CITY COUNCIL WORK SESSION
CITY COUNCIL CHAMBER CONFERENCE ROOM
MONDAY, MARCH 3, 2014
5:00 TO 7:00 PM

1. Call to Order
2. Work session on Annexation
3. Public Comments
4. City Council provides directions on which annexations, if any, to pursue
5. Adjournment

MEMORANDUM
#2014-005

To: Mayor John Muhlfeld
City Councilors

From: Chuck Stearns, City Manager

Re: Work session on Annexation

Date: February 24, 2014

We have scheduled a work session on annexation issues for the March 3 work session. This memo will provide some background and history on the topic for the Mayor and City Council.

Methods of annexation – Montana Statutes

Montana statutes (Montana Code Annotated or MCA) provides for six, separate and distinct methods of annexation or additions to municipalities. Copies of the statutes are included in the packet if you wish to read them. There are many legal cases which interpret these statutes and there are many nuances to them, so if you have questions about the statutes, City Attorney Mary VanBuskirk and I can try to address them.

The various methods and some descriptions are below. An important legal aspect is that each method is separate and distinct from all other methods – this aspect is often confused by people. For example, an important misconception is that we can only annex contiguous property. That requirement only applies to some methods and does not apply to the Annexation By Petition method of annexation.

1. **Addition to Municipalities – Section 7-2-4201 MCA *et.seq.***

   This method of annexation is not used very much because the Annexation by Petition method of annexation (see information below) is used typically for annexations of vacant or raw land that is going to be developed.

2. **Annexation of Contiguous Land – Section 7-2-4301 MCA *et.seq.***

   - This method of annexation is not used as much as other methods.

- Cannot annex land used for industrial, railroad, or manufacturing purposes with this method (Section 7-2-4303 MCA) without the owner's consent.
- If the area contains less than 300 parcels of land, City can annex unless a majority of property owners protest by date of public hearing.
- If area contains more than 300 parcels, an election is required for all registered voters residing in the area proposed for annexation.
- Requires a plan for the provision of services to the area including the need to notify and consult with the County and Whitefish Fire Service Area if they want to meet (7-2-4731 (2) and 7-2-4732 (5). Our plan of service extension is included in the packet.

3. Annexation of Contiguous Government Land – Section 7-2-4401 MCA *et.seq.*

- Used primarily to annex government land from federal or state government.
- Requires affirmative letter from owner of land or administrative head of government department describing the land and requesting it to be annexed.

4. Annexation of Wholly Surrounded Land – Section 7-2-4501 MCA *et.seq.*

- Often used by municipalities.
- Was used by City of Whitefish in the past, most recently last year on the Hwy 93 South annexations
- Properties have to be "wholly surrounded" by city: (1) where all lands on the side of the tract are within the city; and (2) where it is impossible to reach the tract without crossing such territory. There is no requirement that each parcel individually must be totally wholly surrounded by the city limits boundaries.
- Requires a plan for the provision of services to the area including the need to notify and consult with the County and Whitefish Fire Service Area if they want to meet (Sections 7-2-4731 (2) and 7-2-4732 (5) MCA). Our plan of service extension is included in the packet.
- Cannot annex land used for agricultural, mining, smelting, refining, transportation, industrial, manufacturing purpose, using this annexation method.
- Requires a notice to affected property owners and a public hearing. Owners can protest.
- City Council can annex wholly surrounded properties despite any and all protest – Section 7-2-4502 MCA.
- Attorney General Opinion #41 in 1987 is included in the packet and says it is lawful for the City to use the Wholly Surrounded method of annexation when property is bordered on three sides by the City and one side by the lake.
- Almost always is a contentious method of annexation.

5. Annexation by Petition – Section 7-2-4601 MCA *et.seq.*

- Our most commonly used method of annexation.

- We require a petition to annex and a contract for sewer or water service (contains a waiver of the right to protest a future annexation). We record both documents immediately to ensure it shows up on a title report. We used to require only a waiver of the right to protest annexation until the 1998 – 2004 annexation lawsuits which we won at the Montana Supreme Court. A copy of that decision is contained in the packet.
- Properties do not have to be contiguous to the City limits.
- Requires a plan for the provision of services to the area including the need to notify and consult with the County and Whitefish Fire Service Area if they want to meet (7-2-4731 (2) and 7-2-4732 (5) unless such provision is waived by the property owner. We typically have such waiver of the need to do a plan as part of our standard petition to annex which is included in the packet. Our plan of service extension is included in the packet.
- Cannot annex land used for agