob Pero on behalf of Hilltop Partners to subdivide 6.125 acres into 21 single family lots at First Reading, subject to the findings of fact and with 20 conditions (Staff Report WPP 13-01/WPUD 13-03), as amended by the Planning Board.

Councilor Kahle said the only change is that they aren't forbidding a garage forward design. Mayor Muhlfeld said he tended to agree with Councilor Kahle and Hyatt. He said Rob Pero has built a lot of homes that are affordable and allow working families a chance to have a home. He said to get hung up on this particular phase mandating eliminating any garage forward design is a little short-sighted.

The motion passed 4-1 with Councilor Hildner voting in opposition.

7c. Ordinance No. 13-____; An Ordinance approving text amendments to the Whitefish Zoning Jurisdiction Regulations to create a new Zoning District entitled "Whitefish Planned Resort District", and adopting corresponding amendments regarding architectural standards, signage and landscaping (First Reading) (p. 189)

Planning and Building Director Taylor reported on a request by the City of Whitefish to amend the zoning regulations to create a new zoning district called Whitefish Planned Resort (WPR) in Section 11-2W, Zoning Districts, as called for in the 2007 Whitefish City-County Growth Policy. He said that the Planned Resort zoning district is set up to be similar to a Planned Unit Development (PUD) in that there is flexibility built in to deviate from some development requirements provided that the development offers up significant public benefit of some sort. A neighborhood plan for the area is required prior to adoption of any WPR zoning, and a binding site plan consistent with the neighborhood plan as well as any conditions imposed become part of the development requirements of the final zoning district. All development in the district must follow the basic outline of the approved final binding site plan.

The Growth Policy outlines a Planned Resort land use designation, and states that a zoning district called Planned Resort be implemented there. The only area currently with a Planned Resort designation on the Future Land Use Map is Whitefish Mountain Resort. The Growth Policy defines the Planned Resort Future Land Use as follows:

Planned Resort: This designation is for a master planned, dense, mixed and multi-use destination resort complex. The Planned Resort center is highly walkable and is pedestrian and bicycle oriented. Architecture and streetscapes are of very high quality. Parking is generally in on-site structures or lots that do not interfere with trails, paths, and walkways. Land uses include accommodations of all kinds, resort retail, eating and drinking establishments, and spas and fitness centers. Residential uses are generally medium to high density and are clustered around open space and other resort amenities. Zoning is generally WPR (Whitefish Planned Resort). The Growth Policy will eventually need to be amended in the last sentence of that section to include Big Mountain Resort Residential (WBMRR) and Big Mountain Village Districts (WBMV).

Staff held a work session with the Whitefish City-County Planning Board on October 17, where the Board reviewed this draft and consented to have a final version sent to them for review and approval. The only change from that draft is under 11-2-X-2-C-2(i) below. As was suggested by the board, we added a provision that green building practices and minimizing impervious surfaces can qualify as a public benefit. He said the intent is for resort type development. The Idaho Timber site is a site they will look at in a visioning session in December. This proposed zone provides more flexible approval for different types of development. The neighborhood plan would be a refinement and would provide benefits for community. He highlighted some of the proposed changes for this ordinance.

Proposed Text Amendment: (changes are in red)

11-2X WPR PLANNED RESORT DISTRICT

11-2X-1: INTENT AND PURPOSE:

The WPR district is intended for destination resort purposes and to provide for the development of high density resort uses, including lodges, hotels, motels, resort condominiums and townhouses, indoor and outdoor recreation uses, and other similar uses oriented toward recreation and resort businesses. This district may also provide meeting rooms, convention and/or conference facilities, bars, lounges, restaurants, and retail and commercial service uses intended primarily for the guests and residents of the resort facilities.

It is further the purpose of the WPR district to provide a mechanism to allow the developer and design professionals the flexibility to respond to the physical and environmental characteristics of a site, the character of the surrounding neighborhood, and the changing market demands and needs of the Whitefish community. In return for this increased flexibility, it is the intent of the WPR that the proposed planned resort provides extraordinary community benefits toward the stated goals of the Growth Policy and includes such things as affordable housing and employee housing, preservation of community/neighborhood character, preservation and/or enhancement of natural resources, provision of open space, or essential and/or desirable community infrastructure.

11-2X-2: REVIEW PROCEDURE

Planning Director Taylor reviewed the procedure for review and for the neighborhood plan.

Review Process. Review and approval of a Planned Resort shall consist of the follow steps:

1. A pre-submission conference with staff prior to submitting any applications.

2. A neighborhood meeting with those property owners likely to be affected by the Planned Resort development.
3. Adoption of a neighborhood plan consistent with the Whitefish Growth Policy and Montana State Law.
4. Approval of a zoning map amendment to WPR, along with a binding Site Plan for the site.
5. Approval of necessary land divisions.
6. Approval of necessary conditional use permits.
7. Approval of necessary architectural review.
8. Obtain building permits, as necessary.

The Neighborhood Plan shall comply with and help implement the Growth Policy. The plan shall also demonstrate the following:

1. That the proposed plan is a refinement and implementation of the Growth Policy; and,
2. That the proposed plan provides extraordinary community benefits toward the stated goals of the Growth Policy, including the following items where possible:
 - a. Preservation and/or enhancement of environmentally sensitive areas of the site.
 - b. b. Preservation of crucial wildlife habitat and/or daily or seasonal migration corridors.
 - c. Provision of usable open space.
 - d. Preservation and protection of the character and qualities of existing neighborhoods.
 - e. Making efficient use of infill property.
 - f. Provision of effective buffers or transitions between potentially incompatible uses of land.
 - g. Facilitation of street continuity and connectivity, and attractive high quality streetscapes.
 - h. Provision of pedestrian and bicycle facilities and transportation alternatives.
 - i. Provision of green building practices, energy efficiency, and sustainable design, including minimizing impervious surfaces.
 - j. Provision of affordable housing and employee housing.
 - k. Provision of recreational opportunities to the local community as well as to the visiting public.
 - l. Implementation of essential or desirable community infrastructure.

11-2X-4 CONDITIONAL USES

These apply if they come in with these ideas after the original plan.

1. Amusement parks and water parks
2. Bars, lounges and taverns

3. Boat launching ramps and docks (subject to the standards of Title 13 Lake and Lakeshore Protection Provisions).
4. Cellular towers
5. Churches and other places of worship
6. Convention/conference centers and facilities.
7. Dwellings: nine-plex or greater multi-family dwelling units
8. Golf courses
9. Marinas (subject to the standards of Title 13 Lake and Lakeshore Protection Provisions).
10. Microbreweries and distilleries.
11. Parking structures, commercial.
12. Recreational vehicle parks and campgrounds
13. Ski areas (downhill) and facilities

The Whitefish City-County Planning Board held a work session on this item on October 17, 2013, and then a public hearing on November 21, 2013. Following this hearing, the Planning Board unanimously recommended approval of the above referenced zoning text change with two amendments and adopted the supporting findings of fact in the staff report (Anderson and Vail were absent). The amendments, which passed unanimously, were: 1) to amend 11-2W-2, A-2, to add notifying property owners with 1,500 feet for a neighborhood plan update; and, 2) to move Conference Centers from Conditional Uses to Permitted Uses. He expanded it to include a press release and notification in the newspaper.

At the public hearing, Chris Hyatt, 611 Somers, spoke. He approved of the new district but wanted to see more of the conditional uses moved into the permitted uses. The Planning Board discussed it and added the conference centers as a permitted use.

Councilor Kahle asked and Director Taylor said they've been approached with ideas about some large developments. He said the Idaho Timber site is one likely location, and someone asked about property at the base of Big Mountain Road. Councilor Kahle asked how this is different than a PUD and Director Taylor said a PUD is an overlay over existing zoning. That process isn't designed for a resort. This ordinance would require a lot of public input, if it was a large project, but it could also be a small 5 acre project like a water park. This doesn't affect Big Mountain at all because their Resort Plan is already in place. Councilor Kahle said this new zoning designation could be used anywhere. Director Taylor said it could, but the applicants would have to amend the Growth Policy. Councilor Anderson said he appreciated all of the work that went into this by Director Taylor. He said he would appreciate a work session on this because there is so much information.

Mayor Muhlfeld opened the public hearing. No one wished to speak and the public hearing was closed.

Councilor Anderson offered a motion, seconded by Councilor Sweeney, to table an Ordinance approving text amendments to the Whitefish Zoning Jurisdiction Regulations to create a new Zoning District entitled "Whitefish Planned Resort District," continuing the public hearing until after a work session.

Councilor Hildner asked if they want to keep the public hearing open. City Attorney VanBuskirk said they could just continue this hearing until after the work session. Councilor Kahle said something about this scares him. He said it seems like a slippery slope. He isn't sure they are a resort town—they are a family town. He urged them to proceed cautiously.

The motion to table passed unanimously.

8. COMMUNICATIONS FROM CITY MANAGER

8a. Written report enclosed with the packet. Questions from Mayor or Council? (p. 251)

This is the point in the meeting that Attorney VanBuskirk suggested that the Mayor redirect the Council back to their decision under 7b for additional action or discussion because four votes are required to pass an ordinance. Council action is recorded at the end of section for Item 7b, above.

8b. Other items arising between November 27th and December 2nd

City Manager Stearns said the City Hall Steering Committee will hold a design competition and interviews with the four finalist architectural firms as part of the process for recommending an architectural firm for the new City Hall building. This design competition will occur all day on Wednesday, December 11th. The schedule for the architectural firms' presentations and interviews is below. Each presentation will begin with a half hour presentation by the firm on their conceptual ideas and proposal for how a new City Hall could look. After that half hour, the Committee will ask questions about their presentation and also ask interview questions about the firm's experience and skills.

The schedule of presentations on Wednesday, December 11th is:

8:30 a.m.	Mosaic Architecture
10:15	MMW Architects
1:00 p.m.	CTA Architects/Engineers
2:45 p.m.	OZ Architects/John Constenius

He said it should be an interesting day in the evolution of City Hall and he hopes the public will attend.

8c. Resolution No. 13-___; A Resolution approving a real estate Buy-Sell Agreement with respect to 1 Lakeside Boulevard, Lots 7, 8 and 9, of Block 16, City of Whitefish (p. 257)

City Manager Stearns said the buy-sell agreement he signed expired last week without two of the three owners signing it. Three people own the property and all three must sign it. He said Attorney VanBuskirk wrote the resolution that will allow him to keep negotiating. It is important to get a reading on whether the Council will support this proposal. He said any subsequent buy-sell would come back to the Council for approval.

Manager Stearns, for the benefit of the public, reviewed how they were contacted by a realtor who is representing the owners of a property at 1 Lakeside Blvd (Jacqueline Creon et al) which is at the

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



December 2, 2013

Mayor and City Council
City of Whitefish
PO Box 158
Whitefish, MT 59937

Re: Zoning Text Amendment: WZTA-13-02; Whitefish Planned Resort Zoning District

Honorable Mayor and Council:

Summary of Requested Action: This application is a request by the city of Whitefish to amend the zoning regulations to create a new zoning district called Whitefish Planned Resort (WPR) in Section 11-2W, Zoning Districts, as called for in the 2007 Whitefish City-County Growth Policy.

Planning Board Recommendation: The Whitefish City-County Planning Board held a work session on this item on October 17, 2013, and then a public hearing on November 21, 2013. Following this hearing, the Planning Board unanimously recommended approval of the above referenced zoning text change with two amendments and adopted the supporting findings of fact in the staff report (Anderson and Vail were absent). The amendments, which passed unanimously, were: 1) to amend 11-2W-2, A-2, to add notifying property owners with 1500 feet for a neighborhood plan update; and, 2) to move Conference Centers from Conditional Uses to Permitted Uses.

City Staff Recommendation: Staff recommended approval of the attached referenced text amendments.

Public Hearing: At the public hearing, Chris Hyatt, 611 Somers, spoke. He approved of the new district but wanted to see more of the conditional uses moved into the permitted uses. The draft minutes of the Planning Board hearing that include the entirety of the comments are included.

This item has been placed on the agenda for your regularly scheduled meeting on December 2, 2013. Should Council have questions or need further information on this matter, please contact the Whitefish City-County Planning Board or the Planning & Building Department.

Respectfully,

A handwritten signature in blue ink, appearing to read "David Taylor".

David Taylor, AICP
Director

Att: Draft minutes of the 11-21-13 Planning Board meeting

Exhibit A, Planning Board recommendation, 11-22-13

Exhibits from 11-21-13 Staff Packet to Planning Board

1. Staff Report, 11-21-13

c: w/att Necile Lorang, City Clerk

John Gerbozi said Phase 1 and Phase 2 sold at a time of high values and the developers made their money on those two phases. He said the folks in Phase 1 and 2 shouldn't be impacted because the applicant needs more lots to make more money.

Michael Morton said there is not the same potential for revenue if they decrease the number of lots. He thinks it is interesting that Mr. Gerbozi thinks he understands their profit or loss on the last phase. He said they are only asking for 3 additional lots from the original plan. Gunderson said if the applicant gives up land for the road extension then the lots get even smaller.

AMENDMENT

Gunderson offered an amendment, seconded by Blake to remove condition #6 (the road extension) and reduce the number of lots to the west of Brimstone Drive to 12 lots.

Meckel asked why 12 and not 13 and Gunderson said it takes them back to the original request for 21 lots. Meckel said he appreciates what they are trying to do, but he is hesitant to design projects. He leans toward approving or disapproving within certain limits. Blake said he is glad to see this proposal come back as single family. He said the CAO really messed them up and he appreciates that they've come back with the single family design and he wanted to applaud them for that.

VOTE ON THE AMENDMENT

The amendment passed 3-2 with Konopatzke and Meckel voting in opposition.

VOTE

The original motion, as amended, passed unanimously. (Scheduled for City Council on December 2, 2013.)

**CITY OF WHITEFISH
ZONING CODE
AMENDMENT REQUEST**

A proposal by the City of Whitefish to amend Title 11 of the Whitefish Zoning Code to create a new zoning district, Whitefish Planned Resort (WPR), as called for in the 2007 Whitefish City-County Growth Policy.

STAFF REPORT WZTA 13-02

Director Wilson reported that the Growth Policy calls for this zoning district, but it just hasn't been implemented yet, so that is why they are recommending it. Blake asked what "extraordinary" means in relation to the requirement for 'extraordinary public benefit' and Director Taylor said maybe significant is a better word. They provided a list, under C.2, of what would be provided under the neighborhood plan that would be considered an extraordinary public benefit. Blake asked about affordable housing and noted cash-in-lieu wasn't mentioned. Taylor said cash-in-lieu is tied to development which is residential where the applicant can get a density increase with a PUD. In this case they don't have to build the affordable housing but its one of the benefits they can provide,

but there is no density bonus as an incentive. Gunderson asked if the affordable housing was work force housing and Director Taylor said if it is all commercial development then it wouldn't be residential affordable housing, but they would be required to look at how they would provide employee housing somewhere. He said this is not a PUD, so they can't require it, but the applicant could want to show it as a community benefit.

Blake asked how the neighborhood plan comes together. Director Taylor said in the C section under the neighborhood plan it explains how it is set up. He said it is like any neighborhood plan, the people are notified and then there is an opportunity to go through the public process to develop a plan for the neighborhood. Blake asked and Director Taylor said they generally have 150 feet from the development for notifying the neighbors, but they could expand notification range to 1,000 feet. He said that is a valid concern.

Blake asked about #25 under permitted units. He said if the restaurant has a bar, then what happens. Director Taylor said a typical restaurant could have a beer and wine license and wouldn't need a CUP, but if they want a full bar then it requires a Conditional Use Permit. Director Taylor said a bar or a lounge requires a CUP in each zone. He said they have to look at the distance to schools and churches. Blake said #16 lists hotels and motels, but then convention centers and conference centers are listed as a conditional use. He said Rocky Mountain Lodge and Pine Lodge have conference rooms. Director Taylor said that is a good point. In general, he doesn't have a problem moving conference centers into that list.

Gunderson asked about permitted uses #16 regarding hotels and motels when integrated with a bar. Director Taylor said a stand alone bar would have to go through a CUP. Blake asked and Director Taylor said they could make amendments.

PUBLIC HEARING

The public hearing was opened to those who wished to speak on the issue.

Chris Hyatt, 611 Somers Avenue, said they have had a few projects that deal with resort style planning, like Two Elk or others who have looked at Whitefish. He said this is a nice attempt at creating a resort plan. He said each of the components have talked about water parks and conference centers. When they are in the CUP phase then it moves them out of the resort. He thinks they need to be separate line items. He said Whitefish Mountain Resort has done a good job of mixing individual buildings that give different amenities. He is fine with the convention center being a conditional use, because it sounds huge—like 15,000 to 100,000 square feet.

PUBLIC HEARING

No one else wished to speak and the public hearing was closed.

BOARD DISCUSSION

Director Taylor said if someone came with an original plan that included a water park they wouldn't have to come in for an additional CUP. It wouldn't be a separate process. Later on, if they came up with a new idea then they would have to go through a CUP because it would have a significant visual impact on the neighborhood. Gunderson said that clarifies it for him. If it was part of the original development then they would all be permitted uses.

Chris Hyatt said he has watched Whitefish Mountain change and try to change a lot over the past 20 years. He thinks they need something set aside so that if they deviate from their plan it matches the resort design.

Smith said this brings out the skeptic in her. She said if they have to approve a plan anyway, why do the applicants have to bring it before them. She said it is difficult to discuss water slide parks unless they know where they would be allowed. She wondered if they were having this discussion because there is something they actually have in mind.

Director Taylor said it is a zoning district that would be on the code. He said this is a separate zone that could be applied anywhere in the zoning district, after a neighborhood plan change that would amend the future land use plan. Once it is adopted there is a phasing plan. He said the only variables would be unforeseen circumstances. If there are significant changes to the development they would have to amend it through a new site plan using the PUD amendment process. If it was a major change then it would have to go through the whole neighborhood plan process again. He said this gives flexibility beyond what a hotel resort zone would offer.

Konopatzke said if someone wanted to do a resort at the old hospital site this would give the developer guidelines for the process. Smith said the Board just saw a housing development with 21 lots for the third time, so she thinks they already have the hoops in place for folks to jump through. She said they write it all down, but then they apply it very situationally anyway. Director Taylor said this allows a mechanism if they want to apply it. Smith said if Two Elks Development wanted to come build in Whitefish right now is he saying that the City couldn't do it. Director Taylor said there were elements they might not have been able to approve, depending on where it would be located. A rezone would have to happen, and the zones on the books aren't very flexible. This provides a better public input process. Smith said she loves the opportunity to get more public input. Director Taylor said it provides more public input, but it also provides more flexibility for creativity for resort

development.

MOTION

Blake moved and Konopatzke seconded to adopt the findings of fact within staff report WZTA 13-02 and recommend that the City Council approve the City of Whitefish request to amend the zoning ordinance and add Whitefish Planned Resort to the list of various zoning districts, as recommended by staff.

AMENDMENT

Phillips offered an amendment, seconded by Blake, to notify the neighbors up to 1500 feet from the boundary for the neighborhood plan and the re-zone as well as to provide notification in the newspaper.

BOARD DISCUSSION

Director Taylor suggested that it would fit under 11-2W-2, A-2, to add notifying property owners with 1500 feet.

VOTE ON AMENDMENT

The amendment passed unanimously.

AMENDMENT

Blake offered an amendment, seconded by Konopatzke, to move conference centers and facilities to permitted uses.

VOTE ON AMENDMENT

The amendment passed unanimously.

BOARD DISCUSSION

Meckel asked if microbreweries could be a stand-alone building and Chris Hyatt said if they are going to create a zone then he thought these things should all be included so they didn't have to see every item come before them again and again. He said resort style items should be permitted uses. Gunderson said these conditional uses are after-the-fact. It is not like a typical application. With their first proposal the whole list applies as a permitted use. Blake said if he was a developer he would list everything in there. Meckel said they only have a certain amount of time to complete them, however.

Director Taylor said if something was never mentioned or listed then they would have to come back. Smith said there are things they do to make the process more streamlined for the developer so they know what to expect. She said this isn't it. This insures that there is greater opportunity for the community to give input. She is OK with that, but this isn't about making it easier for people who are thinking about putting in a resort community. Meckel said he does think it will make it easier. Smith disagreed. She thinks Chris Hyatt said that this is about getting certainty in the process and this doesn't lend itself to that. Director Taylor said they could move some of the conditional uses into permitted uses. He said the list includes things that are conditional uses in all zoning districts.

Konopatzke said Big Mountain laid out their district and then if they added to it, the additional things would be conditional uses. He said they are trying to have predictability for the process for those

surrounding the property. He said when he goes through the conditional permit uses he wonders if it would be simpler to allow some of those uses that don't impact health, safety and welfare. Director Taylor said he agrees, but there are some uses that could impact the neighbors significantly. Konopatzke said he was trying to weigh high-volume, high-traffic issues that would impact the public. Director Taylor said if it is too broad they won't get any buy-in from the neighbors. Smith they have people saying that they bought property with certain zoning and then the City shifts that and it upsets people. Konopatzke said large scale developments take a long time so it has to ride out economic changes, too. Smith said they have had concerns with the simple changes like the 21-23 lot subdivision tonight. She said there isn't certainty for the developers or the residents in this case. That is what troubles her about the process. She thinks the applicants tonight could have complained about being treated differently than other applicants. She thinks they need to take this into consideration as they move forward, particularly as development picks back up. She said the City is in a precarious position when it makes decisions situationally. Phillips said he is always an advocate for looking at programs that look well and wondered if this proposal could be modeled after a program in other resort communities.

VOTE ON ORIGINAL MOTION

The original motion, as amended, passed unanimously.

NEW BUSINESS

Phillips said he thinks they can improve on a couple of things on the Board. He said in both Hilltop and the Second Street development projects the applicant proposed things that were not accurate. He said the pictures Mr. Pero showed were built on wider lots than he will have on Hilltop so it was impossible to build anything like the photos he showed. The same thing happened on the Second Street proposal. He said the site images didn't match the proposal. That makes it confusing for the Board members. He asked that the City pull in a professional to look at the PUD. Director Taylor said the applicants don't bring the exact renderings, but they show "eye candy" examples of what their concepts are. They will have to go through ARC for final approval, so what they show aren't their exact plans—they are conceptual. Phillips said they are not similar. If the massing and scale were similar he would agree. Meckel said he thinks designing is outside the scope of the Board. They have planning and zoning regulations the staff reviews and this is outside their prevue. He said they don't design single family homes. Phillips said he thinks they shouldn't even make it part of the application process then.

Phillips said anything over 200 vehicular trips should have a traffic study, but in the Hilltop case Director Wilson overrode the need for one. He said Director Wilson is not a traffic engineer. He said they

have two roads that go through. The traffic engineer is going to be stuck with a 60-foot right-of-way. The traffic engineer looks at a 20 year horizon level. He says one developer has to follow certain standards and another doesn't. This is an important code regulation that they need to follow. Director Taylor said there is a transportation plan that shows which roads should be designed to arterial standards and applicants have to design to Public Works standards. Public Works determines what roads are which and how they'll be developed. Phillips asked and Planner Compton-Ring it is in the engineering standards. Phillips said it should be removed from the engineering standards if they are not going to follow it.

Meckel told Phillips it is not the Planning Board's role to design projects for applicants, they are to review projects in light of the zoning and subdivision codes.

GOOD AND WELFARE

1. Matters from Board-None.
2. Matters from staff

Director Taylor said Ken Meckel is not re-upping as the conservation district appointee. He thanked him for his service.

3. Poll of Board members available for next meeting (December 19, 2013.) All members indicated they would be available.

ADJOURNMENT

The meeting was adjourned by motion at approximately 8:38 p.m. The next regular meeting of the Whitefish City-County Planning Board will be held on December 19, 2013, 6:00 PM

Ken Meckel, Chairman of the Board

Jane Latus Emmert, Recording Secretary

APPROVED as submitted/corrected: ____ / ____ /13

**PROPOSED CODE AMENDMENT
SECTION 11-2: ZONING DISTRICTS, PLANNED RESORT
STAFF REPORT # WZTA-13-02
November 21, 2013**

This is a staff report to the Whitefish City-County Planning Board and Whitefish City Council regarding the creation of a new zoning district called the Whitefish Planned Resort (WPR) as called for in the 2007 Whitefish City-County Growth Policy, to be found in Section 11-2, Zoning Districts. The Planning Board public hearing is scheduled for **November 21, 2013** and a subsequent hearing is scheduled before the City Council on **December 2, 2013**. Draft regulations are below for review and recommendation.

Background Information

This is a request to adopt a new zoning district called Whitefish Planned Resort as called for in the 2007 Whitefish City-County Growth Policy. The Planned Resort zoning district is set up to be similar to a Planned Unit Development (PUD) in that there is flexibility built in to deviate from some development requirements provided that the development offers up significant public benefit of some sort. A neighborhood plan for the area is required prior to adoption of any WPR zoning, and a binding site plan consistent with the neighborhood plan as well as any conditions imposed become part of the development requirements of the final zoning district. All development in the district must follow the basic outline of the approved final binding site plan.

The Growth Policy, under the Land Use Element chapter, designates a number of Future Land Uses on its Future Land Use Map, which is a graphic and general representation of the type, density, and spatial extent of future growth in the Whitefish area. The map designates what types of zoning districts are appropriate in various land use areas. The Growth Policy outlines a Planned Resort land use designation, and states that a zoning district called Planned Resort be implemented there. The only area currently with a Planned Resort designation on the Future Land Use Map is Whitefish Mountain Resort.

The Growth Policy defines the Planned Resort Future Land Use as follows:

Planned Resort: This designation is for a master planned, dense, mixed and multi-use destination resort complex. The Planned Resort center is highly walkable and is pedestrian and bicycle oriented. Architecture and streetscapes are of very high quality. Parking is generally in on-site structures or lots that do not interfere with trails, paths, and walkways. Land uses include accommodations of all kinds, resort retail, eating and drinking establishments, and spas and fitness centers. Residential uses are generally medium to high density and are clustered around open space and other resort amenities. Zoning is generally WPR (Whitefish Planned Resort).

The Growth Policy will eventually need to be amended in the last sentence of that section to include Big Mountain Resort Residential (WBMRR) and Big Mountain Village Districts (WBMV). We can look at that when we do the two-year Growth Policy Review.

Staff held a work session with the Whitefish City-County Planning Board on October 17, where the Board reviewed this draft and consented to have a final version sent to them for review and approval. The only change from that draft is under 11-2-X-2-C-2(i) below. As was suggested by the board, we added a provision that green building practices and minimizing impervious surfaces can qualify as a public benefit.

Items to focus review on would be the Intent and Purpose, Neighborhood Plan contents, Site Plan contents, permitted and conditional uses, and property development standards for the new zone.

Proposed Text Amendment:

11-2W WPR PLANNED RESORT DISTRICT

11-2W-1: INTENT AND PURPOSE:

The WPR district is intended for destination resort purposes and to provide for the development of high density resort uses, including lodges, hotels, motels, resort condominiums and townhouses, indoor and outdoor recreation uses, and other similar uses oriented toward recreation and resort businesses. This district may also provide meeting rooms, convention and/or conference facilities, bars, lounges, restaurants, and retail and commercial service uses intended primarily for the guests and residents of the resort facilities.

It is further the purpose of the WPR district to provide a mechanism to allow the developer and design professionals the flexibility to respond to the physical and environmental characteristics of a site, the character of the surrounding neighborhood, and the changing market demands and needs of the Whitefish community. In return for this increased flexibility, it is the intent of the WPR that the proposed planned resort provides extraordinary community benefits toward the stated goals of the Growth Policy and includes such things as affordable housing and employee housing, preservation of community/neighborhood character, preservation and/or enhancement of natural resources, provision of open space, or essential and/or desirable community infrastructure.

11-2W-2: REVIEW PROCEDURE

- A. Review Process. Review and approval of a Planned Resort shall consist of the follow steps:

1. A pre-submission conference with staff prior to submitting any applications.
 2. A neighborhood meeting with those property owners likely to be affected by the Planned Resort development.
 3. Adoption of a neighborhood plan consistent with the Whitefish Growth Policy and Montana State Law.
 4. Approval of a zoning map amendment to WPR, along with a binding Site Plan for the site.
 5. Approval of necessary land divisions.
 6. Approval of necessary conditional use permits.
 7. Approval of necessary architectural review.
 8. Obtain building permits, as necessary.
- B. Basis for Consideration. Consideration for approval, conditioning, or denial shall be based on and interpreted in light of the conformance of the development the intent and requirements of this ordinance, the adopted Whitefish Growth Policy, and the adopted Neighborhood Plan. These standards and requirements are minimums only. The city may request more stringent standards based on the specific and unique nature of the site and the surrounding areas in order to protect the health, safety and welfare of the citizens and to further the purpose and intent of this ordinance and the city's Growth Policy.
- C. Neighborhood Plan. Prior to submitting an application for WPR zoning, and after conducting at least one neighborhood meeting inviting property owners and residents affected by the proposal, the applicant shall submit an amendment to the Growth Policy in the form of a Neighborhood Plan. The Neighborhood Plan shall comply with and help implement the Growth Policy. The plan shall also demonstrate the following:
1. That the proposed plan is a refinement and implementation of the Growth Policy; and,
 2. That the proposed plan provides extraordinary community benefits toward the stated goals of the Growth Policy, including the following items where possible:
 - a. Preservation and/or enhancement of environmentally sensitive areas of the site.
 - b. Preservation of crucial wildlife habitat and/or daily or seasonal migration corridors.
 - c. Provision of usable open space.

- d. Preservation and protection of the character and qualities of existing neighborhoods.
 - e. Making efficient use of infill property.
 - f. Provision of effective buffers or transitions between potentially incompatible uses of land.
 - g. Facilitation of street continuity and connectivity, and attractive high quality streetscapes.
 - h. Provision of pedestrian and bicycle facilities and transportation alternatives.
 - i. Provision of green building practices, energy efficiency, and sustainable design, including minimizing impervious surfaces.
 - j. Provision of affordable housing and employee housing.
 - k. Provision of recreational opportunities to the local community as well as to the visiting public.
 - l. Implementation of essential or desirable community infrastructure.
3. The plan shall include general site characteristics, types of development, recommended densities, transportation circulation, and general areas of open space.
 4. The following items shall be addressed, in a narrative format, with supporting plans, drawings, renderings, photos, or in other formats as appropriate:
 - a. An overall description of the goals and objectives for the development of the planned resort.
 - b. The extent to which the plan deviates from zoning, subdivision regulations and/or "Standards for Design and Construction" (public works standards) as outlined in Sec 11-2W-6 below.
 - c. A description of the public benefit for such departures including how they further the intent and purpose of the zoning as set forth in Sec. 11-2W-1.
 - d. The nature and extent of all open space in the project and the provisions for maintenance and conservation of the common open space; an assessment of the adequacy of the amount and function of the open space in terms of the land use, densities, and dwelling types proposed in the planned resort.
 - e. The manner in which services will be provided such as water, sewer, storm water management, schools, roads, traffic management, pedestrian access, recreational facilities and other applicable services and utilities.

- f. The relationship of the planned resort to the adjacent and surrounding neighborhoods. Specifically address any potential adverse impacts and how they may be avoided or effectively mitigated.
- g. How the plan provides reasonable consideration to the character of the neighborhood and the particular suitability of the property for the proposed use.
- h. How the development plan will further the goals, policies and objectives of the Whitefish Growth Policy and the adopted Neighborhood Plan.
- i. Describe how the project addresses the community's need for affordable housing and housing for resort employees.
- j. Submit site plans, drawings and schematics with supporting narratives where needed that include general locations for various proposed uses, environmentally sensitive areas, open spaces, recreational amenities, motorized and non-motorized circulation routes, as well as the general location, type, and density of proposed residential uses in dwelling units per acre.
- k. If the development involves the division of land for the purpose of conveyance, a preliminary plat shall be prepared in accordance with the requirements of the subdivision regulations.
- l. The approved final binding site plan, together with the conditions and restrictions imposed, shall be adopted and recorded as part of the development requirements during the adoption of the WPR zoning district. No construction can occur or building permit issued for a structure within the district unless such structure conforms to the provisions of the site plan.

D. Re-zoning Application. The application for zoning or rezoning to a WPR district shall be executed by the individual(s) whose successors and/or assignees shall be responsible for carrying out the requirements and obligations of the district. The application may be accompanied by the preliminary plat for joint review. A binding site plan and draft covenants and conditions shall also be submitted. Any submittal requirements set forth herein that are found to be not applicable to a particular project or site may be waived or deferred by the planning and building department.

- 1. The required binding site plan shall consist of maps, graphics, and text that specify major developments, design features, and services for the entire site. It shall also include the following:

a. Complete land development program to include:

- 1) Total gross acreage;
- 2) Total undevelopable acreage;
- 3) Total net acreage;
- 4) Total area covered by buildings;
- 5) Total floor area of buildings, heights, and floor area ratio (FAR);
- 6) Total area dedicated to parking, loading, drive aisles, and other paved surfaces; and
- 7) Total area of landscaping/open space and landscape ratio (LSR);

b. Present zoning classification and zoning classification of all surrounding properties;

c. Property boundary locations and setback lines.

d. Location, size, height, and number of stories, and the use or uses to be contained in each existing or proposed structure;

e. Layout of residential uses, including identification, building types, and density of single family through multifamily development

f. Special design standards, materials and/or colors;

g. Covenants, conditions and restrictions (CC&Rs);

h. Location, width, surfacing and layout of all streets, parking areas, and pedestrian walks;

i. Vehicle, emergency and pedestrian access, traffic circulation and control, including pedestrian and bikeway linkages to existing and/or proposed trails beyond project boundaries;

j. Location and number of proposed parking spaces;

k. Location, size, height and orientation of all signs with the exception of directional signage;

l. Location and height of all fences, walls, and plantings for buffering and screening purposes.

m. Location and maintenance plans for all open spaces, common spaces and facilities.

n. Location of the mean high water mark of all adjacent streams, lakes, storm water conveyances, and wetlands.

- o. Proposed landscaping;
 - p. Notation of all proposed deviations from standards.
 - q. Any other information that may be deemed relevant for review.
- 2. All documents included in the site plan shall include space for certification of approval in accordance with the form used for subdivision platting.
- 3. The applicant shall furnish:
 - a. The proposed time schedule for the completion of the development, or a detailed phasing plan if phasing is projected;
 - b. A copy of all proposed covenants, restrictions, easements, articles of incorporation and bylaws of any corporation and/or homeowners association to be formed;
 - c. When including an affordable housing component, the developer shall provide a description of the deed restrictions or other mechanism to ensure "long term affordability" as defined in this title. To ensure long term affordability, the developer will need to partner with an organization that specializes in affordable housing such as the Whitefish Housing Authority, Glacier Affordable Housing Foundation, or Habitat for Humanity through a written agreement. This affordable housing agreement is a legally binding agreement between the developer, nonprofit organization and the city of Whitefish. The agreement establishes among other things number of units proposed as affordable, location of units, affordability tenure, terms and conditions of the affordable units, and unit production schedule. Following the approval and execution of the agreement by all parties, the relevant terms and conditions would be recorded as separate deed restrictions or regulatory agreements on the project's affordable lots and/or units. The approval and execution of the agreements shall occur prior to the final plat and shall be recorded upon final plat recordation.
 - d. Any other information that the zoning administrator, planning board, or the city council may deem necessary; and
 - e. Written justification for any proposed deviations from standards.
- 4. The preliminary plat (if required) shall be prepared in accordance with requirements of the subdivision regulations and shall include space for certification of approval by the city council.

C. Approval Process. Approval of a planned resort zoning district shall be based upon a finding that the proposed project is in compliance with the growth policy,

that it substantially achieves the intent of the district as set forth in section 11-2W-1 of this article, and that there is a clear benefit and proper justification for any proposed deviations from standards.

1. The rezone may be denied upon a finding that it is not compliant with the growth policy and/or does not substantially achieve the intent of the district, and/or deviations from standards are neither beneficial to the neighborhood or community at large, nor properly justified.

2. The city council shall approve a planned resort zoning by ordinance, and such approval shall incorporate by reference the site development plan, all conditions, and all related documents.

3. Because the site planning and design issues involved with a Planned Resort can be complex, there is no time limit for final action by the city council.

4. When appropriate, a final plat shall be submitted to and approved by the city council and properly recorded with Flathead County.

11-2W-3: PERMITTED USES:

- Accessory apartments.
- Art galleries.
- Bed and breakfast establishments.
- Boarding houses
- Coffee shops, snack bars, bakeries, candy shops, etc.
- Convenience food stores.
- Curio shops.
- Day care centers.
- Dwellings: one through eight-plex dwelling units, including resort and recreational condominiums, townhouses, time sharing and interval ownership residences or vacation units and other multiple ownership arrangement residential uses, allowing overnight accommodations and ancillary uses for the use of occupants and guests.
- Emergency medical clinics.
- Educational and cultural facilities such as museums, schools, theaters.
- Financial institutions.
- Gas stations.
- Grocery stores (maximum 3,000 square feet).
- Health clubs.
- Hotels and motels (including restaurants, lounges or bars integral to the facilities).
- Laundromats.
- Multi-use structures containing permitted uses.

- Offices, public and private, including but not limited to professional, medical, real estate, travel, government and post office.
- Parking lots, commercial.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Recreation facilities, commercial, with the exception of those listed under 11-2W-5, Conditional Uses.
- Recreational facility accessory structures and amenities, such as ski trails and lifts, hiking and biking trails, tennis courts, swimming pools, etc.
- Repair facilities as an accessory use for the on-site maintenance and repair of resort rental equipment.
- Restaurants.
- Retail sales, service, and rental of items of a minor character relating to the resort, including but not limited to: gift shops, clothing stores, photo labs, barber and beauty salons, boating supplies, ski equipment, sports equipment sales and rental. This does not include sales of major recreational vehicles, self-contained campers, boats, jet skis, or snow machines.
- Transportation facilities such as car rentals, bus terminals, and mass transit terminals.
- Vendors (see special provisions in section 11-3-6 of this title).

11-2W-4 CONDITIONAL USES

- Amusement parks and water parks
- Bars, lounges and taverns
- Boat launching ramps and docks (subject to the standards of Title 13 Lake and Lakeshore Protection Provisions).
- Cellular towers
- Churches and other places of worship
- Convention/conference centers and facilities.
- Dwellings: nine-plex or greater multi-family dwelling units
- Golf courses
- Marinas (subject to the standards of Title 13 Lake and Lakeshore Protection Provisions).
- Microbreweries and distilleries.
- Parking structures, commercial.
- Recreational vehicle parks and campgrounds
- Ski areas (downhill) and facilities

11-2W-5: PROPERTY DEVELOPMENT STANDARDS: The following property development standards shall apply to land and buildings within this district:

<u>Bulk and Scale:</u>	<u>When not shown on the initial plan required for rezoning, all new structures with a building footprint of 10,000 square feet or greater, existing structures where an addition causes the total footprint to be 10,000 square feet or greater, and additions to structures where the footprint already exceeds 10,000 square feet or greater, are subject to a conditional use permit unless developed in accordance with the original approved site development plan.</u>
<u>Minimum District Size:</u>	<u>5 acres</u>
<u>Minimum Lot Area:</u>	<u>N/A</u>
<u>Minimum Lot Width:</u>	<u>N/A</u>
<u>Maximum Density:</u>	<u>15 units per gross acre. Gross acreage shall exclude all lands set aside for commercial activities and associated accessory uses.</u>
<u>Minimum Yard Spaces:</u>	
<u>Front:</u>	<u>15 feet, except when fronting on a public right of way where there shall be a front yard of not less than 25 feet of landscaped greenbelt area. Vehicle and pedestrian ingress and egress may be allowed in this area up to a maximum of 40 percent of the greenbelt area</u>
<u>Side:</u>	<u>10 feet</u> <u>15 feet if there are three or more units</u> <u>30 feet when non-residential uses abut a residential or agricultural use or zone</u>
<u>Rear:</u>	<u>20 feet</u> <u>30 feet when non-residential uses abut a residential or agricultural use or zone</u>
<u>Lakeshore setback:</u>	<u>30 feet horizontally from the mean high water line</u>

<u>Maximum height:</u>	<u>35 feet</u>
<u>Permitted lot coverage:</u>	<u>60 percent</u>
<u>Off street parking:</u>	<u>See Chapter 6 of this title</u>
<u>Accessory buildings:</u>	<u>Accessory buildings conforming to the definition in section 11-9-2 of this title are allowed subject to the standards set forth in section 11-3-2 of this title. Accessory buildings with footprints not exceeding 600 square feet shall be set back a minimum of 6 feet from the side and rear property lines that do not border a street, lake, any intermittent or perennial stream, or the front ½ of any adjoining lot. Setbacks for accessory buildings with footprints exceeding 600 square feet shall be the same as those for the principal structure.</u>
<u>Landscaping:</u>	<u>See Chapter 4 of this title.</u>

11-2W-6: DEVIATIONS FROM STANDARDS:

In order to provide flexibility in the design approach, the Planned Resort zoning district allows deviations from certain standards as well as from certain standards in the "Standards for Design And Construction" (Public Works design manual). Any proposed deviations from adopted standards must be justified as a clear public benefit, and shall directly relate to the purpose and intent of the zoning as set forth in section 11-2W-1 of this article.

A. The following standards may be deviated from through approval of a Planned Resort:

1. Setbacks;
2. Building height;
3. Lot coverage;
4. Minimum lot size;
5. Lot width and/or frontage;
6. Any other lot standards set forth in the subdivision regulations;

7. Street design;

8. Storm water management;

9. Sidewalks, except that fee in lieu of sidewalks may not be waived except by the city council for just cause;

10. Landscape standards, except for required buffers; and

11. Parking and loading standards.

B. Standards that may not be deviated from through a development plan include, but are not necessarily limited to, the following:

1. Density standards as set forth in this chapter.

2. Permitted and conditional uses as set forth in this zoning district or as approved in a neighborhood plan, with the exception that certain proposed uses may be evaluated on a case by case basis by the Zoning Administrator where justification can be derived on the basis that the use will be compatibly and harmoniously incorporated into the unitary design of the planned resort development.

3. Lakeshore protection standards;

4. Utility standards for construction, installation, sizing, etc.;

5. Fire and building code requirements such as through access, specific access and circulation requirements, hydrant locations, and sprinkling; and

6. Any and all fees and charges except as set forth in this chapter.

11-2W-7: ENFORCEMENT AND MODIFICATION:

A. Any substantive modification or deviation from the site plan adopted by the planned resort development ordinance shall be by amendment to the zoning district using procedures for a PUD amendment (11-2-S-8). Substantive modification includes, but is not necessarily limited to, an increase in number of units and/or density, reduction in open space, alteration of buffers, additional deviations from standards, further encroachment into environmentally sensitive areas or buffers, major changes in access and/or circulation, or reduction of project amenities.

B. Minor modifications from the site development plan may be approved by the zoning administrator upon written notice that any proposed modifications are

inconsequential to the proposed development, that impacts associated with a proposed project are unchanged or diminished, and that no other issues associated with Planned Resort approval are compromised.

C. Any other modification or deviation from an approved site plan not otherwise authorized under this section shall constitute a violation of the ordinance establishing the zoning district, and the owner, lessee, or occupant of the area or building in violation shall be subject to the penalties and remedies imposed by this code.

11-2W-8: ABANDONMENT OR EXPIRATION:

Planned resort developments may be abandoned or expire if not developed within a reasonable time frame as described below:

A. A planned resort development, the approval of which is contingent upon, or requires the approval of a subdivision plat, shall terminate or expire if the preliminary plat of the subdivision lapses or the final plat fails to be recorded. In a phased development, those portions of the development that did receive final plat approval shall remain in effect. Those portions of the phased development which fail to receive final plat approval, and/or the preliminary plat lapses, shall terminate or expire.

B. Planned resort developments, or portions of planned resort developments which do not require subdivision approval, shall be required to proceed in accordance with an approved time frame. The owner/applicant shall be notified by the city of any noncompliance to the adopted time frame. The owner may petition the city council for an amended completion schedule. The city council may amend the completion schedule if it finds this action to be in the best interest of the city.

C. Abandonment shall be deemed to occur when no improvements have been made pursuant to the approved planned resort development plan for a period of three (3) years, or upon expiration of the completion schedule approved or amended as part of the planned resort approval process. Improvements, as defined in this section, include actual construction and do not include design work or the activities of securing financing. Upon abandonment, future development of the site will require the review process to start again with a new neighborhood plan or amendment per 11-2W-7-A unless new development is consistent with the originally approved neighborhood plan and binding site plans.

Zoning Code Amendment Review – Section 11-7-10(D).

The following considerations from Section 11-7-10(D) are intended to guide both the Planning Board and the City Council when considering an amendment to the zoning regulations or the official map.

CONSIDERATIONS FROM SECTION 11-7-10D.	Findings/Staff Analysis/Comments
Conformity to the Growth Policy	The proposed changes are consistent with the 2007 Whitefish City-County Growth Policy Land Use Chapter, which calls for a Planned Resort zoning district to be implemented in areas the Future Land Use map calls for Planned Resort. Also, providing for visitor amenities supports the Economic Development chapter.
Project Designed to Lessen Congestion in the Streets	Not applicable
Historical and established use patterns and recent change in use trends weighed equally, not one to the exclusion of the other.	This amendment requires any area applying this proposed zoning to carefully weigh compatibility and historical use patterns.
Security from Fire, Panic, and Disasters	This criterion is not applicable to this code amendment.
Promote Health and General Welfare	In general, these amendments promote the general health and welfare of residential neighborhoods by providing a thorough public vetting process and significant public benefit before approval of changes to use and density.
Provide Adequate Light and Air	This criterion is not applicable to this code amendment. This criterion originates with the model zoning enabling statutes and codes of the 1920s. While it remains in the Montana Code Annotated as well as the planning enabling legislation of some other states, its use as a meaningful standard ceased decades ago.
Prevent Overcrowding of Land and Avoid Undue Concentration of People	The proposed code amendment sets density standards and setback requirements that help alleviate overcrowding and undue concentrations of people.
Facilitate Adequate Provisions for Transportation, Water, Sewerage, Schools, Parks and Other Public Requirements	The proposed zoning district requires a neighborhood plan to be adopted first that would look at infrastructure and transportation needs.
Reasonable Consideration to the Character of the District	The proposed zoning district requires significant public benefit as well as screening from adjacent residential properties. A neighborhood plan, which is required, would address impacts to district character.
Reasonable Consideration to the Peculiar Suitability of the Property for Particular Uses	The proposed amendments establish performance standards and require a neighborhood plan and extensive site plan review prior to application on a particular property

CONSIDERATIONS FROM SECTION 11-7-10D.	Findings/Staff Analysis/Comments
Conserve the Value of Buildings	This criterion is not applicable to this code amendment.
Encourage the Most Appropriate Use of the Land throughout the Municipality	As a neighborhood plan is a required part of adoption of this zoning type, the community will decide up front if the proposed land uses are appropriate for the location presented.

Findings

1. Staff finds the considerations in Section 11-7-10(D) are either met, can be mitigated or are not applicable;
2. Whereas the 2007 Whitefish City-County Growth Policy establishes the specific need for a Planned Resort zoning district;
3. Whereas a neighborhood plan and adopted site development plan are required prior to application of the proposed WPR zoning district so as to offset neighborhood impacts and provide predictability;
4. Whereas the creation of this zoning type will spur the development of visitor amenities;
5. Whereas the adoption of a Planned Resort zoning district will benefit the Whitefish community as a whole by providing extensive public input anytime a future resort is developed;

We find it is in the best interest of the City of Whitefish to amend the zoning ordinance and add Whitefish Planned Resort to the list of various zoning districts.

Recommendation

Staff recommends the Planning Board review the staff report, offer up recommended changes, and ultimately forward it to the City Council for further action with a recommendation of **approval**, subject to the findings set forth in this staff report.

David Taylor, AICP, Director

EXHIBIT "A"
Title 11 – ZONING REGULATIONS
Chapter 2 - Zoning Districts

11-2-1: ZONING DISTRICTS ESTABLISHED:

WPR Planned resort district

11-2-4: APPLICABILITY OF REGULATIONS:

11-2W-1: INTENT AND PURPOSE: The WPR district is intended for destination resort purposes and to provide for the development of high density resort uses, including lodges, hotels, motels, resort condominiums and townhouses, indoor and outdoor recreation uses, and other similar uses oriented toward recreation and resort businesses. This district may also provide meeting rooms, convention and/or conference facilities, bars, lounges, restaurants, and retail and commercial service uses intended primarily for the guests and residents of the resort facilities.

It is further the purpose of the WPR district to provide a mechanism to allow the developer and design professionals the flexibility to respond to the physical and environmental characteristics of a site, the character of the surrounding neighborhood, and the changing market demands and needs of the Whitefish community. In return for this increased flexibility, it is the intent of the WPR that the proposed planned resort provides extraordinary community benefits toward the stated goals of the Growth Policy and includes such things as affordable housing and employee housing, preservation of community/neighborhood character, preservation and/or enhancement of natural resources, provision of open space, or essential and/or desirable community infrastructure.

11-2W-2: REVIEW PROCEDURE:

- A. Review Process. Review and approval of a Planned Resort shall consist of the follow steps:
1. A pre-submission conference with staff prior to submitting any applications.
 2. A neighborhood meeting with those property owners likely to be affected by the Planned Resort development after notification of all property owners within 1500 feet of the proposed site, a public notice in the local newspaper and a press release at least two weeks prior.
 3. Adoption of a neighborhood plan consistent with the Whitefish Growth Policy and Montana State Law.
 4. Approval of a zoning map amendment to WPR, along with a binding Site Plan for the site.
 5. Approval of necessary land divisions.
 6. Approval of necessary conditional use permits.

7. Approval of necessary architectural review.
 8. Obtain building permits, as necessary.
- B. Basis for Consideration. Consideration for approval, conditioning, or denial shall be based on and interpreted in light of the conformance of the development with the intent and requirements of this ordinance, the adopted Whitefish Growth Policy, and the adopted Neighborhood Plan. These standards and requirements are minimums only. The city may request more stringent standards based on the specific and unique nature of the site and the surrounding areas in order to protect the health, safety and welfare of the citizens and to further the purpose and intent of this ordinance and the city's Growth Policy.
- C. Neighborhood Plan. Prior to submitting an application for WPR zoning, and after conducting at least one neighborhood meeting inviting property owners and residents affected by the proposal, the applicant shall submit an amendment to the Growth Policy in the form of a Neighborhood Plan. The Neighborhood Plan shall comply with and help implement the Growth Policy. The plan shall also demonstrate the following:
1. That the proposed plan is a refinement and implementation of the Growth Policy.
 2. That the proposed plan provides extraordinary community benefits toward the stated goals of the Growth Policy, including the following items where possible:
 - a. Preservation and/or enhancement of environmentally sensitive areas of the site.
 - b. Preservation of crucial wildlife habitat and/or daily or seasonal migration corridors.
 - c. Provision of usable open space.
 - d. Preservation and protection of the character and qualities of existing neighborhoods.
 - e. Making efficient use of infill property.
 - f. Provision of effective buffers or transitions between potentially incompatible uses of land.
 - g. Facilitation of street continuity and connectivity, and attractive high quality streetscapes.
 - h. Provision of pedestrian and bicycle facilities and transportation alternatives.

- i. Provision of green building practices, energy efficiency, and sustainable design, including minimizing impervious surfaces.
 - j. Provision of affordable housing and employee housing.
 - k. Provision of recreational opportunities to the local community as well as to the visiting public.
 - l. Implementation of essential or desirable community infrastructure.
3. The plan shall include general site characteristics, types of development, recommended densities, transportation circulation, and general areas of open space.
4. The following items shall be addressed, in a narrative format, with supporting plans, drawings, renderings, photos, or in other formats as appropriate:
 - a. An overall description of the goals and objectives for the development of the planned resort.
 - b. The extent to which the plan deviates from zoning, subdivision regulations and/or "Standards for Design and Construction" (public works standards) as outlined in Sec 11-2W-6 below.
 - c. A description of the public benefit for such departures including how they further the intent and purpose of the zoning as set forth in Sec. 11-2W-1.
 - d. The nature and extent of all open space in the project and the provisions for maintenance and conservation of the common open space; an assessment of the adequacy of the amount and function of the open space in terms of the land use, densities, and dwelling types proposed in the planned resort.
 - e. The manner in which services will be provided such as water, sewer, storm water management, schools, roads, traffic management, pedestrian access, recreational facilities and other applicable services and utilities.
 - f. The relationship of the planned resort to the adjacent and surrounding neighborhoods. Specifically address any potential adverse impacts and how they may be avoided or effectively mitigated.
 - g. How the plan provides reasonable consideration to the character of the neighborhood and the particular suitability of the property for the proposed use.
 - h. How the development plan will further the goals, policies and objectives of the Whitefish Growth Policy and the adopted Neighborhood Plan.

- i. Describe how the project addresses the community's need for affordable housing and housing for resort employees.
- j. Submit site plans, drawings and schematics with supporting narratives where needed that include general locations for various proposed uses, environmentally sensitive areas, open spaces, recreational amenities, motorized and non-motorized circulation routes, as well as the general location, type, and density of proposed residential uses in dwelling units per acre.
- k. If the development involves the division of land for the purpose of conveyance, a preliminary plat shall be prepared in accordance with the requirements of the subdivision regulations.
- l. The approved final binding site plan, together with the conditions and restrictions imposed, shall be adopted and recorded as part of the development requirements during the adoption of the WPR zoning district. No construction can occur or building permit issued for a structure within the district unless such structure conforms to the provisions of the site plan.

D. Re-zoning Application. The application for zoning or rezoning to a WPR district shall be executed by the individual(s) whose successors and/or assignees shall be responsible for carrying out the requirements and obligations of the district. The application may be accompanied by the preliminary plat for joint review. A binding site plan and draft covenants and conditions shall also be submitted. Any submittal requirements set forth herein that are found to be not applicable to a particular project or site may be waived or deferred by the planning and building department.

1. The required binding site plan shall consist of maps, graphics, and text that specify major developments, design features, and services for the entire site. It shall also include the following:
 - a. Complete land development program to include:
 - 1) Total gross acreage;
 - 2) Total undevelopable acreage;
 - 3) Total net acreage;
 - 4) Total area covered by buildings;
 - 5) Total floor area of buildings, heights, and floor area ratio (FAR);
 - 6) Total area dedicated to parking, loading, drive aisles, and other paved surfaces; and

- 7) Total area of landscaping/open space and landscape ratio (LSR);
 - b. Present zoning classification and zoning classification of all surrounding properties;
 - c. Property boundary locations and setback lines;
 - d. Location, size, height, and number of stories, and the use or uses to be contained in each existing or proposed structure;
 - e. Layout of residential uses, including identification, building types, and density of single family through multifamily development;
 - f. Special design standards, materials and/or colors;
 - g. Covenants, conditions and restrictions (CC&Rs);
 - h. Location, width, surfacing and layout of all streets, parking areas, and pedestrian walks;
 - i. Vehicle, emergency and pedestrian access, traffic circulation and control, including pedestrian and bikeway linkages to existing and/or proposed trails beyond project boundaries;
 - j. Location and number of proposed parking spaces;
 - k. Location, size, height and orientation of all signs with the exception of directional signage;
 - l. Location and height of all fences, walls, and plantings for buffering and screening purposes;
 - m. Location and maintenance plans for all open spaces, common spaces and facilities;
 - n. Location of the mean high water mark of all adjacent streams, lakes, storm water conveyances, and wetlands;
 - o. Proposed landscaping;
 - p. Notation of all proposed deviations from standards; and
 - q. Any other information that may be deemed relevant for review.
2. All documents included in the site plan shall include space for certification of approval in accordance with the form used for subdivision platting.
3. The applicant shall furnish:

- a. The proposed time schedule for the completion of the development, or a detailed phasing plan if phasing is projected;
 - b. A copy of all proposed covenants, restrictions, easements, articles of incorporation and bylaws of any corporation and/or homeowners association to be formed;
 - c. When including an affordable housing component, the developer shall provide a description of the deed restrictions or other mechanism to ensure "long term affordability" as defined in this title. To ensure long term affordability, the developer will need to partner with an organization that specializes in affordable housing such as the Whitefish Housing Authority, Glacier Affordable Housing Foundation, or Habitat for Humanity through a written agreement. This affordable housing agreement is a legally binding agreement between the developer, nonprofit organization and the city of Whitefish. The agreement establishes among other things number of units proposed as affordable, location of units, affordability tenure, terms and conditions of the affordable units, and unit production schedule. Following the approval and execution of the agreement by all parties, the relevant terms and conditions would be recorded as separate deed restrictions or regulatory agreements on the project's affordable lots and/or units. The approval and execution of the agreements shall occur prior to the final plat and shall be recorded upon final plat recordation;
 - d. Any other information that the zoning administrator, planning board, or the city council may deem necessary; and
 - e. Written justification for any proposed deviations from standards.
4. The preliminary plat (if required) shall be prepared in accordance with requirements of the subdivision regulations and shall include space for certification of approval by the city council.
- E. Approval Process. Approval of a planned resort zoning district shall be based upon a finding that the proposed project is in compliance with the growth policy, that it substantially achieves the intent of the district as set forth in section 11-2W-1 of this article, and that there is a clear benefit and proper justification for any proposed deviations from standards.
- 1. The rezone may be denied upon a finding that it is not compliant with the growth policy and/or does not substantially achieve the intent of the district, and/or deviations from standards are neither beneficial to the neighborhood or community at large, nor properly justified.
 - 2. The city council shall approve a planned resort zoning by ordinance, and such approval shall incorporate by reference the site development plan, all conditions, and all related documents.

3. Because the site planning and design issues involved with a Planned Resort can be complex, there is no time limit for final action by the city council.
4. When appropriate, a final plat shall be submitted to and approved by the city council and properly recorded with Flathead County.

11-2W-3: PERMITTED USES:

- Accessory apartments.
- Art galleries.
- Bed and breakfast establishments.
- Boarding houses
- Coffee shops, snack bars, bakeries, candy shops, etc.
- Conference centers and facilities.
- Convenience food stores.
- Curio shops.
- Day care centers.
- Dwellings: one through eight-plex dwelling units, including resort and recreational condominiums, townhouses, time sharing and interval ownership residences or vacation units and other multiple ownership arrangement residential uses, allowing overnight accommodations and ancillary uses for the use of occupants and guests.
- Emergency medical clinics.
- Educational and cultural facilities such as museums, schools, theaters.
- Financial institutions.
- Gas stations.
- Grocery stores (maximum 3,000 square feet).
- Health clubs.
- Hotels and motels (including restaurants, lounges or bars integral to the facilities).
- Laundromats.
- Multi-use structures containing permitted uses.
- Offices, public and private, including but not limited to professional, medical, real estate, travel, government and post office.
- Parking lots, commercial.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Recreation facilities, commercial, with the exception of those listed under 11-2W-4, Conditional Uses.
- Recreational facility accessory structures and amenities, such as ski trails and lifts, hiking and biking trails, tennis courts, swimming pools, etc.
- Repair facilities as an accessory use for the on-site maintenance and repair of resort rental equipment.
- Restaurants.

- Retail sales, service, and rental of items of a minor character relating to the resort, including but not limited to: gift shops, clothing stores, photo labs, barber and beauty salons, boating supplies, ski equipment, sports equipment sales and rental. This does not include sales of major recreational vehicles, self-contained campers, boats, jet skis, or snow machines.
- Transportation facilities such as car rentals, bus terminals, and mass transit terminals.
- Vendors (see special provisions in section 11-3-23 of this title).

11-2W-4: CONDITIONAL USES:

- Amusement parks and water parks;
- Bars, lounges and taverns;
- Boat launching ramps and docks (subject to the standards of Title 13 Lake and Lakeshore Protection Provisions);
- Cellular towers;
- Churches and other places of worship;
- Convention/conference centers and facilities;
- Dwellings: nine-plex or greater multi-family dwelling units;
- Golf courses;
- Marinas (subject to the standards of Title 13, Lake and Lakeshore Protection Regulations);
- Microbreweries and distilleries;
- Parking structures, commercial;
- Recreational vehicle parks and campgrounds; and
- Ski areas (downhill) and facilities.

11-2W-5: PROPERTY DEVELOPMENT STANDARDS: The following property development standards shall apply to land and buildings within this district:

Bulk and Scale: When not shown on the initial plan required for rezoning, all new structures with a building footprint of 10,000 square feet or greater, existing structures where an addition causes the total footprint to be 10,000 square feet or greater, and additions to structures where the footprint already exceeds 10,000 square feet or greater, are subject to a conditional use permit unless developed in accordance with the original approved site development plan.

Minimum District Size: 5 acres

Minimum Lot Area: N/A

Minimum Lot Width: N/A

Maximum Density: 15 units per gross acre. Gross acreage shall exclude all lands set aside for commercial activities and associated accessory uses.

Minimum Yard Spaces:

Front: 15 feet, except when fronting on a public right of way where there shall be a front yard of not less than 25 feet of landscaped greenbelt area. Vehicle and pedestrian ingress and egress may be allowed in this area up to a maximum of 40 percent of the greenbelt area.

Side: 10 feet

15 feet if there are three or more units

30 feet when non-residential uses abut a residential or agricultural use or zone

Rear: 20 feet

30 feet when non-residential uses abut a residential or agricultural use or zone

Lakeshore setback: 30 feet horizontally from the mean high water line

Maximum height: 35 feet

Permitted lot coverage: 60 percent

Off street parking: See Chapter 6 of this title

Accessory buildings: Accessory buildings conforming to the definition in section 11-9-2 of this title are allowed subject to the standards set forth in section 11-3-2 of this title. Accessory buildings with footprints not exceeding 600 square feet shall be set back a minimum of 6 feet from the side and rear property lines that do not border a street, lake, any intermittent or perennial stream, or the front ½ of any adjoining lot. Setbacks for accessory buildings with footprints exceeding 600 square feet shall be the same as those for the principal structure.

Landscaping: See Chapter 4 of this title.

11-2W-6: DEVIATIONS FROM STANDARDS: In order to provide flexibility in the design approach, the Planned Resort zoning district allows deviations from certain standards as well as from certain standards in the "Standards for Design And Construction" (Public Works design manual). Any proposed deviations from adopted standards must be justified as a clear

public benefit, and shall directly relate to the purpose and intent of the zoning as set forth in section 11-2W-1 of this article.

A. The following standards may be deviated from through approval of a Planned Resort:

1. Setbacks;
2. Building height;
3. Lot coverage;
4. Minimum lot size;
5. Lot width and/or frontage;
6. Any other lot standards set forth in the subdivision regulations;
7. Street design;
8. Storm water management;
9. Sidewalks, except that fee in lieu of sidewalks may not be waived except by the city council for just cause;
10. Landscape standards, except for required buffers; and
11. Parking and loading standards.

B. Standards that may not be deviated from through a development plan include, but are not necessarily limited to, the following:

1. Density standards as set forth in this chapter.
2. Permitted and conditional uses as set forth in this zoning district or as approved in a neighborhood plan, with the exception that certain proposed uses may be evaluated on a case by case basis by the Zoning Administrator where justification can be derived on the basis that the use will be compatibly and harmoniously incorporated into the unitary design of the planned resort development.
3. Lakeshore protection standards;
4. Utility standards for construction, installation, sizing, etc.;
5. Fire and building code requirements such as through access, specific access and circulation requirements, hydrant locations, and sprinkling; and
6. Any and all fees and charges except as set forth in this chapter.

11-2W-7: ENFORCEMENT AND MODIFICATION:

- A. Any substantive modification or deviation from the site plan adopted by the planned resort development ordinance shall be by amendment to the zoning district using procedures for a PUD amendment (11-2S-8). Substantive modification includes, but is not necessarily limited to, an increase in number of units and/or density, reduction in open space, alteration of buffers, additional deviations from standards, further encroachment into environmentally sensitive areas or buffers, major changes in access and/or circulation, or reduction of project amenities.
- B. Minor modifications from the site development plan may be approved by the zoning administrator upon written notice that any proposed modifications are inconsequential to the proposed development, that impacts associated with a proposed project are unchanged or diminished, and that no other issues associated with Planned Resort approval are compromised.
- C. Any other modification or deviation from an approved site plan not otherwise authorized under this section shall constitute a violation of the ordinance establishing the zoning district, and the owner, lessee, or occupant of the area or building in violation shall be subject to the penalties and remedies imposed by this code.

11-2W-8: ABANDONMENT OR EXPIRATION:

Planned resort developments may be abandoned or expire if not developed within a reasonable time frame as described below:

- A. A planned resort development, the approval of which is contingent upon, or requires the approval of a subdivision plat, shall terminate or expire if the preliminary plat of the subdivision lapses or the final plat fails to be recorded. In a phased development, those portions of the development that did receive final plat approval shall remain in effect. Those portions of the phased development which fail to receive final plat approval, and/or the preliminary plat lapses, shall terminate or expire.
- B. Planned resort developments, or portions of planned resort developments which do not require subdivision approval, shall be required to proceed in accordance with an approved time frame. The owner/applicant shall be notified by the city of any noncompliance to the adopted time frame. The owner may petition the city council for an amended completion schedule. The city council may amend the completion schedule if it finds this action to be in the best interest of the city.
- C. Abandonment shall be deemed to occur when no improvements have been made pursuant to the approved planned resort development plan for a period of three (3) years, or upon expiration of the completion schedule approved or amended as part of the planned resort approval process. Improvements, as defined in this section, include actual construction and do not include design work or the activities of securing financing. Upon abandonment, future development of the site will require the review process to start again with a new neighborhood plan or amendment per 11-2W-7(A) unless new development is consistent with the originally approved neighborhood plan and binding site plans.

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February 7, 2014

Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

Mayor Muhlfeld and Councilors

Recommendation to Designate a Street Reconstruction Project for 2015

Introduction/History

The City Council considered the Resort Tax Monitoring Committee's recommendation to move forward with the West 7th Street Reconstruction Project at their last meeting on February 3rd. Three property owners provided comment in opposition to the project, while two provided comments in support. After discussion, the City Council tabled the item in order to enable more public comment and take time to consider other street reconstruction priorities.

To clarify one point we tried to make at the February 3rd Council meeting, the West 7th Street Project is the next project on the priority list adopted by the City Council in 2004. The staff memo highlighted a few fairly informal Council decisions to shift priorities since 2004 and a choice made by Public Works to defer the Woodland Place Pedestrian Path, as being more appropriate for a Parks Department expenditure of resort tax funds.

Staff's recommendation at the February 3rd Council meeting was to confirm West 7th Street as the next priority project and direct staff to move forward. There seemed to be some misunderstanding that staff is recommending a juggling of priorities, but that is not the case.

Current Report

I appreciate many of the concerns people may have about reconstructing West 7th Street, because I live on a similar road that will be reconstructed this summer.

East 2nd Street is a significant east-west transportation corridor with quite a bit of bicycle and pedestrian traffic. The neighborhood east of Cow Creek enjoys a pleasant rural character, very much like West 7th Street. 2nd Street east of Cow Creek has no curb and

gutter, no sidewalks, no street lights and many of the residents, including the Wilsons, like the neighborhood just as it is. But the roadway is in poor condition, the utilities need upgrading and safe accommodations for bicyclists and pedestrians are long overdue, just like West 7th Street.

East 2nd and West 7th Streets are both important corridors that carry all types of traffic to and from many neighborhoods, including the downtown core. It would be short sighted to postpone improvements on either of these streets or rebuild to a standard that denies the fact of future growth.

The City Council posed several specific questions about the standard to which a West 7th Street project might be designed and staff explained that the Council could control those decisions. Our adopted Engineering Standards call for various widths of asphalt, depending on anticipated traffic loads, curb and gutter for stormwater management, 5 foot wide sidewalks on both sides of the road and street lighting in conformance with dark skies regulations. We have numerous other standards for driveway widths, construction materials, design parameters, warranty provisions and so on, but standards for street widths, sidewalks and street lighting tend to generate the most public interest.

Those are the City's adopted standards; the word "standard" being in the context of our usual, most common or normal requirements. They can be relaxed or modified at the City Council's pleasure. Our usual preliminary engineering process, in rough chronological order, is to:

- hire an engineer,
- complete a field survey to understand conditions on the ground,
- distribute a newsletter to inform the public, provide contact information and schedule a neighborhood meeting,
- conduct a neighborhood meeting to learn about the area from the residents, hear their preferences and generate a mailing list,
- prepare a conceptual design based on a reasonable combination of the Engineering Standards, neighborhood input, physical opportunities and challenges existing on the site, and
- then present the conceptual design to the City Council and interested property owners at a public meeting, along with staff's request for confirmation and direction to proceed with final design.

Final design work begins after the Council has accepted the conceptual design and the project goes out for construction bids only after the Council has accepted the final design.

Staff is well aware some of the residents along West 7th Street, and some of the City Councilors, want to preserve that neighborhood's rural character. We have barely just begun the public involvement process and have no preliminary engineering in hand, so it would be premature to make hard and fast design decisions at this time.

But speaking in general terms, staff sees the possibility of a more urban street concept for 7th Street east of Geddes Avenue, and a more rural design west of Geddes. A transition point between urban and rural might be at another location, there might be a bike/ped trail on one side of the road in some sections, and so on.

“Foolish consistency is the hobgoblin of little minds”, as Emerson wrote, and we don’t have to go there. Standards don’t have to be cookie cutters, but we should be mindful of the precedents we set. That’s all part of the process.

The Resort Tax Monitoring Committee, by unanimous vote, and the Public Works Department recommend West 7th Street, between Baker Avenue and the entrance to the Grouse Mountain subdivision as our street reconstruction project for 2015. The City Council asked staff to recommend an alternate.

Continuing down the priority list adopted in 2004, the next project would be East 7th Street from Columbia to Kalispell Avenue. This priority was initially recommended in the context of a Highway 93 reconstruction project to include a bridge across the Whitefish River at 7th Street. The timing for this project and the inclusion of a 7th Street Bridge are uncertain at this time and we recommend postponing this priority until we can coordinate with the State’s work.

The next priority on the list is East 2nd Street, which has already been moved up to 2014. The four projects following that are:

1. Edgewood Place from Wisconsin Avenue (more likely Colorado) to the east city limits
2. Karrow Avenue from West 2nd Street to West 7th Street
3. State Park Road from Highway 93 to the Railroad Tracks and
4. Somers Avenue from East 2nd Street to East 8th Street.

A discussion of the possibilities could go on for quite a while, but we would like to offer the following points.

- The best reason to choose East Edgewood Place as an alternate to West 7th Street would be reasonable consistency with adopted priorities. It’s not a heavily traveled road, although it does serve as a corridor between neighborhoods and a route to and from the City core. The primary utility need is for improved storm drainage. Bicyclists and pedestrians find reasonable accommodations with a trail along the south side of the road between the viaduct and Texas Avenue.
- The next two streets are both important transportation routes. Either a Karrow Avenue or State Park Road reconstruct should be a fine opportunity to expand our trail system and improve safety for bicyclists and pedestrians. State Park Road might benefit more from utility improvements, particularly water and storm drainage.

- Somers Avenue is the most strictly residential of the four and the roadway may be in the worst condition. An old cast iron water main runs the length of the project area and drainage is very poor. The current Street, Water and Stormwater Fund budgets include money to replace the water main and full width repaving at new grades to improve drainage. This would essentially be a repair project and does not include deep road base reconstruction, upgraded sidewalks or street lights due to budget constraints. Somers could be a candidate for full reconstruction, with its badly deteriorated roadway and utility needs, although it isn't a very heavily traveled road.

Based on adopted priorities, staff points to East Edgewood Place as a possible alternate to West 7th Street. Based on traffic loads, lack of accommodations for non-motorized traffic and benefits for the most people, we suggest State Park Road or Karrow Avenue. And if deterioration of existing infrastructure is high on your list of criteria, Somers Avenue has definite needs and there's an argument to be made for a full rebuild instead of our current plan for patchwork repairs.

Financial Requirement

None at this time

Recommendation

We respectfully recommend the City Council designate a street reconstruction project to be built in 2015. The Resort Tax Monitoring Committee and Public Works Department specifically recommend West 7th Street between Baker Avenue and the entrance to the Grouse Mountain subdivision.

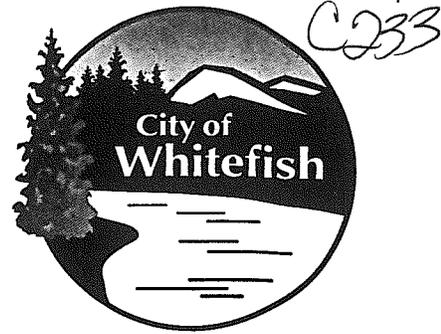
We further recommend the City Council direct the Public Works Department to start the engineering selection process for that project.

And finally, the Public Works Department invites a City Councilor to participate as a non-voting member of the Selection Committee. The committee's work is expected to involve three or four hours to review proposals, a one hour meeting for preliminary ranking in late March or early April and a half day for interviews later in April.

Sincerely,



John C. Wilson
Public Works Director



November 9, 2004

Mayor Feury and City Councilors
City of Whitefish
Whitefish, Montana

Mayor Feury and Councilors

Recommendation to Adopt Street Reconstruction Priorities

Introduction/History

In December 1998 the City Council adopted a Street Reconstruction Priority list to allow the Public Works Department and citizens to plan ahead for major street projects. Over the past 6 years we have completed 13 of these projects, conditions have changed, and several neighborhoods have been annexed into the City; making it necessary to review and update our priorities.

Current Report

The Resort Tax Monitoring Committee has reviewed the attached drawing and recommended the City Council adopt the indicated street reconstruction priorities.

Recommended priority #1, the East Seventh Street Project, was designed last year. Substantial conflicts with an existing natural gas main must be resolved, but we hope to advertise for bids after the first of the year and build the project next summer using Resort Tax Funds.

Recommended priority #2, the Waverly Place Pedestrian Path, is our second choice for a pedestrian route into City Beach from the east. We had hoped to establish a safe pedestrian route over the Skyles hill, but the need to reduce the road to one lane traffic was unacceptable for emergency services. No design work has been performed, nor have we hired a consultant for Waverly Avenue path. This work will not be eligible for Resort Tax funds in terms of reconstructed infrastructure. The plan is to identify appropriate funding, design the project next winter and construct a path in the spring of 2006.

Recommended priority #3 is to mill and overlay West 19th Street and Baker Avenue south of 10th Street during the summer of 2006. This road was built in the mid-1990s but is failing prematurely. The proposed overlay project will prevent the intrusion of moisture, increase structural strength, and substantially extend the useful life of this road at a much lower cost than major reconstruction.

Recommended priority #4 is to reconstruct Colorado Avenue between Edgewood Place and Crestwood Court. This would include the installation of curb and gutter, storm drainage facilities, a bicycle pedestrian path, new sidewalks and street lighting. The plan is to design the project next year and schedule construction in 2 phases. Phase I would be geared to funds available during the summer of 2006 and Phase II would be completed in 2007.

Recommended priority #5 is to reconstruct the 6th Street - Flint Avenue - 5th Street – Geddes – Jennings – Good Avenue connection between Baker Avenue and West 2nd Street. Similar to Colorado Avenue, this would include installation of curb and gutter, storm drainage facilities, water and sewer improvements, a sections of bicycle pedestrian path, new sidewalks and street lighting. The cost will exceed a single year's allotment of Resort Tax funds and so the project will be built in 2 phases during the summers of 2008 and 2009.

As a special note, priority #7 is to reconstruct East 7th Street between Kalispell and Columbia Avenue in concert with the reconstruction of Highway 93. The highway project will include construction of a new bridge across the Whitefish River and a new block of 7th Street between Spokane and Kalispell Avenue. This cross-town connection will provide a much needed alternative to 2nd Street, with a continuous route between Karrow Avenue and the Ashar Avenue / Muldown School area. The timing for the highway project is uncertain at this time and may affect the actual schedule for priority #7.

The general strategy for continuing improvements should be self evident from the attached drawing and it is reasonable to expect we will revisit the priorities before we reach priority # 6 or 7.

Financial Requirement

None at this time.

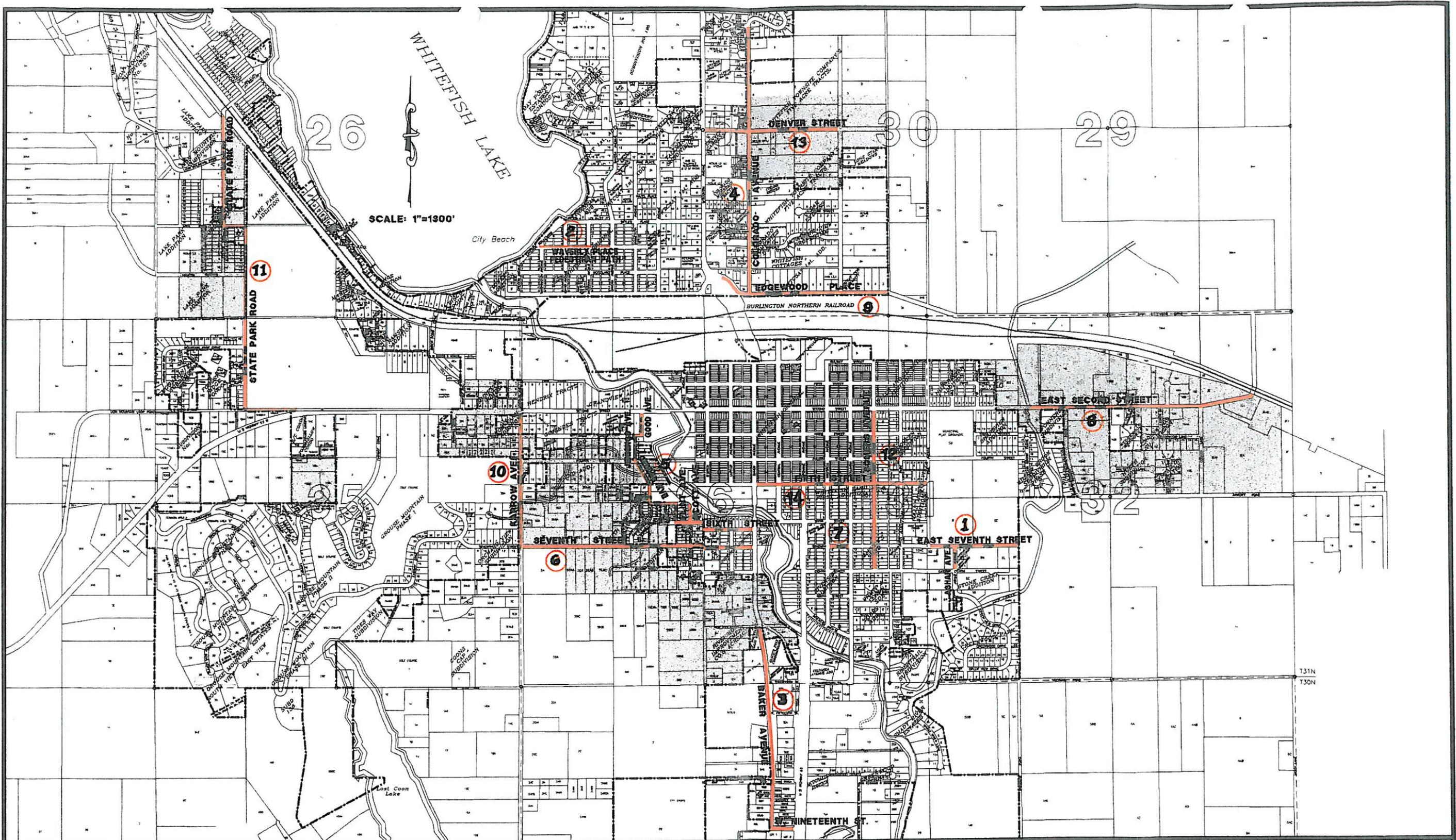
Recommendation

We respectfully recommend the City Council adopt the proposed street reconstruction priorities.

Sincerely,



John C. Wilson
Public Works Director



- - - - - EXISTING CITY LIMITS
 [Red Circle with Number] PROPOSED ANNEXATION AREAS
 [Red Circle with Number] STAFF RECOMMENDED PRIORITIES

PROPOSED WHITEFISH STREET RECONSTRUCTION PROJECTS

DATE: MARCH 31, 2004

UPDATED STREET RECONSTRUCTION PROJECTS FOR FUTURE.DWG

Street Reconstruction Priorities

Adopted by the City Council on November 15, 2004

1. East 7th Street from Pine Avenue to Cow Creek
2. Woodland Place Pedestrian Path (hill above City Beach)
3. Baker Avenue south of 10th Street – Mill and Overlay
4. Colorado Avenue from Edgewood Place to Crestwood Court
5. 6th Street, Geddes, Jennings and Good Avenues from Baker to East 2nd Street
6. West 7th Street from Baker Avenue to Karrow Avenue
7. East 7th Street from Columbia Avenue to Kalispell Avenue
8. East 2nd Street from Cow Creek to the Railroad Tracks
9. Edgewood Place from Wisconsin Avenue to the east City limits
10. Karrow Avenue from West 2nd Street to West 7th Street
11. State Park Road from Highway 93 to the Railroad Tracks
12. Somers Avenue from East 2nd Street to East 8th Street
13. Denver Street from Wisconsin Avenue to Texas Avenue
14. East 5th Street from Baker Avenue to Pine Avenue

Councilor Phillips-Sullivan said she wasn't comfortable moving on this, but Councilor Garberg said a public hearing would serve to gather information. Ms. Knutson said Karin Hilding went down to the County but Director Wilson said the developer went down and then the City approved it.

Councilor Garberg said the Council needs to either table this or move on the motion. He asked and Director Wilson said this proposal doesn't really address the storm drain needs of spring run off. Director Wilson said building used to happen in more logical sites but now contractors are developing in more marginal areas. He said if the City had more information in the beginning they would have denied this subdivision. The utility master plan will definitely give staff more information for situations like this in the future. Director Wilson said he felt the City erred in leaving it up to the developer to talk to the neighbors. He said an extreme possibility would be to require the developer to pump out the water. Councilor Coughlin said she didn't want to pass an "intent to abandon" because it was an intent to discover more.

Councilor Garberg offered a motion, seconded by Councilor Adams, to table the resolution to allow staff time to work with the affected property owners until December. The motion passed unanimously.

6c. Recommendation to authorize matching funds for a "Living with Wildlife" grant.

Director Wilson reported that he received notification that the Living with Wildlife grant program reopened their proposal process. He said the deadline is November 30, 2004 and now he thinks it could be worth their time to develop a comprehensive plan and ask for more than \$5,000 from FW&P. He would like to re-write the proposal asking for \$8,000. The proposal will fare better if the City has a cost sharing agreement in the proposal. Director Wilson asked the Council to authorize City Manager Marks to approve up to \$8,000 in matching funds as staff fine tunes this proposal.

Councilor Garberg offered a motion, seconded by Councilor Adams, to authorize the City Manager to partner with Fish Wildlife and Parks and to allocate \$8,000 in matching funds for the Living with Wildlife grant as detailed in the staff report. The motion passed unanimously.

7. COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

7a. Resolution 04-62; Committing Riverside Bridge easement to a public purpose.

Director Wilson said that in the course of reconstructing the Riverside Park Footbridge he discovered the State requirement that the City declares the easement for a public purpose. This resolution commits to use for a public purpose the proposed easement for the proposed footbridge.

Councilor Adams offered a motion, seconded by Councilor Garberg, to approve Resolution 04-62, Committing Riverside Bridge easement to a public purpose. The motion passed unanimously.

7b. Recommendation to adopt street reconstruction priorities.

Director Wilson said he took this recommendation to the Resort Tax Committee. The street reconstruction plan was originally adopted in 1998 and this is a plan to update that street construction plan. Councilor Adams said priority #3 (asphalt milling and overlay on West 19th Street and Baker

Avenue south of 10th Street) chaps his hide. He wondered why the contractors aren't held accountable for building a bad road. Director Wilson said he inherited the problem when he took this job but it was now way beyond the warranty time for the project. Councilor Adams asked and Director Wilson said the road failure could be attributed to the road substructure. He said south of 10th Street the road structure is weak. Councilor Garberg said there may be blame for both the contractor and the consultant. Councilor Coughlin asked if it would be better to structurally go in and fix the street instead of just overlaying. Director Wilson said the recent study of business development made recommendations at 13th and Baker Avenue. Tom Hudson recommended that heavy traffic go down to 13th Street and then out to the Highway. Director Wilson said Baker could be reconstructed from 10th to 13th street and then place an overlay the rest of the way. Councilor Coughlin asked about the future bridge from Baker to Spokane on 7th Street and wondered if it would be widened to 4 lanes. He said north of 7th Street Spokane will stay the same width.

Councilor Garberg offered a motion, seconded by Councilor Coughlin, to adopt the street reconstruction priorities as presented tonight and as reviewed by the Resort Tax Committee. The motion passed unanimously.

7c. Recommendation to award the 2005 Utility Master Plan consultant contract.

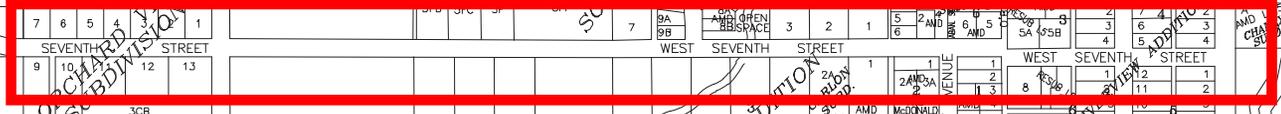
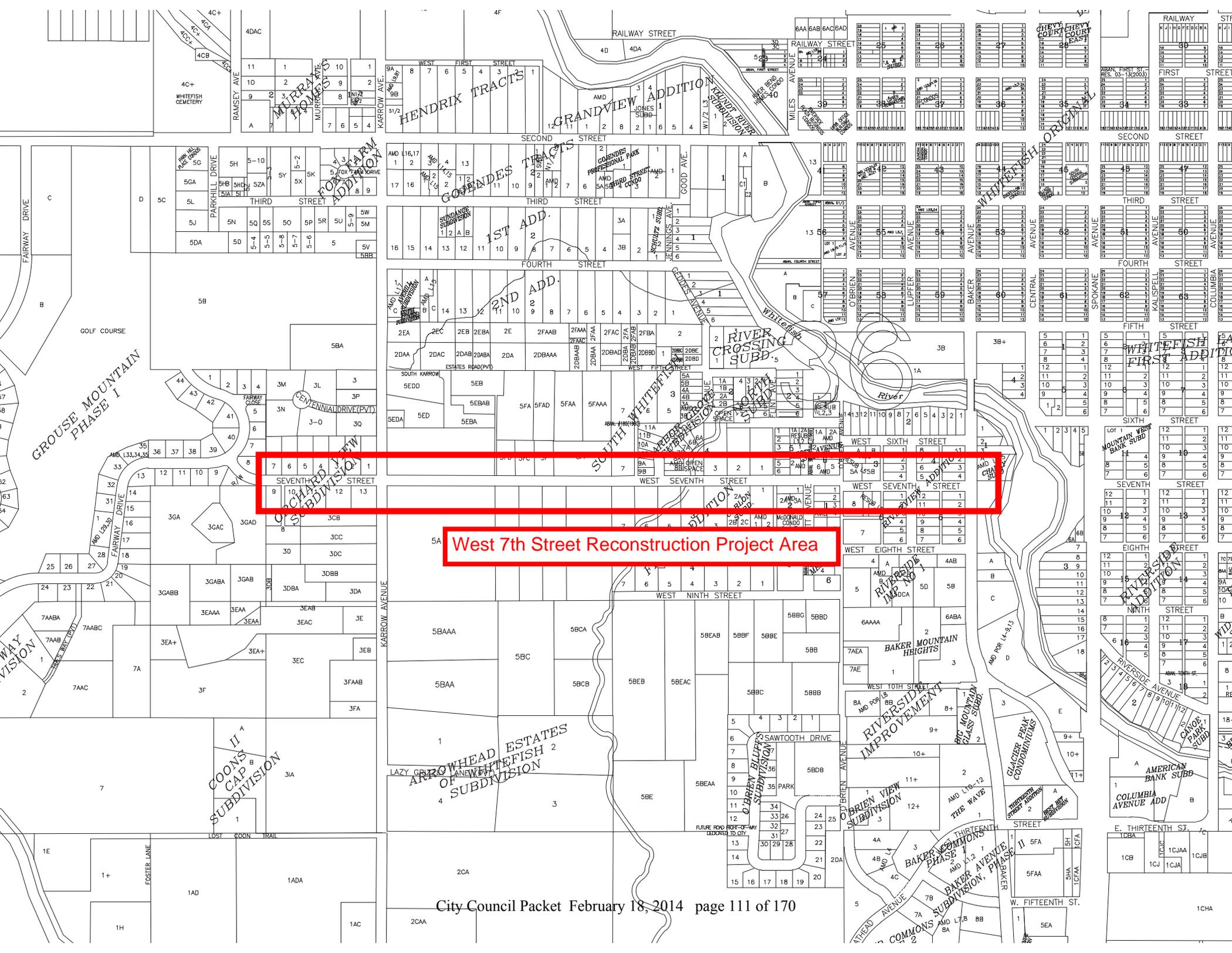
Director Wilson said he and Assistant Engineer Hilding have worked with the Consultant and they believe the City's original estimate was low. This proposal is for a budget of \$205,000 including \$145,000 for the consultant engineering and \$60,000 for aerial photography and topographic mapping. He said there would also be a contour map that would help with long range drainage planning. The consultants are HDR and Anderson Montgomery. Councilor Garberg said he was on the committee and he was in support of the additional cost for this process. Councilor Adams asked and Director Wilson said there was a State mandate to look at water issues in the 1990's. Councilor Adams asked how the staff came up with the original proposed amount of \$125,000 and Director Wilson said it was a figure based on similar proposals in Columbia Falls and Kalispell. Director Wilson said his first number was not based on correct information. He said it would have been accurate for a street project but it was an inadequate estimate for the sewer system. Kalispell's Master Plan was around \$200,000 without the aerial photography. He said they will also ask for community involvement because rate changes might be inevitable. Councilor Garberg asked if they could get information on how to update this in 3-4 years without redoing the whole process. Director Wilson said there is a water model and a storm service model that can be updated.

Councilor Garberg offered a motion, seconded by Councilor Wagner, to authorize staff to enter into an agreement with HDR, Inc. and Anderson Consulting in an amount not to exceed \$205,000. The motion passed unanimously.

8. COMMUNICATIONS FROM CITY MANAGER.

8a. Resolution 04-63; Establishing an Ad Hoc Weed Control Advisory Committee.

Manager Marks reported that on an annual basis the City conducts a City wide survey to see what customers think of the City services. Weed control receives a consistently low rating. This past Spring the City sent out a more extensive survey and the results are in the Council packet. He recommended a citizen committee to help with some guidance issues. The mission of the committee would be to work to identify noxious weed infestation, develop recommendations for a permanent weed



West 7th Street Reconstruction Project Area

Public Work's letter to residents of
West 7th Street



P.O. Box 158 • Whitefish, MT 59937 • (406) 863-2400 • Fax: (406) 863-2419

Date: January 27, 2014
To: West 7th Street Residents and Other Interested Parties
From: John Wilson, Public Works Director
Re: West 7th Street Reconstruction Project

The Whitefish Public Works Department has a goal to reconstruct 5 to 10 blocks of streets and utilities each year. The City's Street Reconstruction Priority List identifies West 7th Street as the project to be built in 2015.

The Public Works Department will ask the City Council to confirm that priority at their next regular meeting on Monday, February 3rd. Direction from the City Council would allow us to start design and plan for construction in 2015.

The preliminary concept for the West 7th Street Reconstruction Project is to rebuild the roadway with new curbs and street lights, and to upgrade water, sewer and other utilities as needed, between Baker Avenue and the entrance to the Grouse Mountain subdivision. Another important feature would be new sidewalks and a bicycle/pedestrian path to improve safety and add to our growing trail system.

City Council meetings begin at 7:10 p.m. in City Hall. The general public is invited to attend and express their views on this or any other subject during the Public Comment period at the start of the meeting.

Written comments may be submitted by email to publicworks@cityofwhitefish.org, via postal service to the Public Works Department at P.O. Box 158, or by dropping a letter or note off at the front counter in City Hall. City Councilors will receive copies of all correspondence arriving before 5:00 p.m. on February 3rd.

A copy of the meeting agenda and information packet will be available on the City web site at <http://cityofwhitefish.org/mayor-and-city-council/agenda-info-2014.php> after Thursday, January 30th. Agendas and information packets are also available on request.

Please feel free to contact Karin, John or Sherri at publicworks@cityofwhitefish.org, 863.2460 or 863.2457 if you need more information.

Whitefish Street Reconstruction Priorities
 Draft Compilation of Completed Work and 2004 Priorities
 November 2013

Project	Location
Completed Projects	
1999 Baker Avenue	Whitefish River to 10th Street
2000 Skyles Place	Wisconsin Avenue to Dakota Avenue
2000 East 2nd Street	Spokane Avenue to Cow Creek
2001 Greenwood Drive	
2001 Columbia Avenue	Railway Street to East 7th Street
2001 Dakota Avenue	Skyles Place to Marina Crest Lane
2001 East 1st Street	Baker Avenue to Miles Avenue
2001 East 4th Street	Baker Avenue to Mountain View Manor
2002 Edgewood Place and Washington Avenue	Wisconsin Avenue to Lakeside Boulevard
2002 O'Brien Avenue	East 1st Street to Railway Street
2003 Lupfer Avenue	Railway Street to East 5th Street
2003 East 3rd Street	O'Brien Avenue to Alley east of Lupfer Avenue
2004 Kalispell Avenue	East 2nd Street to Railway Street
2004 Railway Street	Kalispell Avenue to Columbia Avenue
2004 Railway Street	Miles Avenue to O'Brien Avenue
2005 Railway Street	Columbia Avenue to Somers Avenue
2006 East 7th Street	Pine Avenue to Cow Creek
2006 Somers Avenue	East 2nd Street to Railway Street
2006 Baker Avenue - mill and overlay	South of 10th Street and East 19th Street
2007 Colorado Avenue	Edgewood Place to Dugan's Way
2009 East 3rd Street	Spokane Avenue to Baker Avenue
2009-2011 Central Avenue	Railway Street to East 3rd Street
2010 East 1st Street	Spokane Avenue to Baker Avenue
2012/2013 West 2nd Street to Baker Avenue	via Good, Jennings, Geddes, North, Flint and East 6th

Whitefish Street Reconstruction Priorities
Draft Compilaion of Completed Work and 2004 Priorities
November 2013

	Project	Location
Priorities Adoped by City Council - September 2004		
1	East 2nd Street	Cow Creek to the Railroad Tracks
2	West 7th Street	Fairway Drive to Baker Avenue
3	East 7th Street	Kalispell Avenue to Columbia Avenue
4	Edgewood Place	West of Wisconsin
5	Karrow Avenue	West 2nd Street to West 7th Street
6	State Park Road	South of the Railroad Tracks
7	Somers Avenue	South of East 2nd Street
8	Denver Street	Wisconsin Avenue to Texas Avenue
9	East 5th Street	Baker Avenue to Pine Avenue
10	East 4th Street	Pine Avenue to Willow Brook
11	Fir Avenue	East 2nd Street to East 4th Street
12	Armory Road	East 2nd Street to Armory Park
13	Texas Avenue	
14	Glenwood Road	
15	Iowa Avenue	
16	East 6th Street	Central Avenue to Pine Avenue
17	Dakota Avenue	Marina Crest Lane to Glenwood Road
18	10th Street	Baker Avenue to O'Brien Avenue
19	Park Avenue	South of East 7th Street
20	O'Brien Avenue	East 2nd Street to the Whitefish River
21	Oregon Avenue and Woodland Place	East of Washington Avenue
22	Park Avenue	East 2nd Street to East 7th Street
23	Idaho Avenue	
24	Waverly Place	Idaho Avenue to Dakota Avenue
25	Minnesota Avenue	Edgewood Place to Skyles Place
26	Parkway Drive	
27	East 3rd Street	Fir Avenue to Shareview Alley
28	Waverly Place	Dakota to Iowa Avenue
29	Montana Avenue	Edgewood Place to Skyles Place
30	East 3rd Street	Kalispell Avenue to Columbia Avenue
31	Riverside Drive	
32	Birch Hill Drive	
33	East 10th Street	Columbia Avenue to Park Avenue
34	Barkley Lane	
35	Kalispell Avenue	East 4th Street to Riverside Drive
36	West 10th Street	Baker Avenue to Spokane Avenue
37	Cedar Street	
38	East 8th Street	Spokane Avenue to Park Avenue
39	Waverly Place	Colorado Avenue to Texas Avenue
40	Ramsey Avenue	
41	Lakeside Boulevard	Washington Avenue to Skyles Place
42	Skyles Place	Montana Avenue to Dakota Avenue
43	Hazel Place, Minnesota Avenue north of Hazel, and Pine Place	
44	Birch Point Drive	
45	Lupfer Avenue	West 6th Street to West 8th Street
46	Scott Avenue	West 7th Street to West 8th Street
47	Dakota Avenue	Edgewood Place to Skyles Place
48	Woodland Place	Iowa Avenue to Dakota Avenue
49	Parkhill Drive and West 3rd Street	Highway 93 to Good Avenue
50	West 4th Street	Karrow Avenue to Jennings Avenue
51	Central Avenue	South of East 3rd Street

received
1/30/14

Public Works Department
City of Whitefish
Whitefish, Montana

January 29, 2014
RE: West Seventh Street Reconstruction

As a 30-year resident of West 7th Street, I feel that reconstruction of the street is both necessary and long overdue.

When I built my home, the street was a county road and outside the control of the City of Whitefish. It is now a city street with the attendant joggers, bikers, strollers, pets, children etc. The street is exactly the same as it was when I built my home. It is a major reliever for the West side of the city and remains unlit with no sidewalks and in most cases no shoulders. Our police department does an excellent job of patrolling the street to keep speeds down but that does not reduce the inherent danger to all involved.

The city council, (not the current one), saw fit to reconstruct West 6th street over the past few years which is a much less traveled street through lobbying efforts by the residents and misinformation provided by a resident of West 7th. I hope that series of events does not repeat itself.

I appreciate the work you all do for the betterment of our community and realize that resources are limited. I feel, however, that the reconstruction of this street is a wise investment for the future.

Thanks for your attention.

Sincerely,



Jim Trout

416 West 7th Street

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MANAGER REPORT

February 12, 2014



PARKS AND RECREATION DIRECTOR KARL COZAD ANNOUNCES RETIREMENT

Karl Cozad came to see me on Monday, February 10th to announce his upcoming retirement. Karl plans to retire after work on Friday, March 14th. Karl talked about flexibility in his retirement date and his desire to help the City through a smooth transition to a new Parks and Recreation Director. We did discuss the possibility of Karl just going to half time on March 14th and working half time for a month or two to ease the transition. Karl is thinking about that and will let me know.

Karl has worked for the City for almost 6 years and he has a career in Parks and Recreation management that spans 42 years, so we will lose a lot of experience and a great employee. Fortunately, Karl and his wife are going to remain in Whitefish so we will continue to see them and they will continue to contribute to the community.

TRANSPORTATION ALTERNATIVES GRANT APPLICATIONS – UNSUCCESSFUL

Karin Hilding recently informed me that our two applications for this year's Transportation Alternatives grants through the Montana Department of Transportation (MDT) were unsuccessful and were not funded. The Transportation Alternatives grants are new competitive grants which replaced the old Enhancement grants or CTEP grants, where under prior federal transportation bills, we received a constant formula of funds each year for trails or other eligible projects. Under the most recent federal transportation bill, the Enhancements programs were merged with Safe Routes to Schools grants and all of the funding was mandated to be awarded via competitive grants.

We had applied for two projects, one was for a \$234,032 project for partial funding of any sidewalks/trails on the West 7th Street Reconstruction project (pending Council approval) and the other was a \$100,925 project to complete a trail up the drainage near 6th and Geddes. In each grant application, the City would have had to provide a 13.42% local match for the funds, but the Transportation Alternatives program would have provided the remaining 86.58% of the funding.

The next chance to submit applications is two years from now as they have a two year grant cycle.

PROPERTY AT 1 LAKESIDE DRIVE BY CITY BEACH – PURCHASE FALLS THROUGH

Last week, I talked to the realtor representing the conservator for one of the property owners at 1 Lakeside Blvd that we were hoping to purchase for possible expanded parking at City Beach. The realtor indicated to me that, because of opposition to the sale from the other two co-owners on the three lots, they are abandoning efforts to sell the three lots to the City and the owner's conservator is just going to sell the 1/3 owner's portion to the other two owners of the property. Thus, it appears that for now, the opportunity to purchase these three lots by City Beach is done.

RESORT TAX COLLECTIONS

Resort Tax collections for December of 2013 were 4.55% higher or \$7,759 higher than December of 2012. For the year to date, we are 5.28% or \$61,074 ahead of the same six month period of July – December of 2012. The packet contains a chart and graphics showing the recent monthly collection trends.

UPDATE FROM MONTANA DEQ ABOUT BNSF DIESEL PLUME CLEANUP

I received the following email from Jessica Gutting of the Montana Department of Environmental Quality (DEQ) on the status and future work on the cleanup of the BNSF Diesel Plume under their railroad yard:

Thank you for you continued interest in the BN Whitefish CECRA Facility. Please see my responses to your questions.

1. As you know the BN Whitefish CECRA Facility is an active locomotive fueling and repair facility. The facility is listed as a high priority site on the CECRA Priority List. The most current work to date is as follows:
 - The EPA completed its portion of the Whitefish River cleanup under the Oil Pollution Act last summer (July 2013). DEQ is reviewing the final confirmation samples and the Human Health Risk Assessment report for the Whitefish River. DEQ is slated to meet with BNSF to discuss some final issues in February 2014, and the revised version of this document is due back to DEQ March 10, 2014. DEQ plans to finalize this document in April 2014.
 - Discussions for an ecological evaluation are slated for this spring and potential work for the ecological evaluation could occur in the summer/fall for the Whitefish River. This will determine if the cleanup done has allowed for a healthy ecosystem (i.e. bugs returning to the newly settled sediment, plant growth, fish habitat, etc.) This, along with the finalization of the Whitefish River Human Health Risk Assessment, would essentially be DEQ's approval of the work EPA required BNSF to complete on the river.
 - As for the small cleanup/pilot that you mention in your e-mail, BNSF submitted a proposal for an investigation to define the trichloroethene (solvent) plume that is located underneath and to the west of the Roundhouse. DEQ provided comments on this work plan on October 15, 2013, but since this is a voluntary interim action there was no due date required of BNSF for resubmission. DEQ is still awaiting a revised document and

field work for this investigation will occur once the work plan is approved. The data obtained from this investigation will aid in the determination of which remediation to use in order to cleanup this plume.

- DEQ approved the Remedial Investigation Report in the Fall of 2011. This report outlined all of the investigations (including interim remedial actions) from 1973 until 2000. DEQ just approved the Remedial Investigation Supplement Report in January of 2014. This document included all investigations (including interim remedial actions and the investigation of the Railway District) from 2000 until 2013.
- The next phase for the site is the Human Health Risk Assessment (HHRA) for the entire Facility. DEQ and BNSF have already had several meetings to determine the most effective and efficient way to complete this phase. BNSF will need to acquire several more surface soil samples (slated for late this winter/early this spring) in order to fulfill the data requirements for the HHRA.
- Once the risk assessment is complete, BNSF will complete a Feasibility Study which looks at all of the identified areas of contamination at the Facility along with all of the interim actions that have been completed to date and evaluates the best cleanup options to address any remaining contamination. Once that is complete, DEQ will identify its preferred cleanup in the Proposed Plan. DEQ will solicit public comment on the Proposed Plan. After evaluation and incorporation of public comment, DEQ will issue its decision on the final remedy (cleanup) for the Facility, which BNSF will then implement.

2. I am planning a public meeting this spring (April or May). This meeting would update the community on where the site is now and what activities are planned for the future. This would be an opportune time for the members of the Council and anyone else who is interested to attend. I will keep you updated on the details of this meeting as the time draws nearer. If you'd like, I could also meet separately with members of the Council and the citizens in the Railway District to discuss the status of the cleanup and the schedule at that time.

Please let me know if you have any further questions.

Jessica Gutting

MEETINGS

Cemetery Committee (1/30) – I attended the Cemetery Committee meeting and we discussed the indication from DNRC that it would be unlikely they would sell us any land around the Whitefish Trail Lion Mountain Loop for a cemetery. Thus, it was discussed that we will do additional groundwater testing on the south end of the Wastewater Treatment Plant site this spring as that seems to be the best possibility for a new cemetery at this point. It was also discussed that the Columbarium (cremation niche wall) is built and will be delivered this spring when the weather improves.

911 Funding Sub-committee meeting (2/4) – We had a sub-committee meeting to review and evaluate a new concept for a countywide special district to fund 911 with a combination of a flat fee and a fee based on a property's valuation. There were found to be some problems with this method (large centrally assessed properties couldn't be assessed), so

the discussion focused back on the possibility of a Countywide property tax levy. Various options will continue to be researched and evaluated.

UPCOMING SPECIAL EVENTS

REMINDERS

Monday February 17th – President’s Day state holiday – City Hall is closed
Tuesday, February 18th – City Council meeting because of Monday holiday

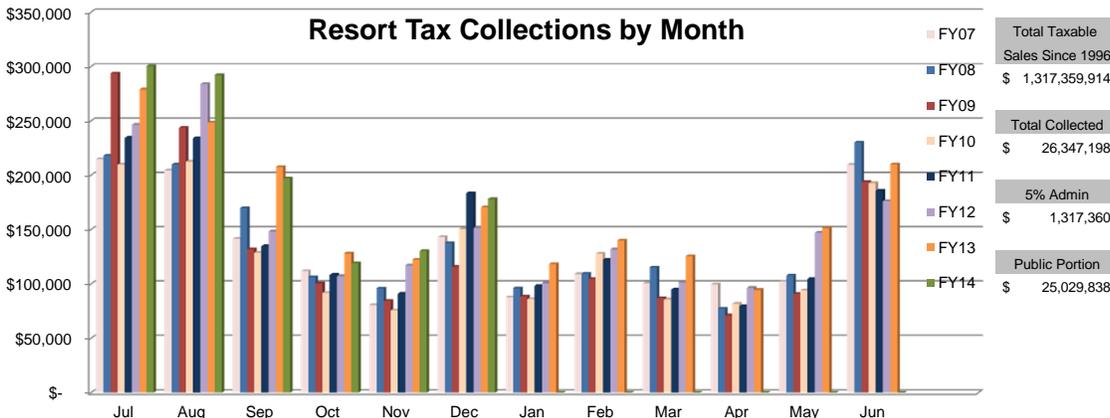
Respectfully submitted,

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

Chuck Stearns, City Manager

Resort Tax Report
Reported in the Month Businesses Paid Tax

Month/Year	Bars & Restaurants				% Chng Mnth to Pr Yr Mnth	% Chng Quarter to Pr Yr Quarter	Interest	Total
	Lodging	Restaurants	Retail	Collected				
Jul-08	57,424	80,928	155,462	293,814	35%		\$ 3,040	\$ 296,854
Jul-09	41,463	71,552	96,808	209,823	-29%		\$ 5,828	\$ 215,652
FY09 vs FY10	-9.0%	-4.1%	-2.6%	-4.2%	or \$	(67,489)	TaxableSalesFY10	\$ 81,019,064
Jul-10	54,499	81,857	98,267	234,624	12%		\$ 2,423	\$ 237,047
Aug-10	69,698	79,873	84,842	234,413	10%		1,023	235,436
Total FY11	\$ 274,688	\$ 651,321	\$ 747,615	\$ 1,673,624	Compared to Prv Yr		\$ 38,004	\$ 1,711,629
FY10 vs FY11	12.0%	15.5%	2.4%	8.7%	or \$	134,262	TaxableSalesFY11	\$ 88,085,492
Jul-11	56,106	90,212	100,325	246,642	5%		\$ 979	\$ 247,621
Aug-11	85,621	91,408	106,860	283,889	21%		7,833	291,722
Sep-11	28,154	58,830	61,535	148,519	10%	12.4%	593	149,112
Oct-11	17,944	45,919	43,610	107,473	-1%		496	107,969
Nov-11	14,351	39,054	63,758	117,162	28%		479	117,641
Dec-11	16,531	51,195	84,000	151,726	-17%	-1.9%	526	152,252
Jan-12	10,032	44,089	46,905	101,026	3%		515	101,541
Feb-12	14,585	56,427	60,780	131,793	8%		578	132,371
Mar-12	11,008	42,952	47,682	101,643	7%	5.9%	557	102,200
Apr-12	9,353	39,367	47,657	96,377	21%		610	96,987
May-12	15,461	51,207	80,526	147,194	40%		6,993	154,187
Jun-12	35,584	68,403	72,472	176,460	-5%	13.44%	625	177,085
Total FY12	\$ 314,731	\$ 679,063	\$ 816,110	\$ 1,809,903	Compared to Prv Yr		\$ 20,785	\$ 1,830,688
FY11 vs FY12	15%	4%	9%	8%	or \$	136,279	TaxableSalesFY12	\$ 95,258,076
Jul-12	69,418	94,341	115,149	278,908	13%		\$ 643	\$ 279,551
Aug-12	53,361	92,463	102,812	248,636	-12%		444	249,080
Sep-12	57,000	77,503	73,232	207,734	40%	8.3%	533	208,267
Oct-12	24,519	54,631	49,137	128,288	19%		434	128,722
Nov-12	8,099	40,326	74,122	122,547	5%		393	122,941
Dec-12	15,490	66,046	88,956	170,492	12%	11.9%	363	170,855
Jan-13	13,152	51,930	53,396	118,478	17%		413	118,891
Feb-13	18,023	55,180	66,995	140,198	6%		405	140,603
Mar-13	16,171	56,231	53,318	125,720	24%	14.9%	465	126,185
Apr-13	10,105	42,230	42,325	94,660	-2%		427	95,087
May-13	19,009	52,303	80,090	151,402	3%			
Jun-13	41,222	74,833	94,085	210,140	19%	8.6%		
Total FY13	\$ 345,570	\$ 758,018	\$ 893,617	\$ 1,997,205	Compared to Prv Yr		\$ 4,520	\$ 1,640,183
FY12 vs FY13	10%	12%	9%	10%	or \$	187,301	TaxableSalesFY13	\$ 105,116,040
Jul-13	81,828	98,642	120,028	300,497	8%		488	300,986
Aug-13	77,809	108,131	106,422	292,362	18%		496	292,858
Sep-13	50,377	77,416	69,328	197,120	-5%	7.4%	434	197,555
Oct-13	16,851	48,015	54,271	119,137	-7%		434	119,571
Nov-13	6,831	47,701	75,780	130,312	6%		434	130,746
Dec-13	21,782	64,884	91,585	178,251	5%	1.5%	25,945	204,196
Mar-14	-	-	-	-				
Apr-14	-	-	-	-				
May-14	-	-	-	-				
Jun-14	-	-	-	-				
Total FY14	\$ 255,478	\$ 444,789	\$ 517,413	\$ 1,217,680	YTD Compared to Last Year		\$ 28,232	\$ 1,245,912
YTD vs Last Year	12.1%	4.6%	2.8%		or \$	61,074	TaxableSalesFY14	\$ 64,088,417
FY14 % of Collections	21%	37%	42%					\$ 25,029,838
Grand Total	\$ 4,481,535	\$ 9,290,416	\$ 11,257,888	\$ 25,029,838			\$ 771,200	\$ 19,510,104
% of Total Collections	18%	37%	45%					3.1% Average i since '96



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SUPPLEMENTAL RESOLUTION

Relating to

\$452,300

SEWER SYSTEM REVENUE BOND

(DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM),
SERIES 2014

CITY OF WHITEFISH, MONTANA

Adopted: February 18, 2014

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(For convenience only, not a part of this Supplemental Resolution)

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RESOLUTION NO. 14-04

RESOLUTION RELATING TO \$452,300 SEWER SYSTEM
REVENUE BOND (DNRC WATER POLLUTION CONTROL
STATE REVOLVING LOAN PROGRAM), SERIES 2014;
AUTHORIZING THE ISSUANCE AND FIXING THE TERMS
AND CONDITIONS THEREOF

WHEREAS, pursuant to the Water Pollution Control State Revolving Fund Act, Montana Code Annotated, Title 75, Chapter 5, Part 11, as amended (the "State Act"), the State of Montana (the "State") has established a revolving loan program (the "Program") to be administered by the Department of Natural Resources and Conservation of the State of Montana, an agency of the State (the "DNRC"), and by the Department of Environmental Quality of the State of Montana, an agency of the State (the "DEQ"), and has provided that a water pollution control state revolving fund (the "Revolving Fund") be created within the state treasury and all federal, state and other funds for use in the Program be deposited into the Revolving Fund, including, but not limited to, all federal grants for capitalization of a state water pollution control revolving fund under the Federal Water Pollution Control Act (the "Clean Water Act"), all repayments of assistance awarded from the Revolving Fund, interest on investments made on money in the Revolving Fund and payments of principal of and interest on loans made from the Revolving Fund; and

WHEREAS, the State Act provides that funds from the Program shall be disbursed and administered for the purposes set forth in the Clean Water Act and according to rules adopted by the DEQ and the DNRC; and

WHEREAS, the City of Whitefish, Montana (the "Borrower") has applied to the DNRC for the 2014 Loan (as hereinafter defined) from the Revolving Fund to enable the Borrower to finance, refinance or reimburse itself, in part, for a portion of the costs of the 2013 Project (as hereinafter defined) which will carry out the purposes of the Clean Water Act; and

WHEREAS, the Borrower is authorized under applicable laws, ordinances and regulations to adopt this Supplemental Resolution and to issue the Series 2014 Bond (as hereinafter defined) to evidence the 2014 Loan (as hereinafter defined) for the purposes set forth herein; and

WHEREAS, the DNRC will fund the 2014 Loan with Recycled Money (as hereinafter defined).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, AS FOLLOWS:

ARTICLE I

DEFINITIONS, RULES OF CONSTRUCTION AND APPENDICES

Section 1.1 Definitions. Unless a different meaning clearly appears from the context, terms used with initial capital letters but undefined in this Supplemental Resolution shall have the meanings given them in the Original Resolution, the Indenture, or as follows:

“Accountant” or “Accountants” means an independent certified public accountant or a firm of independent certified public accountants satisfactory to the DNRC.

“Acquisition and Construction Account” means the account created in the Sewer System Fund pursuant to Section 11.2 of the Original Resolution.

“Act” means Montana Code Annotated, Title 7, Chapter 7, Parts 44 and 45, as heretofore and hereafter amended or supplemented.

“Administrative Expense Surcharge” means a surcharge equal to seventy-five hundredths of one percent (0.75%) per annum on the outstanding principal amount of the 2014 Loan from the date of each advance thereof, payable by the Borrower on a Payment Date.

“Authorized DNRC Officer” means the Director of the DNRC or his or her designee.

“Bond Counsel” means any Counsel nationally recognized as experienced in matters relating to the issuance by states or political subdivisions of tax-exempt obligations selected by the Borrower and acceptable to the DNRC.

“Bonds” means the Series 2002 Bond, the Series 2008A Bond, the Series 2008B Bond, the Series 2010B Bond, the Series 2011B Bond, the Series 2011C Bond, the Series 2014 Bond, and any additional Bonds issued pursuant to Article X of the Original Resolution, excluding Section 10.4 thereof.

“Borrower” means the City.

“Business Day” means any day which is not a Saturday or Sunday, a legal holiday in the State or a day on which banks in Montana are authorized or required by law to close.

“City” means the City of Whitefish, Montana and its permitted successors or assigns hereunder.

“Clean Water Act” means the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, as amended, and all regulations, rules and interpretations issued by the EPA thereunder.

“Closing” means the date of delivery of the Series 2014 Bond to the DNRC.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral Documents” means any security agreement, guaranty or other document or agreement delivered to the DNRC securing the obligations of the Borrower under this Supplemental Resolution and the Series 2014 Bond. If no Collateral Documents secure such obligations, any reference to Collateral Documents in this Supplemental Resolution shall be without effect.

“Committed Amount” means the amount of the Loan committed to be lent by the DNRC to the Borrower pursuant to Section 4.1 of this Supplemental Resolution, as such amount may be reduced pursuant to Sections 3.2, and 3.4 of this Supplemental Resolution.

“Consultant” means a nationally recognized consultant or firm of consultants, or an independent engineer or firm of independent engineers, or an Accountant, which in any case is qualified and has skill and experience in the preparation of financial feasibility studies or projections for facilities similar to the System or the 2013 Project, selected by the Borrower and satisfactory to the DNRC.

“Council” means the City Council of the City of Whitefish, Montana.

“Counsel” means an attorney duly admitted to practice law before the highest court of any state and satisfactory to the DNRC.

“Debt” means, without duplication, (1) indebtedness of the Borrower for borrowed money or for the deferred purchase price of property or services; (2) the obligation of the Borrower as lessee under leases which should be recorded as capital leases under generally accepted accounting principles; and (3) obligations of the Borrower under direct or indirect guarantees in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clause (1) or (2) above.

“DEQ” means the Department of Environmental Quality of the State of Montana, an agency of the State, or any successor to its powers, duties and obligations under the State Act or the EPA Agreements.

“DNRC” means the Department of Natural Resources and Conservation of the State of Montana, an agency of the State, and any successor to its powers, duties and obligations under the State Act.

“EPA” means the Environmental Protection Agency, an agency of the United States of America, and any successor to its functions under the Clean Water Act.

“EPA Agreements” means all capitalization grant agreements and other written agreements between the DEQ, DNRC and the EPA concerning the Program.

“EPA Capitalization Grant” means a grant of funds to the State by the EPA under Title VI of the Clean Water Act and any grant made available by the EPA for deposit in the Revolving Fund pursuant to Section 205(m) of the Clean Water Act.

“Fund” means the Sewer System Fund established pursuant to Section 11.1 of the Original Resolution.

“Governmental Unit” means governmental unit as such term is used in Section 145(a) of the Code.

“Indenture” means the Indenture of Trust, dated as of June 1, 1991, between the Board of Examiners of the State and the Trustee, as such has been or may be supplemented or amended from time to time in accordance with the provisions thereof, pursuant to which, among other things, the State Bonds are to be or have been issued.

“Loan Loss Reserve Surcharge” means a surcharge equal to twenty-five hundredths of one percent (0.25%) per annum on the outstanding principal amount of the 2014 Loan from the date of each advance thereof, payable by the Borrower on a Payment Date.

“Net Revenues” means the entire amount of the gross revenues of the System (as described in Section 11.1 of the Original Resolution) remaining upon each such monthly apportionment, after crediting to the Operating Account the amount required hereby, including sums required to maintain the Operating Reserve in the minimum amount as stated in Section 11.3 of the Original Resolution.

“Operating Account” means the account created in the Sewer System Fund pursuant to Sections 11.1 and 11.3 of the Original Resolution.

“Original Resolution” means Resolution No. 02-52, adopted by the City Council on October 7, 2002, as amended and supplemented by Resolution Nos. 08-59, 10-01, 11-20, and 12-37, adopted by the City Council on December 1, 2008, January 4, 2010, April 4, 2011, and November 5, 2012, respectively.

“Program” means the Water Pollution Control State Revolving Loan Program established by the State Act.

“Project” means an improvement, betterment, reconstruction or extension of the System, including the 2013 Project.

“Public Entity” means a State agency, city, town, municipality, irrigation district, county water and sewer district, a soil conservation district or other public body established by State law or an Indian tribe that has a federally recognized governing body carrying out substantial governmental duties and powers over any area.

“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).

“Regulations” means the Treasury Department, Income Tax Regulations, as amended or any successor regulation thereto, promulgated under the Code or otherwise applicable to the Series 2014 Bond.

“Replacement and Depreciation Account” means the account created in the Sewer System Fund pursuant to Section 11.6 of the Original Resolution.

“Reserve Account” means the account created in the Sewer System Fund pursuant to Sections 11.1 and 11.5 of the Original Resolution.

“Reserve Requirement” means, as of the date of calculation, an amount equal to the maximum principal of and interest payable on outstanding Bonds in the current or any future fiscal year (giving effect to mandatory sinking fund redemption, if any).

“Resolution” means the Original Resolution, as amended and supplemented by this Supplemental Resolution and other supplemental resolutions.

“Revenue Bond Account” means the account created in the Sewer System Fund pursuant to Sections 11.1 and 11.4 of the Original Resolution.

“Series 2002 Bond” means the First Amended and Restated Sewer System Revenue Bond (DNRC Revolving Loan Program), Series 2002, issued by the Borrower, in the maximum authorized principal amount of \$107,000 pursuant to the Original Resolution.

“Series 2008A Bond” means the First Amended and Restated Sewer System Revenue Bond (DNRC Revolving Loan Program), Series 2008A, issued by the Borrower, in the maximum authorized principal amount to \$372,000 pursuant to the Original Resolution.

“Series 2008B Bond” means the First Amended and Restated Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2008B, issued by the Borrower, in the maximum authorized principal amount of \$1,262,000 pursuant to the Original Resolution.

“Series 2010B Bond” means the Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2010B, issued by the Borrower, in the maximum authorized principal amount of \$61,300 pursuant to the Original Resolution.

“Series 2011B Bond” means the First Amended and Restated Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2011B, issued by the Borrower, in the maximum authorized principal amount of \$328,000 pursuant to the Original Resolution.

“Series 2011C Bond” means the First Amended and Restated Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2011C, issued by the Borrower, in the maximum authorized principal amount of \$350,000 pursuant to the Original Resolution.

“Series 2014 Bond” means the Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2014, issued by the City, in the maximum authorized amount of up to \$452,300 pursuant to the Resolution issued to the DNRC to evidence the 2014 Loan.

“Sewer Revenues” means revenues (gross or net) received by the Borrower from or in connection with the operation of the System.

“Sewer System Fund” means the fund created by Section 11.1 of the Original Resolution.

“State” means the State of Montana.

“State Act” means Montana Code Annotated, Title 75, Chapter 5, Part 11, as amended from time to time.

“State Bonds” means the State’s General Obligation Bonds (Water Pollution Control State Revolving Fund Program), issued or to be issued pursuant to the Indenture.

“Subordinate Obligations” means any subordinate obligations issued under Section 10.4 of the Original Resolution.

“Supplemental Resolution” means this Resolution No. 14-04 of the Borrower adopted on February 18, 2014.

“Surplus Account” means the account created in the Sewer System Fund pursuant to Sections 11.1 and 11.7 of the Original Resolution.

“Surplus Net Revenues” shall mean that portion of the Net Revenues in excess of the current requirements of the Operating Account, the Revenue Bond Account and the Reserve Account.

“System” means the existing sewer system of the Borrower and all extensions, improvements and betterments thereof hereafter constructed and acquired, including, without limitation, the 2013 Project.

“Trustee” means U.S. Bank National Association, in Seattle, Washington, or any successor trustee under the Indenture.

“2014 Committed Amount” means the amount of the 2014 Loan committed to be lent by the DNRC to the Borrower pursuant to Section 4.1 of this Supplemental Resolution, as such amount may be reduced pursuant to Sections 3.2 and 3.4 of this Supplemental Resolution.

“2014 Loan” or “Loan” means the 2014 Loan made to the Borrower by the DNRC pursuant to the Program in the maximum amount of the 2014 Committed Amount to provide funds to pay all or a portion of the costs of the 2013 Project, and costs associated with the sale and issuance of the Series 2014 Bond.

“2013 Project” means the designing, engineering, and construction of the facilities, improvements and activities financed, refinanced or the cost of which is being financed by or reimbursed to the Borrower with proceeds of the 2014 Loan, described in Appendix A hereto.

“Undisbursed Committed Amount” means any undisbursed Committed Amount which is not required to pay costs of the 2013 Project upon completion thereof as provided in Section 3.4 of this Supplemental Resolution.

Section 1.2 Other Rules of Construction. For all purposes of this Supplemental Resolution, except where the context clearly indicates otherwise:

- (a) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted government accounting standards.
- (b) Terms in the singular include the plural and vice versa.
- (c) All references to time shall refer to Helena, Montana time, unless otherwise provided herein.
- (d) All references to mail shall refer to first-class mail postage prepaid.
- (e) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.
- (f) “Or” is not exclusive, but is intended to permit or encompass one, more or all of the alternatives conjoined.

Section 1.3 Appendices. Attached to this Supplemental Resolution and hereby made a part hereof are the following Appendices:

- Appendix A: a description of the 2013 Project;
- Appendix B: the form of the Series 2014 Bond; and
- Appendix C: additional agreements and representations of the Borrower.

ARTICLE II

AUTHORIZATION, FINDINGS, REPRESENTATIONS AND COVENANTS

Section 2.1 Authorization and Findings.

(a) Authorization. Under the provisions of the Act, the Borrower is authorized to issue and sell its revenue bonds payable during a term not exceeding forty years from their date of issue, to provide funds for the reconstruction, improvement, betterment and extension of the System or to refund its revenue bonds issued for such purpose; provided that the bonds and the interest thereon are to be payable solely out of the net income and revenues to be derived from rates, fees and charges for the services, facilities and commodities furnished by the undertaking, and are not to create any obligation for the payment of which taxes may be levied except to pay for services provided by the undertaking to the Borrower.

(b) The System. The Borrower, pursuant to the Act and other laws of the State, has established and presently owns and operates the System.

(c) The 2013 Project. After investigation of the facts and as authorized by the Act, this Council has determined it to be necessary and desirable and in the best interests of the Borrower to acquire and construct the 2013 Project.

(d) Outstanding Bonds. Pursuant to the Act and the Original Resolution, the Borrower has issued, and has outstanding, its Series 2002 Bond, Series 2008A Bond, Series 2008B Bond, Series 2010B Bond, Series 2011B Bond, and Series 2011C Bond. The Series 2002 Bond, the Series 2008A Bond, the Series 2008B Bond, the Series 2010B Bond, the Series 2011B Bond, and the Series 2011C Bond are payable from Net Revenues of the System. No other bonds or indebtedness are outstanding that are payable from or secured by revenues of the System.

(e) Additional Parity Bonds. The Borrower reserved the right under Section 10.3 of the Original Resolution to issue additional Bonds payable from the Revenue Bond Account of the Fund on a parity as to both principal and interest with the outstanding Bonds, if the Net Revenues of the System for the last complete fiscal year preceding the date of issuance of such additional Bonds have equaled at least 125% of the maximum amount of principal and interest payable from the Revenue Bond Account in any subsequent fiscal year during the term of the outstanding Bonds, on all Bonds then outstanding and on the additional Bonds proposed to be issued. For the purpose of the foregoing computation, the Net Revenues for the fiscal year preceding the issuance of the additional Bonds shall be those shown by the financial reports caused to be prepared by the Borrower pursuant to the Original Resolution, except that if the rates and charges for services provided by the System or finally authorized to go into effect within 60 days after the issuance of the additional Bonds have been changed since the beginning of such preceding fiscal year, then the rates and charges in effect at the time of issuance of the additional Bonds shall be applied to the quantities of service actually rendered and made available during such preceding fiscal year to ascertain the gross revenues, from which there shall be deducted to determine the Net Revenues, the actual operation and maintenance cost plus any additional annual costs of operation and maintenance the Consultant estimates will be incurred because of the improvement or extension of the System to be constructed from the proceeds of the additional Bonds proposed to be issued. In no event shall any additional Bonds be issued and made payable from the Revenue Bond Account if the Borrower is then in default in any payment of principal or interest on any outstanding Bonds payable therefrom, or if there then exists any deficiency in the balances required by the Original Resolution to be maintained in any of the accounts of the Fund, which will not be cured or restored upon the issuance of the additional Bonds. Based on a certificate executed or to be executed by the Mayor, the Finance Director, and the City Clerk, or any of them, it is hereby determined that the Borrower is authorized to issue \$452,300 in aggregate principal amount of additional Bonds pursuant to Section 10.3 of the Original Resolution payable from and secured by the Net Revenues on a parity with the outstanding Series 2002 Bond, Series 2008A Bond, Series 2008B Bond, Series 2010B Bond, Series 2011B Bond, and Series 2011C Bond.

Section 2.2 Representations. The Borrower represents as follows:

(a) Organization and Authority. The Borrower:

- (1) is duly organized and validly existing as a municipal corporation of the State;
- (2) has all requisite power and authority and all necessary licenses and permits required as of the date hereof to own and operate the System and to carry on its current activities with respect to the System, to adopt this Supplemental Resolution and to enter into the Collateral Documents and to issue the Series 2014 Bond and to carry out and consummate all transactions contemplated by the Supplemental Resolution, the Series 2014 Bond and the Collateral Documents;
- (3) is a Governmental Unit and a Public Entity; and
- (4) has taken all proper action to authorize the execution, delivery and performance of its obligations under this Supplemental Resolution, the Series 2014 Bond and the Collateral Documents and the incurrence of the Debt evidenced by the Series 2014 Bond in the maximum amount of the Committed Amount.

(b) Litigation. There is no litigation or proceeding pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower in any court or before or by any governmental authority or arbitration board or tribunal that, if adversely determined, would materially and adversely affect the existence, corporate or otherwise, of the Borrower, or the ability of the Borrower to make all payments and otherwise perform its obligations under the Resolution, the Series 2014 Bond and the Collateral Documents, or the financial condition of the Borrower, or the transactions contemplated by the Resolution, the Series 2014 Bond and the Collateral Documents or the validity and enforceability of the Resolution, the Series 2014 Bond and the Collateral Documents. No referendum petition has been filed with respect to any resolution or other action of the Borrower relating to the 2013 Project, the Series 2014 Bond or any Collateral Documents and the period for filing any such petition will have expired before issuance of the Series 2014 Bond.

(c) Borrowing Legal and Authorized. The adoption of this Supplemental Resolution, the execution and delivery of the Series 2014 Bond and the Collateral Documents and the consummation of the transactions provided for in this Supplemental Resolution, the Series 2014 Bond and the Collateral Documents and compliance by the Borrower with the provisions of the Resolution, the Series 2014 Bond and the Collateral Documents:

- (1) are within the powers of the Borrower and have been duly authorized by all necessary action on the part of the Borrower; and
- (2) do not and will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Borrower pursuant to any ordinance, resolution, indenture, loan agreement or other

agreement or instrument (other than the Resolution and any Collateral Documents) to which the Borrower is a party or by which the Borrower or its property may be bound, nor will such action result in any violation of the provisions of any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Borrower, its properties or operations are subject.

(d) No Defaults. No event has occurred and no condition exists that, upon execution and delivery of the Series 2014 Bond and the Collateral Documents, would constitute a default under the Resolution or the Collateral Documents. The Borrower is not in violation of any term of any agreement, bond resolution, trust indenture, charter or other instrument to which it is a party or by which it or its property may be bound which violation would materially and adversely affect the transactions contemplated hereby or the compliance by the Borrower with the terms hereof or of the Series 2014 Bond and the Collateral Documents.

(e) Governmental Consent. The Borrower has obtained or made all permits, findings and approvals required to the date of adoption of this Supplemental Resolution by any governmental body or officer for the making and performance by the Borrower of its obligations under this Supplemental Resolution, the Series 2014 Bond and the Collateral Documents (including any necessary sewer rate increase) or for the 2013 Project, the financing or refinancing thereof or the reimbursement of the Borrower for the costs thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental authority (other than those, if any, already obtained) is required on the part of the Borrower as a condition to adopting this Supplemental Resolution, issuing the Series 2014 Bond or entering into the Collateral Documents and the performance of the Borrower's obligations hereunder and thereunder. If a utility board or commission manages or controls the System, such board or commission has agreed with the DNRC to abide by the terms of the Resolution and the Collateral Documents, including approving any necessary sewer rate increases.

(f) Binding Obligation. The Resolution, the Series 2014 Bond and any Collateral Document to which the Borrower is a party are the valid and binding special, limited obligations and agreements of the Borrower, enforceable against the Borrower in accordance with their terms, except to the extent that the enforceability thereof may be limited by laws relating to bankruptcy, moratorium, reorganization, insolvency or similar laws affecting creditors' rights and general principles of equity.

(g) The 2013 Project. The 2013 Project consists and will consist of the facilities, improvements and activities described in Appendix A, as such Appendix A may be amended from time to time in accordance with the provisions of Article III of this Supplemental Resolution.

(h) Full Disclosure. There is no fact that the Borrower has not specifically disclosed in writing to the DNRC that materially and adversely affects or (so far as the Borrower can now foresee), except for pending or proposed legislation or regulations that are a matter of general public information, that will materially and adversely affect the properties, operations and finances of the System, the Borrower's status as a Public Entity and Governmental Unit, its

ability to own and operate the System in the manner it is currently operated or the Borrower's ability to perform its obligations under the Resolution, the Series 2014 Bond and the Collateral Documents and to pledge any revenues or other property pledged to the payment of the Series 2014 Bond.

(i) Compliance With Law. The Borrower:

- (1) is in compliance with all laws, ordinances, governmental rules and regulations and court or other governmental orders, judgments and decrees to which it is subject and which are material to the properties, operations and finances of the System or its status as a Public Entity and Governmental Unit; and
- (2) has obtained all licenses, permits, franchises or other governmental authorizations necessary to the ownership of the System and the operation thereof and agrees to obtain all such licenses, permits, franchises or other governmental authorizations as may be required in the future for the System and the operation thereof, which failure to obtain might materially and adversely affect the ability of the Borrower to conduct the operation of the System as presently conducted or the condition (financial or otherwise) of the System or the Borrower's ability to perform its obligations under the Resolution, the Series 2014 Bond and the Collateral Documents.

Section 2.3 Covenants.

(a) Insurance. In addition to the requirements of Section 2.2 of the Original Resolution, the Borrower at all times shall keep and maintain with respect to the System property and casualty insurance and liability insurance with financially sound and reputable insurers, or self-insurance as authorized by State law, against such risks and in such amounts, and with such deductible provisions, as are customary in the State in the case of entities of the same size and type as the Borrower and similarly situated and shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid timely the premiums for all such insurance. All such insurance policies shall name the DNRC as an additional insured to the extent permitted under the policy or program of insurance of the Borrower. Each policy must provide that it cannot be cancelled by the insurer without giving the Borrower and the DNRC 30 days' prior written notice. The Borrower shall give the DNRC prompt notice of each insurance policy it obtains or maintains to comply with this Section 2.3(a) and of each renewal, replacement, change in coverage or deductible under or amount of or cancellation of each such insurance policy and the amount and coverage and deductibles and carrier of each new or replacement policy. Such notice shall specifically note any adverse change as being an adverse change. The Borrower shall deliver to the DNRC at Closing a certificate providing the information required by this Section 2.3(a).

(b) Right of Inspection and Notice of Change of Location. The DNRC, the DEQ and the EPA and their designated agents shall have the right at all reasonable times during normal business hours and upon reasonable notice to enter into and upon the property of the Borrower

for the purpose of inspecting the System or any or all books and records of the Borrower relating to the System.

(c) Further Assurance. The Borrower shall execute and deliver to the DNRC all such documents and instruments and do all such other acts and things as may be necessary or required by the DNRC to enable the DNRC to exercise and enforce its rights under the Resolution, the Series 2014 Bond and the Collateral Documents and to realize thereon, and record and file and re-record and refile all such documents and instruments, at such time or times, in such manner and at such place or places, all as may be necessary or required by the DNRC to validate, preserve and protect the position of the DNRC under the Resolution, the Series 2014 Bond and the Collateral Documents.

(d) Maintenance of Security, if Any; Recordation of Interest.

- (1) The Borrower shall, at its expense, take all necessary action to maintain and preserve the lien and security interest of the Resolution and the Collateral Documents so long as any amount is owing under the Resolution or the Series 2014 Bond;
- (2) The Borrower shall forthwith, after the execution and delivery of the Series 2014 Bond and thereafter from time to time, cause the Resolution and any Collateral Documents granting a security interest in revenues or real or personal property and any financing statements or other notices or documents relating thereto to be filed, registered and recorded in such manner and in such places as may be required by law in order to perfect and protect fully the lien and security interest hereof and thereof and the security interest in them granted by the Resolution and, from time to time, shall perform or cause to be performed any other act required by law, including executing or causing to be executed any and all required continuation statements and shall execute or cause to be executed any further instruments that may be requested by the DNRC for such perfection and protection; and
- (3) Except to the extent it is exempt therefrom, the Borrower shall pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of the documents described in subparagraph (2), and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Series 2014 Bond and the Collateral Documents and the documents described in subparagraph (2).

(e) Additional Agreements. The Borrower covenants to comply with all representations, covenants, conditions and agreements, if any, set forth in Appendix C hereto.

(f) Financial Information. This Section 2.3(f) supplements, and is not intended to limit, the requirements in Section 2.2(f) of the Original Resolution. The Borrower agrees that for each fiscal year it shall furnish to the DNRC and the DEQ, promptly when available, in addition to those matters specified in Section 2.2(f) of the Original Resolution:

- (1) the preliminary budget for the System, with items for the 2013 Project shown separately; and
- (2) when adopted, the final budget for the System, with items for the 2013 Project shown separately.

(g) 2013 Project Accounts. The Borrower shall maintain 2013 Project accounts in accordance with generally accepted government accounting standards, and as separate accounts, as required by Section 602(b)(9) of the Clean Water Act.

(h) Records. After reasonable notice from the EPA or the DNRC, the Borrower shall make available to the EPA or the DNRC such records as the EPA or the DNRC reasonably requires to review and determine compliance with the Clean Water Act, as provided in Section 606(e) of the Clean Water Act.

(i) Compliance with Clean Water Act. The Borrower has complied and shall comply with all conditions and requirements of the Clean Water Act pertaining to the Loan and the Project.

(j) Program Covenant. The Borrower agrees that neither it nor any “related person” to the Borrower (within the meaning of Section 147(a)(2) of the Code) shall, whether pursuant to a formal or informal arrangement, acquire bonds issued by the State under the Indenture in an amount related to the amount of the Series 2014 Bond.

Section 2.4 Covenants Relating to the Tax-Exempt Status of the State Bonds.

(a) The Borrower covenants and agrees that it will not use or permit to be used any of the proceeds of the Series 2014 Bond or any other funds of the Borrower in respect of the 2013 Project or the Series 2014 Bond, directly or indirectly, in a manner that would cause, or take any other action that would cause, any State Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code or would otherwise cause the interest on the State Bonds to be included in gross income for purposes of federal income taxation.

(b) The Borrower agrees that it will not enter into, or allow any “related person” (as defined in Section 147(a)(2) of the Code) to enter into, any arrangement, formal or informal, for the purchase of the State Bonds or any other obligations of the DNRC in an amount related to the amount of the Loan or the portion of the Loan derived directly or indirectly from proceeds of the State Bonds or that would otherwise cause any State Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code.

(c) The Borrower shall not use or permit the use of the 2013 Project directly or indirectly in any trade or business carried on by any Person who is not a Governmental Unit. For the

purpose of this subparagraph, use as a member of the general public (within the meaning of the Regulations) shall not be taken into account and any activity carried on by a Person other than a natural person shall be treated as a trade or business.

(d) Any portion of the 2013 Project being refinanced or the cost of which is being reimbursed was acquired by and is now and shall, during the term of the 2014 Loan, be owned by the Borrower and not by any other Person. Any portion of the 2013 Project being financed shall be acquired by and shall, during the term of the Loan, be owned by the Borrower and not by any other Person. Notwithstanding the previous two sentences, the Borrower may transfer the 2013 Project or a portion thereof to another Governmental Unit which is also a Public Entity if such transfer is otherwise permitted under the Resolution and if such organization agrees with the DNRC to comply with Section 2.3(h), Section 2.3(i) and Section 2.4 of this Supplemental Resolution and if the DNRC receives an Opinion of Bond Counsel that such transfer will not violate the State Act or the Clean Water Act or adversely affect the exclusion of interest on the State Bonds from gross income or purposes of federal income taxation. In addition, except as otherwise provided in the Resolution or in any Collateral Documents, the Borrower may sell or otherwise dispose of any portion of the 2013 Project which has become obsolete or outmoded or is being replaced or for other reasons is not needed by the Borrower or beneficial to the general public or necessary to carry out the purposes of the Clean Water Act.

(e) At the Closing of the 2014 Loans, the DNRC will, if necessary to obtain the Opinion of Bond Counsel described in Section 7.05(a) of the Indenture, deliver to the Borrower instructions concerning compliance by the Borrower with the arbitrage rebate requirements of Section 148 of the Code (the "Arbitrage Rebate Instructions"). The Borrower shall comply with the Arbitrage Rebate Instructions, if any, delivered to it by the DNRC at Closing, as such Instructions may be amended or replaced by the DNRC from time to time. The Arbitrage Rebate Instructions may be amended or replaced by new Arbitrage Rebate Instructions delivered by the DNRC and accompanied by an Opinion of Bond Counsel to the effect that the use of said amended or new Arbitrage Rebate Instructions will not adversely affect the excludability of interest on the State Bonds or any Additional State Bonds (except State Bonds the interest on which the State did not intend to be excluded from gross income for federal income tax purposes) from gross income of the recipients thereof for federal income tax purposes.

(f) The Borrower agrees that during the term of the 2014 Loan it will not contract with or permit any Private Person to manage the 2013 Project or any portion thereof except according to a written management contract and upon delivery to the DNRC of an opinion of Bond Counsel to the effect that the execution and delivery of such management contract will not violate the State Act or the Clean Water Act or adversely affect the exclusion of interest on State Bonds from gross income or purposes of federal income taxation.

(g) The Borrower may not lease the 2013 Project or any portion thereof to any Person other than a Nonexempt Person which agrees in writing with the Borrower and the State not to cause any default to occur under the Resolution; provided the Borrower may lease all or any portion of the 2013 Project to a Nonexempt Person pursuant to a lease which in the Opinion of Bond Counsel delivered to the DNRC will not cause the interest on the State Bonds to be included in gross income for purposes of federal income taxation.

(h) The Borrower shall not change the use or nature of the 2013 Project if (i) such change will violate the Clean Water Act, or (ii) so long as the State Bonds are outstanding unless, in the Opinion of Bond Counsel delivered to the DNRC, such change will not result in the inclusion in gross income of interest on the State Bonds for federal income tax purposes.

Section 2.5 Maintenance of System; Liens. The Borrower shall maintain the System, including the 2013 Project, in good condition and make all necessary renewals, replacements, additions, betterments and improvements thereto. The Borrower shall not grant or permit to exist any lien on the 2013 Project or any other property making up part of the System, other than liens securing Debt where a parity or senior lien secures the Series 2014 Bond; provided that this Section 2.5 shall not be deemed to be violated if a mechanic's or contractor's lien is filed against any such property so long as the Borrower uses its best efforts to obtain the discharge of such lien and promptly reports to the DNRC the filing of such lien and the steps it plans to take and does take to discharge of such lien.

Section 2.6 Maintenance of Existence; Merger, Consolidation, Etc.; Disposition of Assets. The Borrower shall maintain its corporate existence, except that it may consolidate with or merge into another Governmental Unit or permit one or more Governmental Units to consolidate with or merge into it or may transfer all or substantially all of its assets to another Governmental Unit and then dissolve if the surviving, resulting or transferee entity (if other than the Borrower) (i) is a Public Entity and (ii) assumes in writing all of the obligations of the Borrower under the Resolution, the Series 2014 Bond and the Collateral Documents, and (a) such action does not result in any default in the performance or observance of any of the terms, covenants or agreements of the Borrower under the Resolution, the Series 2014 Bond and the Collateral Documents, (b) such action does not violate the State Act or the Clean Water Act and does not adversely affect the exclusion of interest on the Series 2014 Bond or the State Bonds from gross income for federal income tax purposes and (c) the Borrower delivers to the DNRC on the date of such action an Opinion of Bond Counsel that such action complies with this Section 2.6.

Other than pursuant to the preceding paragraph, the Borrower shall not transfer the System or any portion thereof to any other Person, except for property which is obsolete, outmoded, worn out, is being replaced or otherwise is not needed for the operation of the System, unless the provisions of (a) and (b) of the preceding paragraph are satisfied and the Borrower delivers to the DNRC an Opinion of Bond Counsel to that effect and, in addition, the DNRC consents to such transfer.

ARTICLE III

USE OF PROCEEDS; THE 2013 PROJECT

Section 3.1 Use of Proceeds. The Borrower shall apply the proceeds of the 2014 Loans from the DNRC solely as follows:

(a) The Borrower shall apply the proceeds of the 2014 Loan solely to the financing, refinancing or reimbursement of the costs of the 2013 Project as set forth in Appendix A hereto and this Section 3.1. The 2014 Loan will be disbursed in accordance with Article IV hereof and

Article VII of the Indenture. If the 2013 Project has not been completed prior to Closing, the Borrower shall, as quickly as reasonably possible, complete the 2013 Project and expend proceeds of the 2014 Loan to pay the costs of completing the 2013 Project.

(b) No portion of the proceeds of the 2014 Loan shall be used to reimburse the Borrower for costs paid prior to the date of adoption of this Supplemental Resolution of a Project the construction or acquisition of which occurred or began earlier than March 7, 1985. In addition, if any proceeds of the 2014 Loan are to be used to reimburse the Borrower for 2013 Project costs paid prior to the date of adoption of this Supplemental Resolution, the Borrower shall have complied with Section 1.150-2 of the Regulations in respect of such costs.

(c) Any Debt to be refinanced with proceeds of the 2014 Loan was incurred after March 7, 1985 for a Project the construction or acquisition of which began after March 7, 1985. No proceeds of the 2014 Loan shall be used for the purpose of refinancing an obligation the interest on which is exempt from federal income tax or excludable from gross income for purposes of federal income taxation unless the DNRC has received an Opinion of Bond Counsel, satisfactory to it, to the effect that such refinancing will not adversely affect the exclusion of interest on the State Bonds from gross income for purposes of federal income taxation.

Section 3.2 The 2013 Project. Set forth in Appendix A to this Supplemental Resolution is a description of the 2013 Project, which describes the property which has been or is to be acquired, installed, constructed or improved and the other activities, if any to be funded from the 2014 Loan (the 2013 Project may consist of more than one facility or activity), and an estimated budget relating to the 2013 Project. The 2013 Project may be changed and the description thereof in Appendix A may be amended from time to time by the Borrower but only after delivery to the DNRC of the following:

(a) A certificate of the Borrower setting forth the amendment to Appendix A and stating the reason therefor, including statements whether the amendment would cause an increase or decrease in the cost of the 2013 Project, an increase or decrease in the amount of Loan proceeds which will be required to complete the 2013 Project and whether the change will materially accelerate or delay the construction schedule for the 2013 Project;

(b) A written consent to such change in the 2013 Project by an Authorized DNRC Officer;

(c) An Opinion or Opinions of Bond Counsel stating that the 2013 Project, as constituted after such amendment, is, and was at the time the State Bonds were issued, eligible for financing under the State Act and is, and was at the time the Series 2014 Bond was issued, eligible for financing under the Act, such amendment will not violate the State Act or the Act and such amendment will not adversely affect the exclusion of interest on the State Bonds or the Series 2014 Bond from gross income for purposes of federal income taxation. Such an Opinion of Bond Counsel shall not be required for amendments which do not affect the type of facility to be constructed or activity to be financed.

The Borrower acknowledges and agrees that an increase in the principal amount of the Loan may be made only upon an application to the DEQ, the DNRC and the Trustee, in such

form as the DEQ shall specify, which is approved by the DEQ and the DNRC, in their sole and absolute discretion, and adoption by the governing body of the Borrower of a resolution amendatory of or supplementary to the Resolution authorizing the additional loan and delivery of written certifications by officers of the Borrower to the DEQ, the DNRC and the Trustee to the effect that all representations and covenants contained in the resolution as it may be so amended or supplemented are true as of the date of closing of the additional loan and compliance with applicable tests for the incurrence of such Debt. No assurance can be given that any additional loan funds will be available under the Program at the time of any such application or thereafter. The Borrower acknowledges and agrees that neither the DEQ, the DNRC, the Trustee nor any of their agents, employees or representatives shall have any liability to the Borrower and have made no representations to the Borrower as to the sufficiency of the 2014 Loan to pay costs of the 2013 Project or as to the availability of additional funds under the Program to increase the principal amount of the 2014 Loan.

Section 3.3 2013 Project Representations and Covenants. The Borrower hereby represents to and covenants with the DNRC that:

(a) all construction of the 2013 Project has complied and will comply with all federal and state standards, including, without limitation, EPA regulations and standards;

(b) all future construction of the 2013 Project will be done only pursuant to fixed price construction contracts. The Borrower shall obtain or cause to be obtained a performance and payment bond from the contractor for each construction contract in the amount of 100% of the construction price and ensure that such bond is maintained until construction is completed to the Borrower's, the DNRC's and the DEQ's satisfaction;

(c) all future construction of the 2013 Project will be done in accordance with plans and specifications on file with the DNRC and the DEQ, provided that changes may be made in such plans and specifications with the written consent of an Authorized DNRC Officer and the DEQ;

(d) the 2013 Project is a project of the type permitted to be financed under the Act, the State Act and the Program and Title VI of the Clean Water Act; and

(e) all laborers and mechanics employed by contractors and subcontractors on the 2013 Project have been and will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Section 3.4 Completion or Cancellation or Reduction of Costs of the 2013 Project.

(a) Upon completion of the 2013 Project, the Borrower shall deliver to the DNRC a certificate stating that the 2013 Project is complete and stating the amount, if any, of the Undisbursed Committed Amount. If Appendix A describes two or more separate projects as making up the 2013 Project, a separate completion certificate shall be delivered for each.

(b) If all or any portion of the 2013 Project is cancelled or cut back or its costs are reduced or for any other reason the Borrower will not require the full Committed Amount, the

Borrower shall promptly notify the DNRC in writing of such fact and the amount of the Undisbursed Committed Amount.

ARTICLE IV

THE 2014 LOAN

Section 4.1 The 2014 Loan; Disbursement of 2014 Loan.

(a) The DNRC has agreed to lend to the Borrower, from time to time as the requirements of this Section 4.1 are met, an amount up to \$452,300 (the “2014 Committed Amount”) for the purposes of financing, refinancing or reimbursing the Borrower for all or a portion of the costs of the 2013 Project, funding deposits to the Reserve Account and paying costs of issuance of the Series 2014 Bond; provided the DNRC shall not be required to loan any proceeds of the State Bonds to the Borrower after the Estimated Completion Date. The Committed Amount may be reduced as provided in Section 3.2 and Section 3.4 of this Supplemental Resolution.

(b) The DNRC intends to disburse the 2014 Loan through the Trustee. In consideration of the issuance of the Series 2014 Bond by the Borrower, the DNRC shall make, or cause the Trustee to make, a disbursement of all or a portion of the Loan upon receipt of the following documents:

- (1) an Opinion of Bond Counsel as to the validity and enforceability of the Series 2014 Bond and the security therefor and stating in effect that interest on the Series 2014 Bond is not includable in gross income of the owner thereof for purposes of federal income taxation, in form and substance satisfactory to the DNRC;
- (2) the Series 2014 Bond, fully executed and authenticated;
- (3) a certified copy of the Original Resolution and this Supplemental Resolution;
- (4) any other security instruments or documents required by the DNRC or DEQ as a condition to their approval of the 2014 Loan;
- (5) if all or part of a 2014 Loan is being made to refinance a Project or reimburse the Borrower for the costs of a Project paid prior to the Closing, evidence, satisfactory to the DNRC and the Bond Counsel referred to in (1) above, (A) that the acquisition or construction of the Project was begun no earlier than March 7, 1985 or the debt was incurred no earlier than March 7, 1985, (B) of the Borrower’s title to the Project, (C) of the costs of such Project and that such costs have been paid by the Borrower and (D) if such costs were paid before adoption of this Supplemental Resolution that the Borrower has complied with Section 1.150-2 of the Regulations;

- (6) the items required by the Indenture for the portion of the 2014 Loan to be disbursed at Closing; and
- (7) such other certificates, documents and other information as the DNRC, the DEQ or the Bond Counsel giving the opinion referred to in subparagraph (1) may require (including any necessary arbitrage rebate instructions).

(c) In order to obtain a disbursement of a portion of the Series 2014 Bond to pay costs of the 2013 Project, the Borrower shall submit to the DNRC and the Trustee a signed request for disbursement on the form prescribed by the DNRC, with all attachments required by such form. The Borrower may obtain disbursements only for costs which have been legally incurred and are due and payable. All Loan disbursements will be made to the Borrower only upon proof that cost was incurred.

(d) For refinancings, a disbursement schedule complying with the requirements of the Clean Water Act shall be established by the DNRC and the Borrower at Closing.

(e) If all or a portion of the 2014 Loan is made to reimburse a Borrower for Project costs paid by it prior to Closing, the Borrower shall present at Closing the items required by Section 4.1(b) relating to such costs. The Trustee shall disburse such amounts to the Borrower pursuant to a disbursement schedule complying with the requirements of the Clean Water Act established by the DNRC and the Borrower at the Closing.

(f) Notwithstanding anything else provided herein, the Trustee shall not be obligated to disburse the 2014 Loan any faster or to any greater extent than it has available EPA Capitalization Grants, Bond proceeds and other amounts available therefor in the Revolving Fund. The DNRC shall not be required to do “overmatching” pursuant to Section 5.04(b) of the Indenture, but may do so in its discretion. The Borrower acknowledges that if Project costs are incurred faster than the Borrower projected at Closing, there may be delays in making disbursements of the 2014 Loan for such costs because of the schedule under which EPA makes EPA Capitalization Grant money available to the DNRC. The DNRC will use its reasonable best efforts to obtain an acceleration of such schedule if necessary.

(g) Upon making each 2014 Loan disbursement, the Trustee shall note such disbursement on Schedule A to the Series 2014 Bond.

(h) The Borrower agrees that it will deposit in the Reserve Account upon receipt thereof, on the Closing Date of the 2014 Loan and upon any disbursement date, any proceeds of the 2014 Loan borrowed for the purpose of increasing the balance in the Reserve Account to the Reserve Requirement. The Borrower further acknowledges and agrees that any portion of the 2014 Loan representing capitalized interest shall be advanced only on Payment Dates and shall be transferred by the Trustee on the Payment Date directly to the Revenue Bond Account. The amount of any such transfer shall, as appropriate, be a credit against the interest payments due on the 2014 Loan, and interest thereon shall accrue only from the date of transfer.

(i) Compliance by the Borrower with its representations, covenants and agreements contained in the Original Resolution, this Supplemental Resolution and the Collateral Documents shall be a further condition precedent to the disbursement of the Loan in whole or in part. The DNRC and the Trustee, in their sole and absolute discretion, may make one or more disbursements, in whole or in part, notwithstanding such noncompliance, and without liability to make any subsequent disbursement of the Loan.

Section 4.2 Commencement of Loan Term. The Borrower's obligations under this Supplemental Resolution and the Collateral Documents shall commence on the date hereof unless otherwise provided in this Supplemental Resolution. However, the obligation to make payments under Article V hereof shall commence only upon the first disbursement by the Trustee of the proceeds of the 2014 Loan.

Section 4.3 Termination of Loan Term. The Borrower's obligations under the Resolution and the Collateral Documents in respect of the Series 2014 Bond shall terminate upon payment in full of all amounts due under the Series 2014 Bond and the Resolution in respect thereof; provided, however, that the covenants and obligations provided in Article VI and Section 10.3 of this Supplemental Resolution shall survive the termination of the Resolution.

Section 4.4 Loan Closing Submissions. On or prior to the Closing, the Borrower will have delivered to the DNRC and the Trustee the closing submissions required by Section 7.05 of the Indenture.

ARTICLE V

REPAYMENT OF 2014 LOAN

Section 5.1 Repayment of 2014 Loan. The Borrower shall repay the amounts lent to it pursuant to Section 4.1 hereof in accordance with this Section 5.1. The 2014 Loan shall bear interest at the rate of two percent (2.00%) per annum and the Borrower shall pay the Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal amounts of the 2014 Loan. For purposes of this Supplemental Resolution and the Program, with respect to the 2014 Loan, the term "interest on the 2014 Loan" when not used in conjunction with a reference to any surcharges, shall include the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge. The Borrower shall pay all Loan Repayments and surcharges in lawful money of the United States of America to the DNRC. Interest, Administrative Expense Surcharge, and Loan Loss Reserve Surcharge shall be calculated on the basis of a year of 360 days comprising 12 months of 30 days each.

The Loan Repayments required by this Section 5.1, and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge, shall be due on each January 1 and July 1 (the "Payment Dates"), as follows:

(a) Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal balance of the 2014 Loan shall be payable on each January 1 and July 1, beginning on July 1, 2014, which is the first Payment Date after the first advance of the 2014 Loan;

(b) the principal of the 2014 Loan shall be repayable on each Payment Date, beginning on July 1, 2014 and concluding on January 1, 2034, and the amount of each principal payment shall be calculated on the basis of substantially level debt service at an interest rate of 3.00% per annum.

The payments of principal of and interest and Administrative Expense Surcharge and the Loan Loss Reserve Surcharge on the 2014 Loan shall be due on the dates and in the amounts shown in Schedule B to the Series 2014 Bond, as such Schedule B shall be modified from time to time as provided below. The portion of each such Loan Repayment consisting of principal and the portion consisting of interest and the amount of each Administrative Expense Surcharge and the Loan Loss Reserve Surcharge, shall be set forth in Schedule B to such Bond. Upon each disbursement of amounts of the 2014 Loan to the Borrower pursuant to Section 4.1 hereof, the Trustee shall enter or cause to be entered the amount advanced on Schedule A to the Series 2014 Bond, under "Advances" and the total amount advanced under Section 4.1, including such disbursement, under "Total Amount Advanced."

If the advance was made to pay costs of the 2013 Project pursuant to Section 4.1(b), interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on such advance shall accrue from the date the advance is made and shall be payable on each Payment Date thereafter. Once the completion certificate for the 2013 Project has been delivered to the DNRC, the Trustee shall revise Schedule B to the Series 2014 Bond in accordance with this Section 5.1 and the Trustee shall send a copy of such Schedule B to the Borrower within one month after delivery of the completion certificate.

Past-due payments of principal and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid.

Any payment of principal, interest or Administrative Expense Surcharge and Loan Loss Reserve Surcharge under this Section 5.1 shall also be credited against the same payment obligation under the Series 2014 Bond.

Section 5.2 Additional Payments. The Borrower shall also pay, within 30 days after receipt of a bill therefor, from any legally available funds therefor, including proceeds of the 2014 Loan, if the Borrower so chooses, all reasonable expenses of the DNRC and the Trustee in connection with the 2014 Loan, the Collateral Documents and the Series 2014 Bond, including, but not limited to:

(a) the cost of reproducing this Supplemental Resolution, the Collateral Documents and the Series 2014 Bond;

(b) the fees and disbursements of bond counsel and other Counsel utilized by the DNRC and the Trustee in connection with the Loan, the Resolution, the Collateral Documents and the Series 2014 Bond and the enforcement thereof; and

(c) all taxes and other governmental charges in connection with the execution and delivery of the Collateral Documents or the Series 2014 Bond, whether or not the Series 2014

Bond are then outstanding, including all recording and filing fees relating to the Collateral Documents and the pledge of the State's right, title and interest in and to the Series 2014 Bond, the Collateral Documents and the Resolution (and with the exceptions noted therein) and all expenses, including attorneys' fees, relating to any amendments, waivers, consents or collection or enforcement proceedings pursuant to the provisions hereof or thereof.

Section 5.3 Prepayments. The Borrower may not prepay all or any part of the outstanding principal amount of the Series 2014 Bond unless (i) it obtains the prior written consent of the DNRC thereto, and (ii) no Loan Repayment or Administrative Expense Surcharge or Loan Loss Reserve Surcharge is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2014 Bond are prepaid in part pursuant to this Section 5.3, such prepayments shall be applied to principal payments in inverse order of maturity.

Section 5.4 Obligations of Borrower Unconditional. The obligations of the Borrower to make the payments required by this Supplemental Resolution and the Series 2014 Bond and to perform its other agreements contained in the Resolution, the Series 2014 Bond and Collateral Documents shall be absolute and unconditional, except as otherwise provided herein or in such documents. The Borrower (a) shall not suspend or discontinue any payments provided for in the Resolution and the Series 2014 Bond, (b) shall perform all its other agreements in the Resolution, the Series 2014 Bond and the Collateral Documents and (c) shall not terminate the Resolution, the Series 2014 Bond or the Collateral Documents for any cause, including any acts or circumstances that may constitute failure of consideration, destruction of or damage to the 2013 Project or the System, commercial frustration of purpose, any dispute with the DNRC or the EPA, any change in the laws of the United States or of the State or any political subdivision of either or any failure of the DNRC to perform any of its agreements, whether express or implied, or any duty, liability or obligation arising from or connected with the Resolution.

Section 5.5 Limited Liability. All payments of principal of and interest on the 2014 Loan and other payment obligations of the Borrower hereunder and under the Series 2014 Bond shall be special, limited obligations of the Borrower payable solely out of the Net Revenues or, as appropriate, Surplus Net Revenues, and shall not, except at the option of the Borrower and as permitted by law, be payable out of any other revenues of the Borrower. The obligations of the Borrower under the Resolution and the Series 2014 Bond shall never constitute an indebtedness of the Borrower within the meaning of any state constitutional provision or statutory or charter limitation and shall never constitute or give rise to a pecuniary liability of the Borrower or a charge against its general credit or taxing power. The taxing powers of the Borrower may not be used to pay principal of or interest on the Series 2014 Bond, and no funds or property of the Borrower other than the Net Revenues or, as appropriate, Surplus Net Revenues may be required to be used to pay principal of or interest on the Series 2014 Bond.

ARTICLE VI

INDEMNIFICATION OF DNRC AND DEQ

The Borrower shall, to the extent permitted by law, indemnify and save harmless the DNRC and the DEQ and their officers, employees and agents (each an "Indemnified Party" or, collectively, the "Indemnified Parties") against and from any and all claims, damages, demands, expenses, liabilities and losses of every kind asserted by or on behalf of any Person arising out of the acts or omissions of the Borrower or its employees, officers, agents, contractors, subcontractors, or consultants in connection with or with regard or in any way relating to the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation or financing of the 2013 Project. The Borrower shall also, to the extent permitted by law, indemnify and save harmless the Indemnified Parties against and from all costs, reasonable attorneys' fees, expenses and liabilities incurred in any action or proceeding brought by reason of any such claim or demand. If any proceeding is brought against an Indemnified Party by reason of such claim or demand, the Borrower shall, upon notice from an Indemnified Party, defend such proceeding on behalf of the Indemnified Party.

ARTICLE VII

ASSIGNMENT

Section 7.1 Assignment by Borrower. The Borrower may not assign its rights and obligations under the Resolution or the Series 2014 Bond.

Section 7.2 Assignment by DNRC. The DNRC will pledge its rights under and interest in the Resolution, the Series 2014 Bond and the Collateral Documents (except to the extent otherwise provided in the Indenture) as security for the payment of the State Bonds and may further assign such interests to the extent permitted by the Indenture, without the consent of the Borrower.

Section 7.3 State Refunding Bonds. In the event the State Bonds and Additional State Bonds are refunded by bonds which are not Additional State Bonds, all references in the Resolution to State Bonds and Additional State Bonds shall be deemed to refer to the refunding bonds and any bonds of the State on a parity with such refunding bonds (together, the "Refunding Bonds") or, in the case of a crossover refunding, to the State Bonds and Additional State Bonds and the Refunding Bonds. In the event the State Bonds are refunded by an issue of Additional State Bonds, all references in the Resolution to the State Bonds shall be deemed to refer to such Additional State Bonds or, in the case of a crossover refunding, both the State Bonds and such Additional State Bonds.

ARTICLE VIII

THE SERIES 2014 BOND

Section 8.1 Net Revenues Available. The Borrower is authorized to charge just and equitable rates, charges and rentals for all services directly or indirectly furnished by the System,

and to pledge and appropriate to the Series 2002 Bond, the Series 2008A Bond, the Series 2008B Bond, the Series 2010B Bond, the Series 2011B Bond, the Series 2011C Bond, and the Series 2014 Bond, the Net Revenues to be derived from the operation of the System, including improvements, betterments or extensions thereof hereafter constructed or acquired. The Net Revenues to be produced by such rates, charges and rentals during the term of the Series 2002 Bond, the Series 2008A Bond, the Series 2008B Bond, the Series 2010B Bond, the Series 2011B Bond, the Series 2011C Bond, and the Series 2014 Bond are expected to be more than sufficient to pay the principal and interest when due on such Bonds, and to create and maintain reasonable reserves therefor and to provide an adequate allowance for replacement and depreciation, as prescribed herein.

Section 8.2 Issuance and Sale of the Series 2014 Bond. The 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 2014 Bond to evidence the 2014 Loan. The Series 2014 Bond is issued to the DNRC without public sale pursuant to Montana Code Annotated, Section 7-7-4433(1).

Section 8.3 Terms. The Series 2014 Bond shall be issued in the maximum principal amount equal to the original 2014 Committed Amount, shall be issued as a single, fully registered bond numbered R-1, shall be dated as of the date of delivery to the DNRC, and shall bear interest at the rate charged by the DNRC on the 2014 Loan. The principal of and interest on the Series 2014 Bond shall be payable on the same dates and in the same amounts on which principal and interest of the Loan Repayments are payable. Advances of principal of the Series 2014 Bond shall be deemed made when advances of the 2014 Loan are made under Section 4.1, and such advances shall be payable in accordance with Schedule B to the Series 2014 Bond as it may be revised by the DNRC from time to time in accordance with Section 5.1.

The Borrower may prepay the Series 2014 Bond, in whole or in part, only upon the terms and conditions under which it can prepay the 2014 Loan under Section 5.3.

Section 8.4 Negotiability, Transfer and Registration. The Series 2014 Bond shall be fully registered as to both principal and interest, and shall be initially registered in the name of and payable to the DNRC. While so registered, principal of and interest on the Series 2014 Bond shall be payable to the DNRC at the Office of the Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana 59620-1601 or such other place as may be designated by the DNRC in writing and delivered to the Borrower. The Series 2014 Bond shall be negotiable, subject to the provisions for registration and transfer contained in this Section. No transfer of the Series 2014 Bond shall be valid unless and until (1) the holder, or his duly authorized attorney or legal representative, has executed the form of assignment appearing on the Series 2014 Bond, and (2) the City Finance Director of the Borrower (or successors, the "Registrar"), as Bond Registrar, has duly noted the transfer on the Series 2014 Bond and recorded the transfer on the registration books of the Registrar. The Registrar may, prior to noting and recording the transfer, require appropriate proof of the transferor's authority and the genuineness of the transferor's signature. The Borrower shall be entitled to deem and treat the Person in whose name the Series 2014 Bond is registered as the absolute owner of the Series 2014 Bond for all purposes, notwithstanding any notice to the contrary, and all payments to the

registered holder shall be valid and effectual to satisfy and discharge the Borrower's liability upon such Bond to the extent of the sum or sums so paid.

Section 8.5 Execution and Delivery. The Series 2014 Bond shall be executed on behalf of the Borrower by the manual signatures of the Mayor, the Finance Director, and the City Clerk. Any or all of such signatures may be affixed at or prior to the date of delivery of the Series 2014 Bond. The Series 2014 Bond shall be sealed with the corporate seal of the Borrower. In the event that any of the officers who shall have signed the Series 2014 Bond shall cease to be officers of the Borrower before the Series 2014 Bond is issued or delivered, their signatures shall remain binding upon the Borrower. Conversely, the Series 2014 Bond may be signed by an authorized official who did not hold such office on the date of adoption of this Supplemental Resolution. The Series 2014 Bond shall be delivered to the DNRC, or its attorney or legal representative.

Section 8.6 Form. The Series 2014 Bond shall be prepared in substantially the form attached as Appendix B.

ARTICLE IX

SECURITY FOR THE SERIES 2014 BOND

The Series 2014 Bond is issued as an additional Bond under Article X of the Original Resolution and under this Supplemental Resolution and shall, with the Series 2002 Bond, the Series 2008A Bond, the Series 2008B Bond, the Series 2010B Bond, the Series 2011B Bond, the Series 2011C Bond, and any other additional Bonds issued under the provisions of Article X of the Original Resolution but excluding Section 10.4 thereof, be equally and ratably secured by the provisions of the Resolution and payable out of the Net Revenues appropriated to the Revenue Bond Account of the Sewer System Fund, without preference or priority, all as provided in the Resolution, and secured by the Reserve Account, as further provided in Section 11.5 of the Original Resolution and in the following sentence. Upon advancement of principal of the Series 2014 Bond, the City Finance Director shall transfer from proceeds of the Series 2014 Bond such amount or amounts to the Reserve Account to cause the balance therein to equal the Reserve Requirement, treating such principal amount as outstanding. Upon the first advance of proceeds of the Series 2014 Bond, the deposit to the Reserve Account shall be sufficient to cause the balance in the Reserve Account to equal the Reserve Requirement in respect of the Series 2014 Bond and the principal of the Series 2014 Bond so advanced. The Borrower shall keep, perform and observe each and every one of its covenants and undertakings set forth in the Resolution for the benefit of the registered owners from time to time of the Series 2002 Bond, the Series 2008A Bond, the Series 2008B Bond, the Series 2010B Bond, the Series 2011B Bond, the Series 2011C Bond, and the Series 2014 Bond.

ARTICLE X

TAX MATTERS

Section 10.1 Use of 2013 Project. The 2013 Project will be owned and operated by the Borrower and available for use by members of the general public on a substantially equal basis.

The Borrower shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the 2013 Project or the System or security for the payment of the Series 2014 Bond which might cause the Series 2014 Bond to be considered a “private activity bond” or “private loan bond” within the meaning of Section 141 of the Code.

Section 10.2 General Covenant. The Borrower covenants and agrees with the owners from time to time of the Series 2014 Bond that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Series 2014 Bond to become includable in gross income for federal income tax purposes under the Code and the Regulations, and covenants to take any and all actions within its powers to ensure that the interest on the Series 2014 Bond will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

Section 10.3 Arbitrage Certification. The Mayor, the Finance Director, and the City Clerk, being the officers of the Borrower charged with the responsibility for issuing the Series 2014 Bond pursuant to this Supplemental Resolution, are authorized and directed to execute and deliver to the DNRC a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Series 2014 Bond, it is reasonably expected that the proceeds of the Series 2014 Bond will be used in a manner that would not cause the Series 2014 Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code and the Regulations.

Section 10.4 Arbitrage Rebate Exemption.

(a) The Borrower hereby represents that the Series 2014 Bond qualifies for the exception for small governmental units to the arbitrage rebate provisions contained in Section 148(f) of the Code. Specifically, the Borrower represents:

(1) Substantially all (not less than 95%) of the proceeds of the Series 2014 Bond (except for amounts to be applied to the payment of costs of issuance) will be used for local governmental activities of the Borrower.

(2) The aggregate face amount of all “tax-exempt bonds” (including warrants, contracts, leases and other indebtedness, but excluding private activity bonds) issued by or on behalf of the Borrower and all subordinate entities thereof during 2014 is reasonably expected not to exceed \$5,000,000. To date in 2014, the Borrower has not issued any tax-exempt bonds, and in the calendar years 2009 through 2013, the Borrower issued no tax-exempt bonds, except for the Series 2010B Bond, the Series 2011B Bond, the Series 2011C Bond, its Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2009B, and its Tax Increment Urban Renewal Bonds (Emergency Services Center Project and Refunding), Series 2009.

(b) If notwithstanding the provisions of paragraph (a) of this Section 10.4, the arbitrage rebate provisions of Section 148(f) of the Code apply to the Series 2014 Bond, the Borrower hereby covenants and agrees to make the determinations, retain records and

rebate to the United States the amounts at the times and in the manner required by said Section 148(f).

Section 10.5 Information Reporting. The Borrower shall file with the Secretary of the Treasury, not later than May 15, 2014 or such later date as prescribed by the Regulations, a statement concerning the Series 2014 Bond containing the information required by Section 149(e) of the Code.

Section 10.6 “Qualified Tax-Exempt Obligations.” Pursuant to Section 265(b)(3)(B)(ii) of the Code, the Borrower hereby designates the Series 2014 Bond as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code. The Borrower has not designated any obligations in 2014 under Section 265(b)(3) other than the Series 2014 Bond. The Borrower hereby represents that it does not anticipate that obligations bearing interest not includable in gross income for purposes of federal income taxation under Section 103 of the Code (including refunding obligations as provided in Section 265(b)(3) of the Code and including “qualified 501(c)(3) bonds” but excluding other “private activity bonds,” as defined in Sections 141(a) and 145(a) of the Code) will be issued by or on behalf of the Borrower and all “subordinate entities” of the Borrower in 2014 in an amount greater than \$10,000,000.

ARTICLE XI

CONTINUING DISCLOSURE

The Borrower understands and acknowledges that the DNRC is acquiring the Series 2014 Bond under the Program pursuant to which the State issues from time to time State Bonds to provide funds therefor. The Borrower covenants and agrees that, upon written request of the DNRC from time to time, the Borrower will promptly provide to the DNRC all information that the DNRC reasonably determines to be necessary or appropriate to offer and sell State Bonds or to provide continuing disclosure in respect of State Bonds, whether under Rule 15c2-12 (17 C.F.R. § 240.15c2-12) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, or otherwise. Such information shall include, among other things and if so requested, financial statements of the Borrower prepared in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board as modified in accordance with the governmental accounting standards promulgated by the Governmental Accounting Standards Board or as otherwise provided under Montana law, as in effect from time to time (such financial statements to relate to a fiscal year or any period therein for which they are customarily prepared by the Borrower, and, if for a fiscal year and so requested by the DNRC, subject to an audit report and opinion of an accountant or government auditor, as permitted or required by the laws of the State). The Borrower will also provide, with any information so furnished to the DNRC, a certificate of the Mayor and the City Finance Director to the effect that, to the best of their knowledge, such information does not include any untrue statement of a material fact or omit to state any material fact required to be stated therein to make the statements made, in light of the circumstances under which they are made, not misleading.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Notices. All notices or other communications hereunder shall be sufficiently sent or given and shall be deemed sent or given when delivered or mailed by certified mail, postage prepaid, to the parties at the following addresses:

DNRC: Department of Natural Resources and Conservation
1625 Eleventh Avenue
P. O. Box 201601
Helena, Montana 59620-1601
Attn: Conservation and Resource
Development Division

Trustee: U.S. Bank National Association
c/o Corporate Trust Services
1420 Fifth Avenue, 7th Floor
Seattle, Washington 98101

Borrower: City of Whitefish
418 East Second Street
P.O. Box 158
Whitefish, Montana 59937
Attn: City Finance Director

Any of the above parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices or other communications shall be sent.

Section 12.2 Binding Effect. This Supplemental Resolution shall inure to the benefit of and shall be binding upon the DNRC, the Borrower and their respective successors and assigns.

Section 12.3 Severability. If any provision of this Supplemental Resolution shall be determined to be unenforceable at any time, it shall not affect any other provision of the Resolution or the enforceability of that provision at any other time.

Section 12.4 Amendments. This Supplemental Resolution may not be effectively amended without the written consent of the DNRC.

Section 12.5 Applicable Law. This Supplemental Resolution shall be governed by and construed in accordance with the internal laws of the State.

Section 12.6 Captions; References to Sections. The captions in this Supplemental Resolution are for convenience only and do not define or limit the scope or intent of any provisions or Sections of this Supplemental Resolution.

Section 12.7 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Supplemental Resolution shall be had against any director, officer or employee, as such, past, present or future, of the DNRC, the DEQ or the Trustee, either directly or through the DNRC, the DEQ or the Trustee, or against any officer, or member of the governing body or employee of the Borrower, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer or member of the governing body or employee of the DNRC, the Trustee or the Borrower is hereby expressly waived and released by the Borrower and by the DNRC as a condition of and in consideration for the adoption of this Supplemental Resolution and the making of the Loan.

Section 12.8 Payments Due on Holidays. If the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Supplemental Resolution or the Series 2014 Bond, shall not be Business Day, such payments may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Supplemental Resolution or the Series 2014 Bond.

Section 12.9 Right of Others To Perform Borrower's Covenants. In the event the Borrower shall fail to make any payment or perform any act required to be performed hereunder, then and in each such case the DNRC or the provider of any Collateral Document may (but shall not be obligated to) remedy such default for the account of the Borrower and make advances for that purpose. No such performance or advance shall operate to release the Borrower from any such default and any sums so advanced by the DNRC or the provider of any Collateral Document shall be paid immediately to the party making such advance and shall bear interest at the rate of ten percent (10.00%) per annum from the date of the advance until repaid. The DNRC and the provider of any Collateral Document shall have the right to enter the 2013 Project or the facility or facilities of which the 2013 Project is a part or any other facility which is a part of the System in order to effectuate the purposes of this Section.

Section 12.10 Authentication of Transcript. The officers of the Borrower are hereby authorized and directed to furnish to the DNRC and to Bond Counsel certified copies of all proceedings relating to the issuance of the Series 2014 Bond and such other certificates and affidavits as may be required to show the right, power and authority of the Borrower to issue the Series 2014 Bond, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the Borrower as to the truth of the statements of fact purported to be shown thereby.

Section 12.11 Effective Date. This Supplemental Resolution shall take effect immediately.

Adopted by the City Council of the City of Whitefish, Montana, on this 18th day of February, 2014.

John M. Muhlfeld, Mayor

Attest: _____
Necile Lorang, City Clerk

(SEAL)

APPENDIX A

Description of the 2013 Project

The 2013 Project consists of replacing approximately 2,100 feet of sewer main and related improvements in conjunction with the State of Montana’s Whitefish West U.S. 93 Highway Reconstruction Project.

Estimated Budget for Application of Proceeds of Series 2014 Bond

Costs	Source: Series 2014 Bond	Source: City funds	Total:
Debt Service Reserve	\$ 30,915		\$ 30,915
Bond Counsel & Related costs	\$ 5,500		\$ 5,500
Construction	\$ 415,885	\$ 229,315	\$ 645,200
TOTAL PROJECT COSTS	\$ 452,300	\$ 229,315	\$ 681,615

APPENDIX B

[Form of the Series 2014 Bond]

UNITED STATES OF AMERICA
STATE OF MONTANA
FLATHEAD COUNTY

CITY OF WHITEFISH

SEWER SYSTEM REVENUE BOND
(DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM),
SERIES 2014

No. R-1

\$452,300

FOR VALUE RECEIVED, the City of Whitefish, Montana (the "City"), a duly organized municipal corporation and political subdivision of the State of Montana, acknowledges itself to be specially indebted and, for value received, hereby promises to pay to the Department of Natural Resources and Conservation of the State of Montana (the "DNRC"), or its registered assigns, solely from the Revenue Bond Account of its Sewer System Fund, the principal sum equal to the sum of the amounts entered on Schedule A attached hereto under "Total Amount Advanced," with interest on each such amount from the date such amount is advanced hereunder at the rate of 2.00% per annum on the unpaid balance until paid. In addition, the City shall pay, solely from the Revenue Bond Account, an Administrative Expense Surcharge and a Loan Loss Reserve Surcharge on the outstanding principal amount of this Bond at the rates of seventy-five hundredths of one percent (0.75%) per annum and twenty-five hundredths of one percent (0.25%) per annum, respectively. Principal, interest, Administrative Expense Surcharge, and Loan Loss Reserve Surcharge shall be payable in semiannual installments payable on each January 1 and July 1 (each a "Loan Repayment Date") commencing on the date first set forth in the column headed "Date" on Schedule B attached hereto. Principal shall be payable on the dates set forth in Schedule B hereto. Each installment shall be in the amount set forth opposite its due date in Schedule B attached hereto under "Total Loan Payment." The portion of each such payment consisting of principal, the portion consisting of interest, the portion consisting of Administrative Expense Surcharge, and the portion consisting of Loan Loss Reserve Surcharge shall be as set forth in Schedule B hereto. Upon each disbursement of 2014 Loan amounts to the City pursuant to the Resolution described below, the DNRC shall enter (or cause to be entered) the amount advanced on Schedule A under "Advances" and the total amount advanced under the Resolution (as hereinafter defined), including such disbursement, under "Total Amount Advanced." The DNRC shall prepare Schedule B and any revised Schedule B, or cause Schedule B and any revised Schedule B to be prepared, as provided in Section 5.1 of the Resolution. Schedule B shall be calculated and recalculated on a substantially level debt service basis assuming an interest rate of 3.00% per annum. Past-due payments of principal and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid. Interest, Administrative Expense Surcharge, and Loan Loss Reserve Surcharge shall be calculated on the basis of a 360-day year comprising 12 months of 30 days

each. All payments under this Bond shall be made to the registered holder of this Bond, at its address as it appears on the Bond register, in lawful money of the United States of America.

This Bond is one of an issue of Sewer System Revenue Bonds of the City authorized to be issued in one or more series from time to time, and constitutes a series in the maximum authorized principal amount of \$452,300 (the "Series 2014 Bond"). This Series 2014 Bond is issued to finance a portion of the costs of the construction of certain improvements to the sewer system of City (the "System"), to make deposits to the Reserve Account for the Bonds, and to pay costs of issuance. The Series 2014 Bond is issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 7, Part 44, as amended, and ordinances and resolutions duly adopted by the governing body of the City, including Resolution No. 02-52, passed and adopted by the City Council of the City on October 7, 2002 (the "Original Resolution") as amended and supplemented by Resolution Nos. 08-59, 10-01, 11-20, 12-37, and 14-04 adopted by the City Council on December 1, 2008, January 4, 2010, April 4, 2011, November 5, 2012, and February 18, 2014, respectively (the Original Resolution, as so amended and supplemented, the "Resolution"). Terms used with initial capital letters but not defined herein shall have the meanings given such terms in the Resolution. The Series 2014 Bond is issuable only as a single, fully registered bond. The Series 2014 Bond is issued on a parity and is equally and ratably secured by the Net Revenues of the System with the City's outstanding First Amended and Restated Sewer System Revenue Bond (DNRC Revolving Loan Program), Series 2002 (the "Series 2002 Bond"), First Amended and Restated Sewer System Revenue Bond (DNRC Revolving Loan Program), Series 2008A (the "Series 2008A Bond"), First Amended and Restated Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2008B (the "Series 2008B Bond"), Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2010B (the "Series 2010B Bond"), First Amended and Restated Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2011B (the "Series 2011B Bond"), and First Amended and Restated Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2011C (the "Series 2011C Bond").

Reference is made to the Resolution for a more complete statement of the terms and conditions upon which the Series 2014 Bond has been issued, the Net Revenues of the System pledged and appropriated for the payment and security thereof, the conditions upon which additional Bonds may be issued under the Resolution and made payable from such Net Revenues on a parity with the Series 2002 Bond, the Series 2008A Bond, the Series 2008B Bond, the Series 2010B Bond, the Series 2011B Bond, the Series 2011C Bond, and the Series 2014 Bond (collectively, the "Bonds") or otherwise, the conditions upon which the Resolution may be amended, the rights, duties and obligations of the City, and the rights of the owners of the Series 2014 Bond.

The City may prepay the principal of the Series 2014 Bond only if (i) it obtains the prior written consent of the DNRC thereto, and (ii) no Loan Repayment or Administrative Expense Surcharge or Loan Loss Reserve Surcharge is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest and Administrative Expense Surcharge and the Loan Loss Reserve Surcharge to the date of prepayment on the amount of

principal prepaid. If the Series 2014 Bond is prepaid in part, such prepayments shall be applied to principal payments in inverse order of maturity.

The Bonds, including interest and any premium for the redemption thereof, are payable solely from the net revenues pledged for the payment thereof and do not constitute a debt of the City within the meaning of any constitutional or statutory limitation or provision.

The City may deem and treat the person in whose name this Series 2014 Bond is registered as the absolute owner hereof, whether this Series 2014 Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and the City shall not be affected by any notice to the contrary. The Series 2014 Bond may be transferred as hereinafter provided.

This Series 2014 Bond has been designated by the Borrower as a “qualified tax-exempt obligation” pursuant to Section 265(b) of the Internal Revenue Code of 1986, as amended.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that the City has duly authorized and will forthwith undertake the improvements to the System hereinabove described, has fixed and established and will collect reasonable rates and charges for the services and facilities afforded by the System, and has created a special Sewer System Fund into which the revenues of the System as described in Section 11.1 of the Original Resolution (the “Gross Revenues”), including all additions thereto and replacements and improvements thereof, will be paid, and a separate and special Revenue Bond Account in that fund, into which will be paid each month, Net Revenues of the System then on hand (the Gross Revenues remaining after the payment of operating expenses of the System and providing for operating reserves), an amount equal to not less than the sum of one-sixth of the interest due within the next six months and one-twelfth of the principal due within the next twelve months with respect to all outstanding Bonds payable semi-annually from that account, and a Reserve Account in that fund into which shall be paid additional Net Revenues sufficient to establish and maintain a reserve therein equal to, as of the date of calculation, an amount equal to the maximum principal of and interest payable on the outstanding Bonds in any future fiscal year (giving effect to any mandatory sinking fund redemption); that the Revenue Bond Account and the Reserve Account will be used only to pay the principal of, premium, if any, and interest on the Bonds issued pursuant to the authority herein recited; that the rates and charges for the System will from time to time be made and kept sufficient to provide Net Revenues for each fiscal year at least equal to 125% of the principal and interest payable from the Revenue Bond Account in any subsequent fiscal year, to maintain the balance in the Reserve Account at the Reserve Requirement, to pay promptly the reasonable and current expenses of operating and maintaining the System and fund an operating reserve, to pay the principal of and interest on any subordinate obligations and to provide reserves for the replacement and depreciation of the System; that additional Bonds may be issued and made payable from the Revenue Bond Account on a parity with the Series 2002 Bond, the Series 2008A Bond, the Series 2008B Bond, the Series 2010B Bond, the Series 2011B Bond, the Series 2011C Bond, and the Series 2014 Bond upon certain conditions set forth in the Resolution, but no obligation will be otherwise incurred and made payable from the Net Revenues, unless the lien thereof shall be expressly made subordinate to the lien of the Series 2002 Bond, the Series 2008A Bond, the Series 2008B Bond, the Series 2010B Bond, the Series 2011B Bond, the Series 2011C Bond, the Series 2014 Bond, and other additional Bonds on such Net Revenues; that all provisions for the security of this Series 2014 Bond set forth in the Resolution will be punctually and faithfully performed as

therein stipulated; that all acts, conditions and things required by the Constitution and laws of the State of Montana and the ordinances and resolutions of the City to be done, to exist, to happen and to be performed in order to make this Series 2014 Bond a valid and binding special obligation of the City according to its terms have been done, do exist, have happened and have been performed as so required; and that this Series 2014 Bond and the premium, if any, and interest hereon are payable solely from the Net Revenues of the System pledged and appropriated to the Revenue Bond Account and do not constitute a debt of the City within the meaning of any constitutional, statutory or charter limitation or provision and the issuance of the Series 2014 Bond does not cause either the general or the special indebtedness of the City to exceed any constitutional, statutory or charter limitation.

IN WITNESS WHEREOF, the City of Whitefish, Montana, by its governing body, has caused this Bond to be executed by the signatures of the acting Mayor, City Finance Director, and the City Clerk, and has caused the official seal of the City to be affixed hereto, and has caused this Bond to be dated as of the 6th day of March, 2014.

John M. Muhlfeld, Mayor

(SEAL)

Corey Swisher, City Finance Director

Necile Lorang, City Clerk

REGISTRATION AND TRANSFER

This Bond shall be fully registered as to both principal and interest. No transfer of this Bond shall be valid unless and until (1) the registered holder of the Bond, or his duly authorized attorney or legal representative, executes the form of assignment appearing on this Bond, and (2) the City Finance Director as bond registrar (the "Registrar"), has duly noted the transfer on the Bond and recorded the transfer on the Registrar's registration books. The City shall be entitled to deem and treat the person in whose name this Bond is registered as absolute owner thereof for all purposes, notwithstanding any notice to the contrary. Payments on account of the Bond shall be made only to the order of the registered holder thereof, and all such payments shall be valid and effectual to satisfy and discharge the City's liability upon the Bond to the extent of the sum or sums so paid.

REGISTER

The ownership of the unpaid Principal Balance of this Bond and the interest accruing thereon is registered on the books of the City of Whitefish, Montana in the name of the registered holder appearing on the first page hereof or as last noted below:

<u>Date of Registration</u>	<u>Name and Address of Registered Holder</u>	<u>Signature of City Finance Director</u>
March 6, 2014	Department of Natural Resources and Conservation 1625 Eleventh Ave. Helena, MT 59620	_____

THE FOLLOWING ENTRIES ARE TO BE MADE ONLY BY THE BOND REGISTRAR UPON REGISTRATION OF EACH TRANSFER

The City Finance Director of the City of Whitefish, Montana, acting as Bond Registrar, has transferred, on the books of the City, on the date last noted below, ownership of the principal amount of and the accrued interest on this Bond to the new registered holder noted next to such date, except for amounts of principal and interest theretofore paid.

<u>Date of Transfer</u>	<u>Name of New Registered Holder</u>	<u>Signature of Bond Registrar</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

FORM OF ASSIGNMENT

For value received, this Bond is hereby transferred and assigned by the undersigned holder, without recourse, to _____ on this ____ day of _____, ____.

By: _____
(Authorized Signature)

For: _____
(Holder)

SCHEDULE B

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	Administrative Expense <u>Surcharge</u>	Loan Loss Reserve <u>Surcharge</u>	Total Loan <u>Payment</u>
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APPENDIX C

ADDITIONAL REPRESENTATIONS AND COVENANTS

None

MEMORANDUM

#2014-004



To: Mayor John Muhlfield
City Councilors

From: Chuck Stearns, City Manager *Chuck Stearns*

Re: Staff Report – Resolution relating to \$452,300 Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2014; Authorizing The Issuance And Fixing The Terms And Conditions Thereof

Date: February 7, 2014

Introduction/History

When the Montana Department of Transportation (MDT) initiated the Hwy 93 North reconstruction project known as the Whitefish West Project from downtown to Mountainside Drive, we knew that as part of the reconstruction project, we would want to replace and increase the capacity of the water and sewer lines underneath Highway 93 North while it was under construction and trenches were being dug. Whitefish West Phase I which was substantially completed last year went from Lupfer Avenue to Karrow Avenue.

When MDT does a project, they typically require any City contributions for the costs of construction to be paid up front. The water line cost for Phase I was estimated to be \$663,384 and the Sewer cost was estimated to be \$629,315. We had sufficient funds and reserves in the Water Fund to pay the \$663,384 without incurring debt, however it was estimated that we would have to take on approximately \$400,000 of debt to pay a part of the Sewer cost of \$629,315. MDT allowed us to wait to pay the debt portion until we could arrange a loan through the State's Revolving Loan Fund.

Current Report

The most recent estimate of our costs owed to MDT is \$415,885. With state financing and bond counsel costs of \$36,415 (8.76%), the loan/bond total will be \$452,300. The packet contains the standard bond resolution prepared by the Bond Counsel Dorsey & Whitney in Missoula. Assistant City Manager Corey Swisher and I have reviewed and revised the Bond Resolution with Dorsey and Whitney.

Financial Requirement/Impact

The total loan amount of the bond will be \$452,300. The total interest rate on the bond/loan will be 3% and payable over 20 years. We have well more than the 125% coverage requirements for Net Revenues (annual operating revenues minus annual operating costs) for repayment of this loan and no sewer rate increase is needed to pay for this bond.

Recommendation

Staff respectfully requests the City Council approve a Resolution relating to \$452,300 Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2014; Authorizing The Issuance And Fixing The Terms And Conditions Thereof.

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Flathead City-County Health Department

1035 First Ave. West Kalispell, MT 59901
(406) 751-8101 FAX 751-8102
www.flatheadhealth.org

Community Health Services
751-8110 FAX 751-8111
Environmental Health Services
751-8130 FAX 751-8131
Family Planning Services
751-8150 FAX 751-8151
Home Health Services
751-6800 FAX 751-6807
WIC Services
751-8170 FAX 751-8171
Animal Shelter
752-1310 FAX 752-1546

February 7, 2014

Councilman
Whitefish City Council Member
418 East 2nd Street
Whitefish, MT 59937

received
2/12/14 CS

Dear Councilman,

Over a year ago animal shelter staff entered into discussion with staff members from the cities of Kalispell and Whitefish regarding the possibility of a single entity for licensing of dogs in Flathead County. Although there have been numerous discussions regarding this matter, no direction from the cities has been sought or received.

The Flathead City-County Board of Health seeks your input regarding this matter. The Board believes that consolidating this service has several benefits to the community:

- There are three governmental entities currently licensing dogs. They are Flathead County, Kalispell and Whitefish. Columbia Falls has elected not to have a dog licensing ordinance and dogs owned by Columbia Falls citizens' license through the county. There is inconsistency regarding dog licensing within the county that could be eliminated with a licensing program operated by a single entity.
- County licensing is conducted on an electronic platform and is web-based. Licensing information is available in the field via a laptop or peripheral device. This provides 24/7 access to information for Animal Wardens/Law Enforcement Officers regarding a dog owners' information, facilitating the return of the dog without a costly trip to the shelter.

There are many other good reasons to consider a single-entity for the licensure of dogs in Flathead County. We request an opportunity to meet with you in-person to further discuss this matter. Please contact Joe Russell, Health Officer at 751-8101 to schedule a time to meet regarding this matter.

Sincerely,

Glen Aasheim, MD
Chairman, Flathead City-County Board of Health

CC: Chuck Stearns, City Manager



The following pages were handed out at the City Council meeting the night of the meeting. They are included here as an addendum to the packet.

WHITEFISH CITY COUNCIL MINUTES
February 3, 2014
EXECUTIVE SESSION, 5:00 TO 6:15 PM

Mayor Muhlfeld called the meeting to order. Councilors present were Anderson, Hildner, Sweeney, Feury, Barberis and Frandsen. City Staff present were City Manager Stearns, City Attorney VanBuskirk, and Assistant City Manager/Finance Director Swisher. The meeting was closed for the quarterly litigation update with the City Attorney. The meeting adjourned at 6:15 p.m.

WHITEFISH CITY COUNCIL MINUTES
February 3, 2014
7:10 P.M.

1. CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Sweeney, Anderson, Hildner, Feury, Barberis and Frandsen. City Staff present were City Manager Stearns, Assistant City Clerk Woodbeck, Assistant City Manager/Finance Director Swisher, City Attorney VanBuskirk, Planning and Building Director Taylor, Senior Planner Compton-Ring, Planner II Minnich, Public Works Director Wilson, Parks and Recreation Director Cozad, Police Chief Dial, and Fire Chief Kennelly. Approximately 25 people were in attendance.

2. PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Carol Atkinson to lead the audience in the Pledge of Allegiance. Mayor Muhlfeld asked for a moment of silent on behalf of Norm Kurtz, June Munski Feenan and Bob DePratu, all who were pillars in the community and who passed away recently.

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

Rebecca Norton, 530 Scott Avenue, spoke in support of Chief Dial. She has never seen him be arbitrary and there has to be a good reason for his recommendation to deny the permit for the Beer Barter. She asked if the Council could re-open discussion on the Ethics Policy Committee. She said it is an issue they need to deal with and make sure that not only the people who run for office, but the staff and union people as well, understand the ethics policy. She thanked the new Councilors.

Greg Sandberg, 435 Colorado Avenue, talked about the subdivision on Colorado Avenue. He said he lives south of the proposed subdivision and he and Mr. Bevill are in a legal disagreement about an easement. He asked them to deny approval of the preliminary plat later on the agenda until he and Mr. Bevill can resolve this access issue.

WHITEFISH CITY COUNCIL MINUTES

February 3, 2014

JeanAnne Swope, 1 Fairway Drive, said she has lived in Whitefish over 5 years and has participated in the beer barter contest every year. She said she is a retired Presbyterian Minister and has worked to resolve many conflicts in the past. She spoke in favor of granting the permit to the brewery. She thinks it could be a little arbitrary to deny it today. She said Winter Carnival is a fun winter event she brings her grandchildren to and they haven't seen anything untoward at the Beer Barter. She said if they were all honest and checked out Central Avenue after the parade ends they would find open containers that have nothing to do with the Beer Barter. She didn't think they should deny the permit when it is an opportunity for about 1,000 people to have a great time.

Richard Atkinson, 404 Dakota Avenue, spoke on the Brewery Beer Barter issue. He asked how many people got arrested in past years and Manager Stearns said he did not know. Mr. Atkinson said he understands there was a verbal warning after the Beer Barter last year, but there was nothing in writing. He said he thinks Marcus Duffy has some faults and the City has some faults. He said he doesn't want 1,000 angry people at the Winter Carnival. The press has been blowing it up stating that the City Council has denied it, even though they haven't.

Carol Atkinson, 404 Dakota Avenue, said Winter Carnival is an incredible tourist related bonus for tourism in the town. She said anything they can do to make it work should be done. She said Marcus Duffy has sent out requests for volunteers to provide extra security and she hoped they would work it out.

Cathy Juno, officer of Whitefish Winter Carnival Board, 1780 E. Edgewood Drive, said she has experienced most of 30 winter carnivals. The Beer Barter has become a really fun event and is an important part of the Carnival. She said Great Northern Brewery is a reputable business and Marcus Duffy is trying to do thing right this year. The large crowd sort of disabled the barriers for the beer garden last year and they will work to fix that this year. She asked the Council to approve this permit.

Lisa Jones, 314 Blanchard Hollow, thanked those who were serving on the Council. She said she has a business in the Railway District and they haven't heard what is going on with the Montana DEQ remediation and timeline. She asked them to be sure that that process is completed. She also commented on the beer barter. She owns a marketing firm that promotes Whitefish and works with the Montana Office of Tourism. She is concerned about safety and the reputation of the town so it is not a free for all. She also has a concern about wanting to sustain the Beer Barter. Winter Carnival was written about by a travel journalist and the Beer Barter was listed as a top beer garden. She said that this year they have 9 journalists and 2 video crews who will be visiting Whitefish. She asked the community to make the promise that they won't go beyond the perimeters and to be responsible as they participate in the event.

Doug Simonson, 814 Columbia, said he is with Bevill Limited Partnership and asked that the Council not act as judge and jury on the land dispute. They will litigate the situation. It would cause quite a bit of pain if they were to stop the process of developing the property. He asked the Council not to impose conditions or regulations beyond what will be determined through litigation.

Eric Scheele, 239 W. 7th Street, talked about the reconstruction project. He is very happy with the project but has a public concern about the corner of 7th and O'Brien Avenue. He said O'Brien

Avenue is only 16 feet wide and his property is constantly being driven on. He asked if they could make it a safety concern to fix this intersection before someone dies.

Dee Blank, 725 W. 7th Street, said she is concerned about the street rebuild and utilities. It is a rural area and they have fought long and hard to keep the rural character. She asked them to give the 7th Street residents more time to learn about this. She said a lot of traffic came down 7th Street during the road construction on the highway. She said they have already born enough construction impact. She said bigger utilities would make for easier access for contractors to build new subdivisions and there would be a major impact on this low density neighborhood. They like the dark skies and quiet neighborhood. She already clears her driveway by hand, she doesn't want to have to shovel the proposed sidewalks, too. Urban street design does not work here. She asked them to give the Resort Tax money to another neighborhood where the rebuild would be more welcome.

Judy Husslender, 786 W. 7th Street, said she bought a house on a ½ acre in the County. Now she has been incorporated and her property taxes went up \$900/year. She said there are no curbs or sidewalks and it is a peaceful setting. She doesn't want to have to shovel the sidewalk. She was on the Growth Policy Committee and there were 16 community meetings and they talked and listened to a lot of people in the community. Street lights were left out because of the night skies. They don't need street lights on every street in the community. She said her property taxes were high enough. She said Grouse Mountain has no street lights or sidewalks and she would like the feel of their neighborhood to remain the same as theirs. She said she agreed with Dee Blank that they need a break after all the road construction on Highway 93.

Dave Streeter, 910 Abby Road, supported Dee Blank's comments about the traffic on 7th Street. He said it might be wise to delay the 7th Street project until they know what is going to happen on Karrow Avenue. He said they also don't know about the jurisdiction on Karrow Avenue yet, so it would be good to wait.

4. COMMUNICATIONS FROM VOLUNTEER BOARDS

4a. Recommendation from Pedestrian and Bicycle Trail Advisory Committee to install a stairway from 2nd Street to the pedestrian trail underneath the 2nd Street Bridge over the Whitefish River (p. 29)

City Engineer Hilding reported that with the new bridge over the river they put in a bike and pedestrian path under the new bridge. She said it dead-ends on the north side of Highway 93. The long term plan, part of the City's Bike/Ped Master Plan for about 15 years, is to construct a path along the river adjacent to the Riverbend Condos. The committee wants to put stairs to connect pedestrians to Miles Avenue. This would create a safe route for locals and visitors traveling towards City Beach from Kay Beller Park. Staff got estimates for a 5-6 foot wide grip strut metal stairs with hand rails. She said signage will be important, too, because of the way the trail dead ends.

Councilor Hildner asked and Karin Hilding said she estimated that to construct and install the entire requested staircase it would cost about \$16,300. This includes concrete pads, sonotubes supports, painting the stairs and signage.

Councilor Anderson asked if other funding sources were considered. Director Cozad said Resort Tax can be considered for this type of construction, but not until 2015. Councilor Frandsen asked and Engineer Hilding said the stairway would be a permanent structure. She said they have an easement along the Riverbend condos and they are working on that for the future. Councilor Frandsen asked about a future plan for bicycles to avoid crossing the highway there. Engineer Hilding said people can carry bikes up the stairs. There is an option some cities have where people can run their bikes up a gutter alongside them as they climb stairs. She didn't get an estimate on that concept. Councilor Frandsen asked if they considered the noise intrusion for the neighbors. Engineer Hilding said it will mostly be people who are trying to get to the beach, so she didn't imagine it would be very busy early in the morning or late at night. Councilor Sweeney said \$16,300 seems like a lot of money for about 10 feet of stairs. She said there are two 19 foot sections that total about \$10,000 and a different contractor will do the cement. She said they always get three bids before they proceed with the project and they will go with the least expensive.

Councilor Hildner offered a motion, seconded by Councilor Feury, to approve installing a stairway from 2nd Street to the pedestrian trail underneath the 2nd Street Bridge over the Whitefish River to connect with Miles Avenue at a cost not to exceed \$16,300.

Councilor Hildner said this has come up more than once at the Bike/Ped Committee and every time they have voted unanimously in support of the stairway. He said people will continue to walk up and down that hill if there is no stairway and may cause significant erosion.

The motion passed unanimously.

Councilor Hildner reported on the Bike/Ped Committee meeting and said DHC presented drawings for the Skye Bridge project. The bridge will be accessible for emergency vehicles and they will bring the bridge up about 10 feet with fill which will also make it ADA compatible. The public hearing will be February 27th. He said Karin Hilding and Bruce Boody are working out the cost of materials on the bike trail between Town Pump and the Rygg property. The Committee said that there should be a line item in the Public Works budget for maintenance. The Committee would like to encourage the City to get an epoxy marking machine to stripe the streets and to get it done early in the year. He said Mr. Cutworth, was supposed to sign an agreement today regarding the stairs between Stumptown Inn and the bike path.

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

5a. Minutes from the January 21, 2014 Council special meeting (p. 33)

5b. Minutes from the January 21, 2014 Council regular meeting (p. 35)

Councilor Sweeney offered a motion, seconded by Councilor Frandsen to approve the Consent Agenda. The motion passed unanimously.

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

6a. Consideration of a request by C Holdings on behalf of Goat Haunt LLP to amend an existing site plan at 3905 Highway 40, the site is approximately 4.88 net acres and is zoned WBSD (Business Service District) (p. 43)

Planner Minnich reported that this item is a request by C Holdings on behalf of Goat Haunt LLP to amend an existing site plan approved by the Whitefish City Council on November 2, 2009 in connection with zone change WZC-09-22. The property is located at 3905 Highway 40 and is currently developed with a three sided storage shelter, a wooden barn, and a small shed. The site is approximately 4.88 net acres and is zoned WBSD (Business Service District). The WBSD zoning district was adopted in 2008 as a district intended *'to create defined areas that are appropriate for nonretail limited commercial services and light industrial uses.'* The district requires a site plan outlining potential buildings, parking areas, access locations, utilities, drainage, landscaping, and signage to be submitted and approved when a change to WBSD zoning is requested. The WBSD zoning regulations further state that any desired subsequent changes shall be submitted for approval as an amendment to the site plan, and approved by the City Council if a substantial change or the Zoning Administrator if a minor change. The original property owners applied for the text amendment for this zoning. It is designated as a business service center in the Growth Policy.

The previous site plan, approved with the zone change submittal in 2009, identifies the storage shelter currently built on the subject property to remain at 2520 square feet and a 2520 square feet future supply building to be constructed to the east. Two separate future lease space buildings approximately 5184 square feet each would be constructed south of the existing storage building. Also approved in 2009 were three additional future lease space buildings ranging between 5184 square feet to 6500 square feet, located near the southern and eastern property boundaries.

According to Section 11-2V-4(B)(3) of the WBSD zoning designation, substantial modifications to the approved site plan require review and approval by the Whitefish City Council, whereas minor changes can be approved administratively. Substantial modifications include but are not limited to, an increase in the number of buildings, major changes in access or circulation, major changes to signage and landscaping, or an increase in building size by more than ten percent (10%). The applicants' submitted modified site plan proposes the existing storage shelter to be enlarged to 5040 square feet, a two-story office building approximately 6000 square feet to be constructed instead of the future supply building, and the two future lease space buildings to be combined into one large storage building approximately 9999 square feet. The applicants are proposing the building to be less than 10,000 square feet as the regulations require a structure over that size to be approved through a Conditional Use Permit. The remaining three future lease space buildings are not being modified at this time. If future modifications are proposed for those structures, the site plan would need to be re-evaluated. The submitted amendments to the site plan propose to double the size of the existing storage shelter and more than double the size of the future office building, thereby necessitating review by the Whitefish City Council. No additional changes to parking, access, landscaping, or signage is proposed at this time.

Notification was mailed to adjacent property owners on December 30, 2013. Only one comment regarding the proposal was received, which was in support of the proposed modifications. She received

a few questions from people, but nothing else was received in writing. She said this is the first public hearing because the Planning Board did not meet January 16, 2014 due to a lack of quorum.

Mayor Muhlfeld opened the public hearing. No one wished to speak and the public hearing was closed.

Councilor Hildner said there is an ingress/egress on Montana Highway 40 and said he counted 22 parking spaces in the new site plan. He wondered if a traffic study had been done as a result of the modifications. He wondered if it could be conditioned to eliminate the driveway to the east of Dillon Road. He said there are 5 accesses into the property and he thought it would be good to eliminate the access that is on Highway 40 and close to Dillon Road. Planner Minnich said she can address the parking issue. She said they haven't determined the exact number of parking spaces until they know the uses the applicant chooses. She said any use that is allowed can be permitted. She said the access off Highway 40 is currently in use. She said the 2nd driveway on Dillon Road has a gate and she doesn't know for sure if the other access points are already constructed. She said that with this site plan they are looking at only Lot 4 right now. Councilor Hildner said there are still 5 entrances and he said it would be safer to eliminate the one entrance off Highway 40. She said if that is a concern then this is the time to recommend changes. Councilor Feury said he assumes the property owners have an existing permit from MDOT and Planner Minnich agreed. Councilor Feury said it would be difficult for them to take it away if there is an existing permit and they are already using this entrance. She said it is easier to take an access away if it has not been built or used yet. She said that the Highway 40 entrance is the only access for the storage units. Councilor Hildner asked the applicant to speak.

Nicolette Covey, the applicant, said she lives in Libby, MT. Councilor Hildner asked and she said that the access off of Highway 40 is an easement and the only access for Mr. Denman's storage units.

Councilor Anderson offered a motion, seconded by Councilor Sweeney, to approve the request by C Holdings on behalf of Goat Haunt LLP to amend an existing site plan at 3905 Highway 40, adopting Staff Report WZC09-22A as findings of fact. The motion passed unanimously.

7. COMMUNICATIONS FROM PLANNING AND BUILDING DIRECTOR

7a. Consideration of approving an application from Bevill Limited Partnership for the Preliminary Plat of Orchard Lane 3, a minor, four lot subdivision located at 467 and 469 Colorado Avenue (p. 62)

Senior Planner Wendy Compton-Ring reported that this is a request for preliminary plat approval by Bevill Limited Partnership for a four-lot subdivision called Orchard Lane 3. This is a minor subdivision so it doesn't go to the Planning Board. She said there is a quicker review for minor subdivisions. The subject property is approximately 0.821 acres. Currently, a townhouse building is under construction. The townhouse received Architectural Review approval in 2012. The property is located on the east side of Colorado Avenue between Aspen Grove Street and Colorado Avenue. The property is addressed as 467 & 469 Colorado Avenue and is zoned WR-2, Two-Family Residential District. It is surrounded by residential properties and is served by City water and sewer.

A notice was mailed to adjacent land owners within 150-feet of the subject parcel on January 10, 2014. A sign was posted on the property on January 10, 2014. Advisory agencies were noticed on January 10, 2014. Staff received a letter in opposition to the subdivision from the neighbor to the south of the proposed subdivision. This neighbor obtains access across the applicant's lot and has concerns about the use of this easement for the two proposed western lots. She said that is the neighbor to the south who spoke earlier tonight.

She said they received a letter from the applicant's attorney who points out that the concerns of the neighbor are irrelevant to this proposal. The Fire Marshal states they have adequate access. The two western lots will have access on an existing easement with shared access. The eastern lots will have access off Aspen Grove, which is a public road. They must submit an engineered stormwater plan. They are required to dedicate parkland of .12 acres as cash in lieu or land, but because of its small size, the Parks Department requests the cash in lieu of land. That amount will be calculated at time of final plat. Staff calculated \$6505 for the parkland dedication cash in lieu amount based on the property estimate submitted by the applicant. This property is designated as urban and meets the zoning and subdivision regulations. Staff recommends approval with 13 conditions. She reviewed the conditions for approval and noted that roads and driveways have to be paved. A drainage plan must be approved by the Public Works Department and they must have a T-turn around for the western lots. A road owner's agreement must be signed for the long term maintenance of that driveway.

Councilor Sweeney asked if he the road maintenance agreement would have to include resolution of the other property owner's issue and Planner Compton-Ring agreed that it would. Councilor Hildner said he was concerned about the City taking an estimate of the value of the land for the parkland. He asked if there were comparisons and she said comps were included in the report. She said the City generally does accept the value that the owners state. Councilor Sweeney asked and Planner Compton-Ring said the City determines the value on the unimproved market value. Councilor Hildner asked if the City could get into the easement concern and Attorney VanBuskirk said she doesn't believe they have any concerns.

Councilor Feury offered a motion, seconded by Councilor Barberis, to approve an application from Bevill Limited Partnership for the Preliminary Plat of Orchard Lane 3, a minor, four lot subdivision located at 467 and 469 Colorado Avenue, adopting Staff Report WPP14-01 as findings of fact and subject to 13 conditions.

Councilor Feury said he is confident that the dispute is not the City's concern and Condition #12 addresses this issue. It should be handled before final plat.

The motion passed unanimously.

8. COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

8a. Consideration of awarding the contract for the clearing and grubbing of the East 2nd Street road and trail project (p. 97)

Public Works Director Wilson said staff published an advertisement for bids on the East 2nd Street Reconstruction Project - Phase I. Bids were opened on January 23rd and they received 5

responses. He recommends that the City Council award a construction contract to LHC, Inc. in the amount of \$87,368.76.

The scope of work for Phase I includes clearing brush and trees, excavation, installation of conduits and vaults for private utilities, and related work along the north side of the East 2nd Street right of way between Wild Rose Lane and Dodger Lane. Work is scheduled to begin on March 3rd and be completed by March 24th of this year. The City's Phase I work will enable private utility companies, including electric, phone, cable and natural gas, to relocate their infrastructure starting on March 24th, with a schedule to be finished by June 7th.

The City will open bids for Phase II construction in early March. This work will include street construction, lighting, the bicycle/pedestrian path and City utilities. This second phase of construction is scheduled to start on June 7th and be completed by the end of September. Councilor Hildner complimented the staff because the estimates were within a few percentage points of the estimate and Director Wilson said it is not to his credit, but he would pass it on.

Councilor Anderson offered a motion, seconded by Councilor Sweeney, to award a construction contract for the East 2nd Street Reconstruction Project - Phase I to LHC, Inc. in the amount of \$87,368.76 and return bid security at the appropriate time, adopting the staff report as findings of fact. The motion passed unanimously.

8b. Consideration of authorizing the issuance of Requests for Proposals (RFP) for design engineering consultants for the future West 7th Street reconstruction project (Baker to Karrow) – a 2015 Resort Tax project (Three motions) (p. 103)

Public Works Director Wilson said the City is looking ahead to the street reconstruction projects for 2015 and recommends moving forward with design. This memo is to request the City Council to confirm West 7th Street as the next priority and direct the Public Works Department to begin the engineering selection process.

The Street Reconstruction Priorities were first adopted in 1998 and revisited in 2004. Staff's recommendations were approved by the City Council at that time and priorities number 1, 3, 4 and 5 have since been completed. The Downtown Infrastructure Improvements Project came to life in 2008 and was informally inserted in the priority list and constructed over the next 3 years, prior to the 6th and Geddes Project (priority No 5). That and the following changes had an obvious effect on the intended schedule.

- The Waverly Place Pedestrian Path (priority No 2) was moved to the back burner and forgotten,
- East 7th Street between Kalispell and Columbia Avenue (priority No. 7) was postponed to better coordinate with Highway 93 improvements, and
- The City Council switched priorities No. 6 and 8 (the West 7th Street and East 2nd Street Projects, respectively), in November 2011 at the recommendation of the Bicycle and Pedestrian Path Committee.

The Resort Tax Monitoring Committee (RTMC) reviewed the current priorities at their January 15th meeting and recommended, by motion and unanimous vote, to move forward with the West 7th

Street Reconstruction Project. He said the requested action is to confirm West 7th Street as the next reconstruction project and authorize staff to begin the consultant selection process. There is no financial requirement at this time, but the project is scheduled to cost \$2,150,000 plus any costs to put utilities underground if that decision is made in the future. He said they received a note from Jim Trout in support of the project and he ran into Judy Husslander in the coffee shop and she expressed her opinions before them tonight.

Councilor Anderson asked if the Waverly project could be funded with Resort Tax Funds and Director Wilson said the Resort Tax would cover the trails. Director Wilson said the Resort Tax Committee is considering the street project as a whole. He said it would have to fall under the Parks fund priority. Councilor Anderson said he thinks they can only make part of the project on Waverly Place work with those funds. Director Wilson said he doesn't think it will apply for the infrastructure portion and Councilor Anderson said it should come off the Resort Tax priorities and Director Wilson agreed.

Councilor Sweeney asked why W. 7th Street should be a high priority for street improvements. Director Wilson said it was originally priority 15 or 18 and they have worked down the list to it. At one point Geddes and 6th was after this project, but they flipped it. He said the Resort Tax Committee would like to move forward in 2015. Councilor Sweeney said he thinks they are confirming re-ordering the priority list, but they don't know what the other projects are. He doesn't see this as their greatest need on the priority list. The neighbors aren't clamoring for a new City street.

Public Works Director Wilson said he is not asking them to re-order any priorities. This is the next item on the priority list. Councilor Feury asked Director Wilson about the utilities on W. 7th Street. He wondered if when they go through the design process they can rebuild and get the utilities they need with a reasonable, functioning street. Director Wilson said they start with curbs, gutters, street lights and sidewalks. He said there is a safety issue for pedestrians here and they need to improve the corner on 7th Street and O'Brien Avenue. Councilor Sweeney asked if they have done another project without City standards for curbs and sidewalks. Director Wilson said on Geddes Avenue and Colorado Avenue they lacked enough right-of-way to have sidewalks on both sides. Councilor Anderson asked Dave Streeter to explain his concerns again.

Dave Streeter, 910 Abby Road, said the concern he has is that the development on W. 7th will be determined by what happens on Karrow Avenue. He said they don't know who is going to control the jurisdiction and what is going to happen on Karrow Avenue. He suggested they hold off until they know what was going on up Karrow Avenue. Councilor Anderson asked and Director Wilson said they can plan for these things. He said the road needs to carry more traffic than a rural street. He said 7th Street is the only street that runs East and West in town besides 2nd Street. It needs to be designed to carry traffic. They need to upgrade the water main on that street. Director Wilson said they have to plan for the future growth with every road they improve.

Councilor Anderson said he would be inclined to defer this decision until they get more input from the people on West 7th Street. Councilor Sweeney said he is giving representation to the people in his neighborhood. He said the other neighbors should have the right to speak before the Council makes a commitment. He said he would be less uncomfortable with moving forward if the character of the

street and neighborhood could be maintained, even if they added a bike path. He said City standards don't seem to accommodate the rural feel and crowned roads that exist in this neighborhood now.

Councilor Feury offered a motion, seconded by Councilor Sweeney, to table this decision to the February 18, 2014 meeting. The motion passed unanimously.

Councilor Feury offered a motion, seconded by Councilor Sweeney, to direct staff to come back with an alternate street construction project. The motion passed unanimously.

Director Wilson said he welcomes comments from the public. He clarified that they are not asking the Council to reorder priorities; this was the next project on the priority list.

9. COMMUNICATIONS FROM CITY MANAGER

9a. Written report enclosed with the packet. Questions from Mayor or Council? (p. 117)

None.

9b. Other items arising between January 29th and February 3rd

None.

9c. Consideration of contract amendment #2 with Crandall Arambula PC for the Downtown Master Plan Update (p. 129)

Manager Stearns said the City Council adopted the Downtown Master Plan on April 3, 2006 via Resolution No. 06-21. At a March 12, 2012 work session on Tax Increment Priorities, the City Council members present determined that an update of the Downtown Master Plan was desired and asked staff to contact the consultant, Crandall Arambula for an estimated cost and scope of work for an update.

On April 16, 2012, the City Council approved only Phase I of the proposed work program suggested by the consultants, Crandall Arambula. See attached minutes from the meeting and the contract scope of work for Phase I. The City Council at that time eliminated Phases 2-3 pending further review and approved a contract for \$13,558.

On November 5, 2012, the City Council approved Amendment #1 to the contract for items #1, 2, 6, and 7 in the amount of \$56,096 for a total contract cost of \$69,654. He said there is an attachment in the packet.

That work was completed and an open house was held on the Downtown Master Plan update on May 2, 2013. Following that open house, the Downtown Master Plan Update was completed and the Whitefish City-County Planning Board held a public hearing on it on September 19, 2013 and the City Council held a public hearing on October 7, 2013. Subsequent to that public hearing, the City Council requested a work session on the Downtown Master Plan update and that work session was held on November 4th. At that work session, the City Council requested that Crandall Arambula PC do some additional work to change and complete the Downtown Master Plan Update. Thereafter, Crandall Arambula submitted some proposed work items that Mayor Muhlfeld and Manager Stearns reviewed.

Crandall Arambula have submitted a proposed Amendment #2 for \$30,120 of work and an option of travel expenses for 1 staff person for two meetings at \$7,180 or two staff people for \$13,960.

Mayor Muhlfeld and Manager Stearns are recommending Amendment #2 be for the \$37,300 option with only one staff person from Crandall Arambula coming for two meetings – one at the O’Shaughnessy Center and then one at the final City Council public hearing.

The cost of amendment #2 as staff recommends would be \$37,300. These costs will be paid from the Tax Increment Fund which has sufficient funds for this project. This amendment would bring the total contract cost to \$106,954.

Manager Stearns said there were primarily text changes to the proposal and some of the additional work can be done by staff in the future, so that is the proposal that has the staff and Mayor’s recommendation to finish the Downtown Master Plan update. Councilor Anderson said what they have proposed makes sense. He thought they need text amendments and a few extra definitions. They would then consider feedback from public comments, so he thinks this is the right set of work for the Master Plan update.

Councilor Frandsen said she feels an obligation to finish the work the previous Council started, but it appears that they have a contract cost over and above what they originally proposed. She said there is room for public input at the public outreach meeting and if they got comments there that exceed the list for refinements and updates, then they were looking at another possible amendment to the contract. Mayor Muhlfeld said the original proposed budget was in excess of \$200,000 and they have kept it to about \$110,000. Councilor Hildner asked Director Taylor if he was comfortable with this amendment as far as protecting any grant proposals they might have in the future. Director Taylor said there is enough detail in there, especially for bike path proposals, to help them get grants for things like that. Councilor Hildner asked if it would prepare them for grants like the Tiger Grant they got in the past and Director Taylor said he thought it was possible. Councilor Hildner said the connectivity should be on O’Brien and not Lupfer as stated in the report. Mayor Muhlfeld said they are asking for schematics along the highway to make it work with the construction of the highway.

Councilor Sweeney offered a motion, seconded by Councilor Hildner, to approve contract Amendment #2 with Crandall Arambula for \$37,300 and authorize the City Manager to approve a contract amendment for those items. The motion passed unanimously.

10. COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

10a. Consideration of appeal of City Manager decision to deny a Special Event Permit for the Great Northern Brewery to close Central Avenue for a Beer Barter on February 8th (p. 145)

Mayor Muhlfeld asked the audience to avoid any outbursts. Manager Stearns said he put a lot of information in his letter on page 146 in the packet. He said at the inaugural event on Railway Street two years ago the Police Chief was dismayed at the lack of control and the open containers. For open containers outside a building during special events, there must be strict control of boundaries. Last year, even after talking with Marcus Duffy about their concerns, they saw that the second year wasn’t any better. At the Department Directors meeting the permit was discussed, and Manager Stearns asked Chief Dial to contact Marcus Duffy regarding the recommendation against approval so Marcus didn’t advertise for it. Chief Dial had talked to Marcus after last year’s event and told him there would be no

permit this year. Manager Stearns said Marcus Duffy submitted the permit for 2014 on January 21, 2014 and Manager Stearns said his letter denying it was written two days later. Marcus Duffy asked for an opportunity to talk to Chief Dial, but the two men didn't connect before the packet went out. Manager Stearns said he also emailed the denial to Marcus Duffy to make sure he received it. Manager Stearns said Chief Dial called him down to witness the lack of control of the event last year. He said Marcus Duffy had plenty of warning about the lack of control at the event in the past, so that is why he denied the permit.

Chief Dial said this wasn't an arbitrary decision. He said it was a difficult decision to make. It is a great event, but his job is to protect the public. When it first started it was totally out of control. People offered him beers from the Great Northern Brewery as he lead the parade. He made it clear that ingress and egress must be controlled so people who are not of age are not drinking. He said they have to make sure they are not over-serving, either. After the first year he and Marcus talked about controlling it, but the second year wasn't better. He said of his 15 officers, 12 are working Winter Carnival. He said the organizer, Marcus Duffy, has not taken the steps he needs to control the event. He said they don't have a problem with the BrewFest or Octoberfest. He said if they approve this they could open the City to torte liability because this would be the 3rd time Mr. Duffy has discounted what the City staff has said. Marcus Duffy has not taken the steps he has been asked to take. Chief Dial said he wishes it could be different.

Marcus Duffy, General Manager of Great Northern Brewery, 326 Somers Avenue, passed a handout to the Council. He thanked them for allowing him to speak. He respects Manager Stearns' and Chief Dial's concerns. He said the Beer Barter reappeared in 2011 after an 11 year hiatus. They moved it to Central Avenue last year. He said this is the 4th year of the Beer Barter. They believe it has fit the mold of what Whitefish Winter Carnival is all about. They don't believe that Great Northern Brewery is above the law. They have taken measures to abide by the permit. He said specific incidences have never been brought to his attention. He said they want to see the Beer Barter continue and are more than willing to take the measures they need to. They want to work in tandem with the City. That comes down to communication. He said follow-up has been minimal; he wants to communicate better. He proposed the following conditions:

1. Eliminate all open container permitting prior to 4:00 p.m.(as requested and granted in 2013).
2. Permitting for street closure following the Grand Parade beginning at 4:00 p.m. (ish) and ending at 7:00p.m. (ish) (the exact timing of the end of the Grand Parade is unknown).
3. Open container permitting to begin in conjunction with the special event permit at 4:00 (ish)
 - a. Conclude all alcohol serving 30 minutes prior to the conclusion of the Beer Barter (6:30p.m.)
4. Clearly labeled barriers will define the borders of the open-container permitted area (mobile chain link fencing), and ingress and egress will be limited to two locations on each end of the block.
 - a. Volunteers will ID and wristband all entering the area. Those 21 years of age and up will receive a wristband. This wristband will allow the individual to purchase beer.

5. Each ingress and egress will also be accompanied by a professional security officer (4 officers), hired by Great Northern Brewery.
6. At the conclusion of the Beer Barter, all barriers will stay in place through 7:30 p.m. and security officers will assume positions at each exit and screen for open containers of alcohol attempting to leave the permitted area.
7. I propose to sit with Chief Dial and City Manager Stearns tomorrow afternoon (2/4/2014) to review the details of our operations plan for the 2014 Great Northern Beer Barter.

Mr. Duffy proposed to sit with Chief Dial and Manager Stearns to make sure they understand the standards of performance and his intent to adhere to them. He said Great Northern Brewery and the City will be on the same team if they communicate well. He said they want to be accountable, but they need to know the standards they will be held accountable for.

Councilor Hildner said the permit states that there will be 500 people and depending on the weather they may end up with only 200 or end up with almost 1,000 people. Councilor Hildner asked and Duffy said he believes their operations plan can accommodate up to 1,200 people. Councilor Hildner asked why they waited so long to apply for the permit. Marcus Duffy said they thought they gave themselves plenty of opportunity to get the permit, they didn't expect to be before City Council. Councilor Frandsen asked why they promoted the event before they applied for the special events permit. Duffy said he thought they could work the problems out with the City. Councilor Frandsen said she has heard tonight that Duffy heard Chief Dial say he wasn't going to approve the permit this year, yet he didn't sit down with Chief Dial to discuss it and ease his concerns. She said with the success comes continuing responsibility. She said future permits need to acknowledge there may be 1,000 people and they need to have a plan to handle the crowd. Duffy said communication should have gone two ways.

Councilor Anderson asked and Attorney VanBuskirk said the City is named as an additional insured. The City is the certificate holder. General liability is \$1,200,000 and the umbrella liability is \$5,000,000. Councilor Sweeney said he is uncomfortable in this position. He said they've put the City in a terrible position by their failures in the past. He said Duffy proposes to sit down tomorrow to work on an agreement with Chief Dial and Manager Stearns to make this work. If they make any condition on him is he willing to comply with it? Duffy said if there are stipulations that make the event physically or financially impossible he couldn't agree to that, but otherwise, he is willing. Manager Stearns said any conditions should be clarified and clearly understood tonight. The Council would be overtuning Manager Stearns conditions, so they would have to be comfortable with what the Council decides. They should go forward with the denial or agree to conditions with the Chief of Police and City Manager.

Councilor Anderson asked Manager Stearns and Chief Dial if there were additional conditions that would prompt them to issue the permit. Manager Stearns said his decision has been made and it is in their court now. He said he would want some sort of performance bond. He said it is too late to get it from an insurance company at this point. He said if he has a cash bond and they hold it in the vault it is easier to cash, but they don't have to prove the case quite as much as they would with a performance bond. Chief Dial said they will abide by what the Council decides. Councilor Sweeney said he is uncomfortable with relying on volunteers. He said volunteers didn't do it last year, so why would they think they would have the experience of someone who works in a bar. He is also concerned that having

four security officers is not going to cut it. He said these are the expectations of this community, not just Manager Stearns or Chief Dial. Marcus Duffy said his version of the performance bond was sitting down with Manager Stearns and Chief Dial to understand the parameters. He said this City and this event are built on the efforts of volunteers. He clarified that they offered four officers on the ingress/egress based on previous year's traffic. He said he is now clearer than he has been in the past and he thinks they can have a successful event.

Councilor Feury offered a motion, seconded by Councilor Sweeney, to overrule the denial, based on Marcus Duffy meeting the attached conditions he proposed, along with the following amendments: six paid professional security individuals, issuance of a \$5000 performance bond by a check, held in the vault. A mandatory follow-up meeting with Chief Dial, Manager Stearns and Marcus Duffy to determine if the expectations were met and then the \$5000 bond would be returned or cashed.

Councilor Frandsen offered an amendment, seconded by Councilor Feury, to state that the beer barter may begin no earlier than 4 pm and to conclude sales no later than 6:30 p.m. for items 1, 2, 3 and to end the permit no later than 7 p.m.

Councilor Sweeney said 6:30 may be a little hard based on when the parade ends. Councilor Frandsen said she didn't know how they would know when it was "30 minutes before the end of the event." Duffy said fencing can come down at 7:30, then the barter needs to end at 7:00 and they need to quit serving at 6:30 p.m. Councilor Hildner said the set time leaves no ambiguity and that is a good thing.

The vote on the amendment passed 5-1 with Barberis abstaining due to conflict of interest.

Councilor Feury said he doesn't feel that Duffy applied "in plenty of time," but he isn't going to beat Marcus Duffy up over it. He doesn't go against the recommendation of the Police Chief lightly. He said they have very few problems with other events, but it can only work if the manager does a good job. If Duffy doesn't do it like he is supposed to, then he will pay.

Councilor Anderson said he would like to make a clear identification provision for any claims. He said the performance bond needs to be \$10,000 to cover the deductible. He would like to keep that for 30 days in case there are any incidences. He said he thinks the \$5000 cash bond is fine.

Manager Stearns said the liability deductible is \$5,000. Mayor Muhlfeld reviewed the amendments for the Council. Councilor Hildner said he will vote in opposition. He has loved the Carnival for as long as he has lived in Whitefish, but when someone makes an agreement and fails, there has to be a consequence. He said there was sufficient time to avoid the consequence they find themselves in currently. He said he hopes the press doesn't say it was the fault of the City of Whitefish. He said the responsibility falls squarely on Marcus Duffy and the Great Northern Brewery. He can't go against the recommendationis of the City Manager and Chief of Police who laid this out fairly.

The motion passed 4-1 with Councilor Hildner voting in opposition and Councilor Barberis abstaining due to a conflict of interest.

Councilor Anderson said that if the Winter Carnival wants to make this happen maybe they should be in line for liability, too. He said he is not proposing it; he would leave that to Marcus Duffy. He said it would include a defensive indemnification. He asked and Attorney VanBuskirk said the deductible is \$10,000.

Councilor Feury noted that Bob Pilot also passed away this week and said he was a long time Whitefish resident who has done a lot for the community. He offered his condolences to the family.

Councilor Frandsen asked if they could get a Manager's update on what is happening with the DEQ timeline. Manager Stearns said he can send the DEQ a request for an update and ask them to schedule a time to come over. Councilor Anderson said that with the Beer Barter issue if someone gets hurt it isn't the brewery who pays for it and it is the taxpayers who would pay for it. He said they tried to put some protections in place, but the burden doesn't fall on the brewery, it falls on the taxpayer. He said he hopes it doesn't happen, but they need to be aware where the burden falls.

He said a friend emailed him about how little news breaks out of Whitefish, but now there is an Olympian and a musician making news these days. It is a great town and he can't wait to see what happens this month.

Mayor Muhlfeld said he and Councilor Anderson met with Matt Jones and Zak Andersen with BNSF and it was a good, open discussion. He told the Councilors that on Thursday there is a meeting with Jim Satterfield with Fish, Wildlife and Parks, regarding the request for non-motorized vehicles on the Whitefish River, Tuesday at 2:00 p.m. in the Council Chambers.

11. 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 9:38 p.m.

Mayor Muhlfeld

Jane Latus Emmert, Recording Secretary

Attest:

Vanice Woodbeck, Assistant City Clerk

received
2-14-14

Subject: letter to city council
From: Doug Adams <dougmda@gmail.com>
Date: 2/13/2014 5:54 PM
To: Necile Lorang <nlorang@cityofwhitefish.org>

Necile,
Please forward this email to the mayor and city councilors.
Thanks,
Doug

Dear Mayor and City Councilors:

Although I am not a member of the Bike and Pedestrian Path Committee (due to the fact that I live outside the city limits), I do serve, along with Chuck Stearns, as your Easement Negotiator. I also served as chairman of the committee when I served on the Council.

For many years, we have looked forward to the construction of a bike and pedestrian path along a reconstructed 7th Street. For all the reasons that John Phelps, current chairman, has listed, I agree that 7th Street, along with the path, should be rebuilt. I know that some would like to keep a more rural feel to the area, but I submit to you that a rural feel is appropriate outside the city limits. Safety and convenience, in this case, are more important than a fear of change.

Thanks for your consideration and your service.

Doug Adams



Subject: comment on reconstruction of West 7th Street

From: "dblank1@cyberport.net" <dblank1@cyberport.net>

Date: 2/17/2014 7:23 PM

To: nlorang@cityofwhitefish.org, jmuhlfeld@cityofwhitefish.org,
janderson@cityofwhitefish.org, pbarberis@cityofwhitefish.org, afeury@cityofwhitefish.org,
jfrandsen@cityofwhitefish.org, rhildner@cityofwhitefish.org, fsweeney@cityofwhitefish.org

Dear City Councilors, Mayor, and Public Works Department staff,

Thank you for the extra time you have allowed for citizen feedback on the rebuild of West 7th Street, and for considering other options for the next resort tax project.

If you decide to follow the Public Works Department recommendation in your packet, I hope you will ensure that residents are notified well in advance of any meetings for neighborhood design input.

Short notice stifles citizens' ability to respond.

Also please help us minimize traffic speed and volume, save trees and dark skies, and minimize the damage to neighborhood character, and the character of our town.

Sincerely,
Dee Blank

received
2-14-14

Subject: W Seventh St project

From: Ray Boksich <rboksich@yahoo.com>

Date: 2/13/2014 9:46 PM

To: "nlorang@cityofwhitefish.org" <nlorang@cityofwhitefish.org>

I would like to go on record as supporting the W Seventh St. project. I hope it remains a high priority as it is a busy, unsafe street that is heavily used. I am sorry to see some residents in the area in opposition to it but they need to realize it is a public street and not just a neighborhood lane. The safety of all Whitefish residents is a much higher priority than people not wanting to see change. Ray Boksich

received
2-14-14

From: brownwfsmt@yahoo.com

Date: 2/13/2014 9:04 PM

To: "nlorang@cityofwhitefish.org" <nlorang@cityofwhitefish.org>

I think that West 7th is badly in need of improvements.

As development occurs in west Whitefish, this road will be used even more than it is now, Current conditions there are certainly well below standard for our town.

Harry & Nancy Brown

Subject: Support for West 7th Street Improvements
From: "John Constenius" <jconstenius@jcarch.com>
Date: 2/17/2014 10:43 AM
To: <nlorang@cityofwhitefish.org>
CC: <paul.johannsen@gmail.com>



Council Members,

I am writing to make record of my support for the West 7th street improvement project. West 7th is a critically important street to the traffic flow in Whitefish. At some point in time a new bridge will span the Whitefish river at 7th street and the connection to East 2nd Street will be made. This will make 7th street the second East/West connection in Whitefish. West 7th street must be upgraded to safely handle not only present traffic; but, future traffic. That traffic will include a multitude of vehicle trips to and from the public schools at the Eastern terminus.

The area of city between Baker and Karrow avenues is a logical infill area for future growth. Improving the existing streets is logical as well. I would encourage the City Council to look to the future and not be swayed by those who want to live in the past. One only has to look at our city's failure to select a REAL bypass to see how, over time, options narrow and traffic multiplies. That is the result of not making good timely decisions for the future. Please support the West 7th street project.

Respectfully,
John Constenius
President
J. Constenius Architects, Ltd.
210 Park Hill Drive
Whitefish, MT 59937
jconstenius@jcarch.com
406-862-4818
406-862-0750 (fax)



Subject: FW: 7th Street West rebuild
From: "Sherri Baccaro" <publicworks@cityofwhitefish.org>
Date: 2/18/2014 9:11 AM
To: "Necile Lorang" <nlorang@cityofwhitefish.org>, "John Wilson" <jwilson@cityofwhitefish.org>

From: Ken [mailto:plowpullinken@hotmail.com]
Sent: Friday, February 14, 2014 3:50 PM
To: publicworks@cityofwhitefish.org
Subject: 7th Street West rebuild

Sirs: I would like to go on record as supporting a full rebuild of 7 St West. After a few years of heavy use due to a great rebuild of 2nd street 7th is in much need. I drive it almost (7th) every day and see the condition of the roadway as well as very unsafe conditions for the walking public. Please include undergrounding all utilities, Ken Cordoza, 150 Lost Coon Trail, Whitefish, MT.



Subject: FW: Rebuild of W Seventh Street
From: "Chuck Stearns" <cstearns@cityofwhitefish.org>
Date: 2/18/2014 8:22 AM
To: "Necile Lorang" <nlorang@cityofwhitefish.org>

From: Jim and Michaelan [mailto:deherrera@bresnan.net]
Sent: Monday, February 17, 2014 11:05 AM
To: Chuck Stearns; John Muhlfeld; John Anderson; Richard Hildner; Frank Sweeny; Jen Frandsen; Pam Barberis; Andy Feury
Cc: John Wilson; Karin Hilding; Karl Cozad; John & Melisa Phelps
Subject: Rebuild of W Seventh Street

Dear City Manager Chuck Stearns, Mayor Muhlfeld and City Councilors:

I received a copy of John Phelps' letter he sent you concerning the above subject. John wrote an excellent letter which I fully endorse. I don't want to be redundant, so I will add just a few brief points to those he made.

I live in Grouse Mountain Subdivision and drive 7th Street on a regular basis, as do the other residents of both Grouse Mountain developments, numbering over 150 residences. On a daily basis I witness multiple safety concerns on this very heavily travelled road which also receives a lot of use from bicycles, walkers, and runners, including many children. We desperately need a safe road and a safe travel path for the bikes and pedestrians.

I am sensitive to the wishes of residents of 7th Street, but I ask you to consider the needs and safety considerations of hundreds of other Whitefish residents who depend on W 7th Street for a primary travel way. I personally have been eagerly anticipating this project so that we would finally have a safe and adequate road and provide a safe path for bikes and pedestrians. This is the one opportunity we will have to address the numerous shortcomings of W Seventh Street, so I appeal to you that we do the job right and in a timely fashion.

One final point I would submit for your consideration is for the rest of W Seventh Street from Karrow Avenue to Fairway Dr. receive an overlay of asphalt. This road is in a seriously deteriorated condition.

Thanks for your consideration.

Jim DeHerrera
339 Fairway Dr.

received
2-18-14

Subject: West 7th improvements

From: David Dittman <ddittman@bresnan.net>

Date: 2/17/2014 9:25 AM

To: "nlorang@cityofwhitefish.org" <nlorang@cityofwhitefish.org>

Please keep the W 7th improvements on the priority list. The road is narrow and dangerous with increasing traffic (vehicle, bike, and pedestrian). It will only get worse!

David Dittman
505 S Karrow Est.

Sent from my iPhone



Subject: W. 7th St.
From: <50pgapro@cyberport.net>
Date: 2/14/2014 1:48 PM
To: <nlorang@cityofwhitefish.org>

IT WOULD BE SAD IF WEST 7th ST. WAS NOT IMPROVED.

We have lived on 7th, 36 years, with traffic gradually increasing each year. There is still a “**No Trucks**” Sign on the N/W corner of 7th & Karrow, *to boot*. Large Trucks still travel over our broken road. What will happen, when the road is redone? I understand, there may some objection to road repairing in 2015? *It does need to be done!*

We are still on a Septic System, *thanks* to some residence objecting a Sewer System in the early 80’s.

Then, Also, the City threatened us, if we *declined* to allow the Sewer to be installed. Obviously, they ignored their comment, when I periodically asked, *When?* Six (6) months ago we had to have our drain field fixed, with the “Terra Lift Process” at a cost of \$4,000, which was difficult to pay, being only on S.S. We assume we will *have to install* the Sewer System in 2015? I hope there will be some relief to the cost and *Archive Information, during the 1980’s & 90’s is available in your office.*

Thank you for your time.

Mike and Sally Dowaliby

1037 W. 7th St.

Whitefish 862-4771

Cell: 270-9926

50pgapro@cyberport.net



Subject: FW: West 7th Reconstruction
From: "Sherri Baccaro" <publicworks@cityofwhitefish.org>
Date: 2/18/2014 8:10 AM
To: "Necile Lorang" <nlorang@cityofwhitefish.org>, "John Wilson" <jwilson@cityofwhitefish.org>

From: Bob Driggers [mailto:bob254@centurytel.net]
Sent: Monday, February 17, 2014 4:22 PM
To: publicworks@cityofwhitefish.org
Cc: Bob Driggers
Subject: West 7th Reconstruction

February 16, 2014

Dear Mr. Wilson and City Council Members,

Re: West 7th Street Reconstruction Project

We are writing regarding the proposed rebuild of West 7th Street. We have lived at 535 West 7th, about half way between Baker and Karrow, for 26 years. Since we were annexed into the City of Whitefish there has been talk of rebuilding the street and we strongly believe that the time has come. Let me list some of my reasons.

Condition of pavement

The condition of the street has deteriorated over the last few years and was especially effected by the increase in truck and car traffic caused by the 2nd Street detour for bridge construction. Potholes have turned into long strips of missing asphalt and the road is cracked about two feet in on both sides and appears to be sloping toward the ditch.

Safety

By the end of last summer, bicyclists began avoiding the street, not only because of the traffic but also because of condition of the pavement. The increase in traffic has left West 7th street unsafe for pedestrians and bicyclists. In many areas along the street there is no place for a person to get out of the way of traffic. The area east of our property has a 20 foot drop in some areas with less than a foot between the road and the ravine.

Septic Systems

The septic systems along West 7th St. are old and if city sewer is not provided soon, 40 and 50 year old septic systems will begin to fail. Many of the residents on smaller lots are running out of options for new septic systems and others have been waiting to repair systems based on construction of a city sewer main.

We have talked with our closest neighbors and we are all in agreement that the 7th Street project needs to remain at the top of the City's Street Reconstruction Priority List with construction beginning in 2015. We believe that we have waited long enough.

Thank you for your consideration,

received
2-14-14

Subject: west 7th
From: "Scott Freudenberger" <scott@frazierappraisal.com>
Date: 2/13/2014 6:43 PM
To: <nlorang@cityofwhitefish.org>

Hi Necil,

I recently read the article in the Whitefish Pilot regarding to possible reconstruction of West 7th Street. I would like to express my opinion that I feel West 7th Street does need to be rebuilt.

I have lived on the west side of Whitefish for about a decade. I regularly travel this road.

I respect the opinion of the residents along this corridor to keep their "rural" setting; however, the road, as-is, is not safe for pedestrians or bicyclists and is questionable for vehicles. I also believe that sufficient/reliable water and sewer services are critical to a healthy environment.

Feel free to contact me if you have any questions.

Respectfully,
Scott Freudenberger
Frazier Appraisal
National Parks Realty
253.6876

received
2-14-14

Subject: w 7th

From: "Tim Grattan" <grattan@bresnan.net>

Date: 2/14/2014 10:45 AM

To: <nlorang@cityofwhitefish.org>

I strongly support improving w 7th street. I travel it daily and it can be scary . Tim Grattan 28 fairway view.

February 17, 2014

received
2-18-14

To: John Wilson, Public Works Director
7th St. From: Irv Heitz, Homeowner, 544 West 7th Street
Re: West 7th Street Reconstruction Project

Dear Sir:

I was unable to make the Feb. 3 City Council meeting, nor will I be able to attend the one tomorrow night, Feb. 18. However, I would like to submit my comments on the proposed reconstruction of West 7th Street from Baker to Karrow Avenues.

I am wholeheartedly in support of such rebuilding, especially if sewer upgrades are proposed throughout the entire length of the reconstruction. The project has merit both for safety issues, both pedestrian and vehicle, but does not have to be as extensive as outlined in the City's letter dated Jan. 27.

I support the curbing idea, especially with storm drains, but feel a painted bicycle path within the curbing would solve pedestrian/bike traffic concerns, but allow the "country" setting entailed here. However, if sidewalks or paths pass approval, and cannot be placed within the 60 feet of easement for which 7th Street is platted, I would not be in favor of granting land from the homeowner.

Lighting is unnecessary, as we love the dark skies already in place in the neighborhood.

I do have several concerns that should be addressed in the planning stages. First, what will be done to widen and/or fill the drainage cut east of the Arbor Grove subdivision entrance? This site has been a drainage nightmare for ice and water dams, overhanging willow trees that force eastbound traffic to the center of the road, and for pedestrian traffic in avoiding conflicts with motorists. It may also be a problem for sewer extension, just as it was for the large water main put in many years ago. At least 10 feet of fill will probably have to be added to each side of the roadway just to create sidewalks and curbs.

Secondly, a concern is that, if great improvements are made to this street, residents will experience increasingly dense traffic flow, much as was experienced this past summer and fall. The heavier-than-normal traffic in 2013 was dangerous due to the unevenness of the roadway, lack of curbs, and the higher speeds of those who traveled to avoid construction on 2nd Street. Residents of this area do not want 7th Street to become an arterial as Baker has become after extending it further south a few years ago. (Please commend our Police department for trying hard to slow traffic, but they often could not cover the early morning and late afternoon periods because of shift changes, school zone traffic, etc.)

Lastly, will storm drains be engineered for this street? Most of the existing street has deep drainage ditches paralleling the street at least from O'Brien to Karrow. Will those be leveled closely to property elevations on each side of the roadway?

I will certainly have further concerns if this project in any way involves an SID type of payment for any upgrades such as sewer or other infrastructure. This is not a high income district, even though taxes would suggest otherwise, and owners here are working class people who have lived here long before the City of Whitefish annexed the area.

I can be contacted at 544 West 7th, or by phone at 406-862-4645. Thank you for your time and consideration of my thoughts at this time.

Sincerely,

Irvin F. Heitz

received
2-13-14

Subject: 7th Street Improvements

From: Necile Lorang <nlorang@cityofwhitefish.org>

Date: 2/13/2014 2:21 PM

To: Necile Lorang <nlorang@cityofwhitefish.org>

On Feb 13, 2014 12:01 PM, "Paul Johannsen" <paul.johannsen@gmail.com> wrote:

-Hi John

I read the article in the Pilot this week about the proposed improvements to West 7th with amazement that anyone could not be in favor. I hope the City won't alter its plans based on the irrational opinion of a few. As you know, 7th badly needs upgrading and I'd be happy to find lots of WF residents in support.

Thanks.

Paul

received
2-18-14

----- Original Message -----

Subject:FW: Seventh Street Rebuild

Date:Tue, 18 Feb 2014 15:34:21 -0700

From:Sherri Baccaro <publicworks@cityofwhitefish.org>

Organization:City of Whitefish

To:John Wilson <jwilson@cityofwhitefish.org>, Necile Lorang
<nlorang@cityofwhitefish.org>

From: Fred Jones [mailto:fredj@bresnan.net]

Sent: Tuesday, February 18, 2014 3:02 PM

To: 'John Anderson'

Cc: publicworks@cityofwhitefish.org

Subject: Seventh Street Rebuild

John,

I read in the paper that the rebuild of 7th Street West is being discussed and that public input is being solicited tonight. Unfortunately, I have a previous engagement and cannot attend the Council meeting. I would appreciate it if you could pass my comments onto the other Council members.

I live on Tides Way, which is accessed off of Fairway Drive and 7th Street. Consequently, I use 7th Street on a regular basis to access the supermarkets and other businesses on the 93 South corridor.

I understand that this project was under consideration several years ago and was moved down the priority list due to concerns voiced by some of the residents on the street. I also understand that some of the issues discussed then are still concerns of the residents. I appreciate these concerns and would anticipate that a reconstruction of the street will be sensitive to the neighborhood.

In addition to being a neighborhood street, 7th Street West is a significant connector street from Karrow to Baker, serving many residents living on the western side of Whitefish. As a frequent user of the street by automobile, bicycle and as a pedestrian, I can assure you that the street is definitely in need of improvement. For the amount of traffic on the street, the traveled way is narrow, particularly when mixing automobiles with pedestrians and/or bikers. I long ago stopped walking/running on that street in the winter, having had to dive for the snow bank more than once to avoid the traffic. Riding a road bike on the street is a hairy experience when pushed to the side of the road, with broken pavement and potholes.

I strongly urge the Council to keep the rebuild of 7th Street West on the priority list for 2015, making sure that the reconstruction provides adequate pedestrian and bicycle ways for year around use.

I greatly appreciate your consideration.

Fred

Subject: West 7th Street
From: Cathy Juno <cathyjuno@gmail.com>
Date: 2/17/2014 11:32 AM
To: nlorang@cityofwhitefish.org



I request the West 7th Street rebuild to remain a high priority. It is dangerously potholed and narrow. I think the design should remain rural as some residents have requested, but the road surface needs to be smooth and widened. My elderly mother drives it daily. I hope the section between Karrow and Grouse Mtn. Estates is included in the project.

Sincerely,
Cathy Juno
1780 E. Edgewood Dr.
Whitefish



February 14, 2014

Chuck Stearns
Whitefish City Manager

Council Members
Whitefish City Council

**Re: February 18, 2014 City Council Agenda Item
Concerning Proposed 7th Street 2015 Upgrade Plan.**

I write on behalf of the boards of directors of the Grouse Mountain Homeowners, Inc., and of Grouse Mountain Estates, by their president, Kevin Kirwan. Although we have not had time to poll our HOA members, Mr. Kirwan and I are confident that our comments herein reflect accurately not just the opinions of our boards but also of a large majority, if not all, of our HOA members, some 160 in all.

We understand the issues to be the timing of the 7th Street upgrade, 2015 or later, and the extent of road modification to be undertaken.

Regarding the first issue, timing, we urge that the work be accomplished in 2015. The road is in poor and continually deteriorating condition, obviously in need of resurfacing not only for cosmetic reasons but also for safety and ease-of-travel reasons. We believe that the city priority already assigned is appropriate and should not be changed, considering especially the large volume of auto and truck traffic that proceeds along 7th Street to and from our housing developments and to and from Karrow Road.

Regarding the second issue, extent of modification, we are mindful of City Sidewalk Standards that call for widening the road and installing curbs, gutters, sidewalks, and street lights. However, we understand also that 7th Street residents in significant numbers oppose such extensive treatment of their road and neighborhood, preferring instead to maintain a rural setting without road widening and without curbs, gutters, sidewalks, and street lights. Acceptable to them, we understand, are an improved road surface and a pedestrian/bicycle path on one side of the road. Regardless, for safety and other reasons we urge that city standards be imposed at least to the extent of upgrading the road surface and adding at least a single pedestrian/bicycle path, and, importantly, widening the road.

Thank you for considering our thoughts on the subject.

Parker Kelly, president
Grouse Mountain Homeowners, Inc.

received
2-14-14

Subject: West 7th Street
From: "Susie Moore" <Susie@nationalparksrealty.com>
Date: 2/14/2014 10:16 AM
To: <nlorang@cityofwhitefish.org>

West 7th Street should be a high priority for improving this street between Baker and Karrow!! It is dangerous as it is with no lanes for walking or biking There is high vehicle traffic on W. 7th and upgrades need to be made! Please move this to the top of the list for upgrading!

Susie Moore, Broker
National Parks Realty of Whitefish
205 Spokane Avenue
Whitefish, MT 59937
406-862-8458 Office
406-261-7449 Mobile





Subject: FW: Rebuild of Seventh Street, including bicycle and pedestrians path
From: "Chuck Stearns" <cstearns@cityofwhitefish.org>
Date: 2/13/2014 3:43 PM
To: "'Necile Lorang'" <nlorang@cityofwhitefish.org>

From: John & Melisa Phelps [mailto:jjohn016@centurytel.net]
Sent: Thursday, February 13, 2014 11:15 AM
To: Chuck Stearns; John Muhlfeld; John Anderson; Richard Hildner; Frank Sweeney; Jen Frandsen; Pam Barberis; Andy Feury
Cc: John Wilson; Karin Hilding; Karl Cozad Parks and Recreation
Subject: Rebuild of Seventh Street, including bicycle and pedestrians path

Dear City Manager Chuck Stearns, Mayor Muhlfeld and City Councilors,

I understand that two residents on Seventh Street have questioned the wisdom of the City's long-established plan to rebuild Seventh Street, which includes construction of a new bicycle and pedestrian path from Baker Avenue to Karrow Avenue. I also understand that the Council may discuss this topic at its February 18 meeting. There will not be time for a meeting of the Bicycle and Pedestrian Path Advisory Committee before February 18. As Chairman of that Committee, however, I can state that the Committee's established position is in support of the Seventh Street reconstruction. And I can also point out, as a resident of the Whitefish community, how important and necessary the reconstruction of Seventh Street is to the Whitefish community.

As you know, the City Council adopted a Bicycle and Pedestrian Path Masterplan many years ago, after extensive research and public involvement. The Masterplan has been revised a number of times, also after public input. For many years the Masterplan has called for a bicycle and pedestrian path along Seventh Street, from Baker to Karrow. One need only drive down Seventh Street to understand why. It has long been an important collector street, and aside from Highway 93 the only direct East-West route between Baker and Karrow. But it has always been sub-standard, and relatively inconvenient for vehicle traffic. It is downright dangerous for bicycles and pedestrians. It is narrow, with virtually no shoulder in places, and with steep banks, particularly along the North side. Although its strategic location guarantees that it will always carry a lot of traffic, its poor design and condition guarantee that it won't do it safely or efficiently.

Because it is an important collector street in serious need of reconstruction, Seventh Street has been on the Resort Tax Reconstruction Priority List for as long as I can remember. The priority list has been repeatedly affirmed by the Resort Tax Advisory Committee and the City Council over the years. There is no good reason to change its priority at this time. There will always be a handful of good citizens that will object to improvement of older streets because they believe the improvements will adversely affect their neighborhood. Their comments should carry weight in the design stage, so that the new roadway can both serve the serious traffic needs of the community and preserve the positive aspects of the neighborhood. The City has always listened to those citizens, and tried its best to affect the

neighborhood in positive ways. Certainly a new Seventh Street can improve the neighborhood, and a well-designed and constructed roadway, together with the addition of a bicycle and pedestrian path, will improve the neighbors' property values. It will also enhance safety for school children, as well as for walkers and bicyclists. But the fears of a couple residents should not be allowed to stop needed improvements to crucial collector streets, to the detriment of the community as a whole.

Consistent with the City's long-established Bicycle and Pedestrian Path Masterplan and its long-established Resort Tax Reconstruction Priority List, I urge you to keep Seventh Street scheduled for complete reconstruction in 2015, while continuing to work with the Seventh Street neighbors so that the improvements are a positive change to their neighborhood.

John Phelps

received
2-14-14

Subject: 7th Street

From: <terry@golfwhitefish.com>

Date: 2/13/2014 7:03 PM

To: <nlorang@cityofwhitefish.org>

Hi Necile,

As someone that uses 7th street often on the way to the golf course I can't tell you how often the narrowness of the road has nearly caused an accident. I still remember the tragic accident where a young girl on a bike was killed because of the lack of visibility and bike paths. I can't think of a higher priority than 7th Street for safety and also needed repairs to the road surface. The highway 93 project redirected traffic to 7th Street and further deteriorated the roadway.

Terry Nelson



Subject: W. 7th St. Reconstruction Project
From: "roland newton" <rjnewton@bresnan.net>
Date: 2/17/2014 11:17 PM
To: publicworks@cityofwhitefish.org
CC: nlorang@cityofwhitefish.org

Dear Mayor and City Councilors,

We are writing this letter IN SUPPORT of the above referenced project and it's present priority status. We have lived at our present w. 7th st. address since 1977, and have seen first hand the changes in increased growth, auto, bike, and pedestrian traffic. The street is used as a main artery to bypass the downtown district heading west from Baker avenue, and is totally unsafe in every aspect.

We also very much support the extension of the sewer lines,, and increased water line capacity to all of the 7th st. residents from Baker Ave. to the Grouse Mountain subdivision. All of these homes are operating on septic tank and drain field systems. Many of them have been engineered to death at great expense to keep them going, and many of them are failing even then, causing unhealthy situations.

We have great faith in the City of Whitefish and their ability to properly engineer the project to every ones satisfaction, as they have done in all of the prior projects that have been completed. Seventh street residents have paid their dues over these past years, and it is time to rectify all of the problems to properly handle all of our past and future growth. Additionally, all of these improvements will enhance property value!

Please maintain our PRIORITY status, and lets get this project DONE.

Sincerely,

Roland & Jo Newton
1040 W. 7th St.
Whitefish

received
2-14-14

Subject: West 7th Street
From: "Doug and Nikki Reed" <nreed@bresnan.net>
Date: 2/14/2014 9:11 AM
To: "'Necile Lorang'" <nlorang@cityofwhitefish.org>

Dear Mayor John Muhlfeld, City Manager Chuck Stearns and City Councilors,

I whole-heartedly concur with John Phelps' opinion in his letter written concerning the upcoming reconstruction of West 7th Street.

Sincerely,
Doug Reed
Chair Resort Tax Monitoring Committee
Committee Member Bicycle/Ped Advisory

520 Somers Ave
Whitefish, MT
(406)249-0070

received
2-18-14

Subject: 7th St W Reconstruction Project
From: Mary Kay Roche <rochemkb@gmail.com>
Date: 2/18/2014 11:49 AM
To: nlorang@cityofwhitefish.org

February 18, 2014

To Whom It May Concern;

Our names are Mary Kay and Bill Roche. We reside at 1055 7th St W which is one of the last houses before entering Grouse Mountain Estates

We are writing in support of the reconstruction project that is being proposed by the Public Works Department. 7th St West has long been in need of reconstruction as it is a major East/West thoroughfare for the residents of West Whitefish. The City has been diligent in attempting to keep the current road patched up but it has become dangerous to drivers and pedestrians. Cars are always swerving to dodge rough roads and pedestrians are often having to step off the road so two cars can pass. Recently it has become even more torn up as it became the bypass for the Hwy 93 state project.

We would like to put our vote in for a wider road with curbs and sidewalks all the way from Baker to the entrance of Grouse Mountain Estates. We understand from the Pilot that some believe that we who live west of Karrow are not interested in reconstruction but that is not true. We have looked up the street reconstruction projects over the years and have always seen 7th Street West on the list so we were patiently waiting our turn and allowing the city professionals to prioritize the projects. Now that it is our turn we would like you to consider the entire length of 7th Street West and not leave us that live west of Karrow with a road in terrible and dangerous shape. We have several new families in our small section of 7th St W with small children who need a safe walking/cycling route to town. Many of us would walk/cycle to town on a regular basis if there was safe passage off of the roadway.

Thank you for all your hard work and consideration of those of us who use 7th St West daily.

Sincerely,

Mary Kay and Bill Roche
1055 7th St W
Whitefish, MT 59937
862-3782



Subject: FW: Comments on 7th Street Project discussion this evening 2/18/14
From: "Chuck Stearns" <cstearns@cityofwhitefish.org>
Date: 2/18/2014 3:17 PM
To: "'Necile Lorang'" <nlorang@cityofwhitefish.org>

From: Chris Schustrom / Garden Wall Inn [mailto:chris@gardenwallinn.com]
Sent: Tuesday, February 18, 2014 2:34 PM
To: 'John Muhlfeld'; afeury@cityofwhitefish.org; pbarberas@cityofwhitefish.org; 'Richard Hildner'; janderson@conradianderson.com; 'John W. Anderson'; 'Frank Sweeney'; 'Jen Frandsen'
Cc: 'Chuck Stearns'; 'John Wilson'
Subject: Comments on 7th Street Project discussion this evening 2/18/14

Dear Mayor Muhlfeld and City Councilors,

As I will not be able to attend the City Council meeting this evening to give comment on the 7th Street Project discussion I thought I would send you my comments for your consideration this evening.

I sit on the Resort Tax Monitoring Committee, and serve as Vice Chair. This is my third, or fourth term, if memory serves.

The committee voted unanimously to recommend moving forward with the 7th Street project as it is the only other east west collector we have in Whitefish west of Baker and it is the next project recommended by Public Works in the Whitefish Reconstruction Priority List.

My view is that this project can be built with a design sensitive to the concerns of some individuals who live in that neighborhood, and that this should to be the next project built with Resort Tax funds.

Whitefish is coming into another period of growth and having the best transportation infrastructure in place is very important in order to keep traffic, pedestrian, bicycle and vehicle, flowing in and through town as smoothly as possible. The 7th Street Project is an important piece in making this happen.

In addition, I believe that our public works department, under the leadership of John Wilson and engineers such as those who work for Peccia and Associates can design this project in a way that maintains the character of the neighborhood, provides the infrastructure improvement needed on this collector street, and accommodates the pedestrian and bicycle traffic, including myself, that uses this street frequently.

Thanks for your consideration of this input.

Sincerely,
Chris
504 Spokane Avenue
Whitefish, MT 59937

From: John Muhlfeld [mailto:jmuhlfeld@riverdesigngroup.net]



Subject: FW: WEST 7TH STREET PROJECT

From: "Sherri Baccaro" <publicworks@cityofwhitefish.org>

Date: 2/18/2014 9:02 AM

To: "Necile Lorang" <nlorang@cityofwhitefish.org>, "John Wilson" <jwilson@cityofwhitefish.org>

From: Jeff Selig [mailto:seligmasonry@hotmail.com]

Sent: Monday, February 17, 2014 11:45 AM

To: publicworks@cityofwhitefish.org

Subject: WEST 7TH STREET PROJECT

WE OWN A HOME ON WEST 7TH ST. I AGREE WITH QUITE A FEW OF THE NEIGHBORS ABOUT LEAVING IT RURAL.WE ARE LOSING SO MUCH OF THAT IN WHITEFISH. PRETTY IS NOT ALWAYS PRACTICAL. IF YOU DRIVE THAT ROAD,YOU WILL REALIZE THAT MOST OF THE HOMES DONT HAVE MUCH LAND BETWEEN THE ROAD ANDTHEIR HOMES AS IT IS. PLEASE RECONSIDER MAKING THIS A SUBURB AND LET THE RURAL STAY. THANK YOU,PATTI GOHN&JEFF SELIG 314 WEST 7TH

received
2/18/14
4:55 p.m.

Comments for City Council Meeting, February 18, 2014
RE: Improvements to 7th Street

I would like to see improvements to West 7th Street.

Whitefish has grown and had many changes. I feel that 7th Street should see improvements and change as well.

With Whitefish growing and changing can we expect to keep a very busy street rural? Most importantly, the safety of pedestrians must be considered. Many people use 7th Street for walking, running, cycling and there are some women and men pushing baby strollers. Especially in winter, there is nowhere at all for them to walk, run, cycle and push strollers on the street in its present state. In fact it is dangerous for them to do so. We need improvements for safety as well as growth.

I would like to see 7th Street less traveled, and less busy, but at this point I don't believe that will happen. So we must make 7th Street safe for everyone.

Joyce E. Walkup, Permanent and full time resident of Whitefish (at corner of 7th Street)



Subject: PROPOSED RESORT IDEA and an opinion about how we let the public in on city discussions

From: "Handworks" <info@handworks.us>

Date: 2/18/2014 3:52 PM

To: <nlorang@cityofwhitefish.org>

Dear Mayor and City Councilors;

I noticed that you are doing a work session this evening on the proposal to be able to develop resorts around the city just prior to the city council meeting, but it was such short notice for the public to be able to participate (packet sent out on Friday, Monday a holiday), that I am unable to change my scheduled patient to be able to attend. I concur with Mayre Flowers of Citizens for a Better Flathead that the noticing has not been adequate to proceed as of yet. I read most of the packets and try to keep up with things and all I know so far is that the neighbors will be notified within 1500 feet. Please table this idea until you give the public a chance to see how the impact will affect all of our lives. This doesn't mean that I'm opposed to the idea, just that I think it needs more time to be explained and thought about by the citizens before it is acted on.

This also brings up a point that has bugged me for some time---Chuck has done a fantastic job of bringing the city's business to the community with his "folks" listserv for important things like open houses, road closures, etc. ; updating the website, and also letting the public have access to the packets to read through in preparation for the city council meetings. However, I don't think it's much time for the public to gather data, and give input by the meetings if we only get the packets on Friday. How do we talk to staff? How do we review proposed plans in such a short timeframe? If you want an educated and informed citizen population, so that you can make sure that you are truly doing the will of the people, then I think creating a list of upcoming topics or some way to prepare citizens for discussions should be looked at. I've written to chuck about this but he's not sure that anything can be improved upon, but I've sat in on too many meetings where citizens feel blindsided because they don't know what is coming at them until things are in the endgame. I think in the short run this creates a sense of distrust of the "city", and in the long run, doesn't help the community learn the skills needed to be effective citizens. Please ruminate on it. (In your spare time J). Thanks for being up there in service to our great community. I do really appreciate it more than you will ever know, Rebecca Norton 530 Scott Ave. WF

 This email is free from viruses and malware because [avast! Antivirus](#) protection is active.



Subject: message for city council

From: Lindy young <wildmile@hotmail.com>

Date: 2/19/2014 12:39 AM

To: "nlorang@cityofwhitefish.org" <nlorang@cityofwhitefish.org>

Hi! We would like to ask that the city council please table the idea of the planned resort district until there is more time for public examination and comment. Thank you so much for all you do!

-- Linda and Eric Young, 103 Idaho Ave, Whitefish

*Rec'd @ Council
Meeting 2-18-14*

Septage Bioreactor Landfill Workshop

February 24-26, Flathead County

(See agenda below for workshop locations)

Sponsored by the WasteNot Project¹ and the Montana Dept of Environmental Quality

Overview: This workshop will provide a technical overview of the operation and research supporting a bioreactor landfill. Te-Yang Soon of CTI and Associates and Matthew Williams, Environmental Services Director in St. Clair, Michigan will present on their research and operational experience at the Smiths Creek Bioreactor Landfill Project, which has operated successfully since 2008. Bioreactor landfills pose a possible solution to traditional farm-field application of septic wastes in rural communities and the water quality and health issues this can create in growing communities. A bioreactor landfill is different than a conventional landfill because it is lined and liquid (in this case septage) is injected into the decomposing material to decompose the material faster. There are many other benefits of a bioreactor landfill including reclaimed airspace and increased landfill gas generation to produce electricity.

Feb. 24th

3:00 pm to 5pm: Smith Creek Consultants arrive at Flathead County Landfill for tour of landfill and energy facility and discussions with staff of landfill and Flathead Electric staff on energy facility

6:00-7:30pm No-Host Dinner with Consultants---(Staff/engineers welcome to join)

Feb. 25th

8:00am to 12pm: Presentations providing overview of the Smith Creek Bioreactor Project by consultants and others with time for Q&A; at the Flathead County Earl Bennett Building, 1035 1st Ave W, Kalispell.

12:pm to 2pm: Transition time and Working lunch (catered at Earl Bennett Bldg.) with focus on water quality and septic disposal topics/questions (target participation would be Health Department staff and board and the Flathead Basin Commission, but open to those who pre-register for lunch).

3:00pm: Flathead County Solid Waste Board Meeting: Consultants provide twenty-minute overview of project and provide time for Q&A. Ricknold Thompson, MT DEQ Solid Waste Director will briefly discuss permitting standards.

6:00pm---No-Host Dinner with DEQ staff and others who want to join.

Feb. 26th

9:00am: Presentation Flathead County Commissioners

10:30am: Presentation Flathead Electric Coop Board Meeting

¹ The WasteNot Project is a 21year cooperative effort between Flathead County Solid Waste District, Flathead Valley Community College Service Learn Program, and Citizens for a Better Flathead. The project provides educational programs and develops community services to encourage and grow, waste reduction, safe disposal, and recycling options.

Detail for Feb. 25th morning Presentation 8am to Noon

Background

- St. Clair County (SCC) profile
- Looking to increase site life @ landfill
- Runoff from land application of septage causing pollution
- Needed additional sources of revenue

Project Overview

- General project description
- In operation since 2008

Results To Date

- Leachate quality
- Waste settlement
- LFG production
- Septage Receiving Station
- Other benefits

Permitting

- Montana DEQ

Funding

- Clean Water State Revolving Fund (SRF) loan
- Green Project Reserve (GFR)
- St. Clair County's CWSRF Pisces Award in 2010
- Precedent set with USEPA for these types of projects and their ability to meet GFR requirements

Future

- SCC has applied for new SRF loan to expand project
- Project will focus on applicability of septage injection to commingled waste
- County anticipates 50% principal forgiveness for this expansion
 - Funding construction has changed the standard way of doing business for the County
 - Able to conserve \$\$ in the short term
 - Save significant \$\$ through principal forgiveness
- SCC model could be implemented anywhere in the Country
 - May require legislative amendments
 - SRF requirements vary by State but most offer some sort of incentive for green projects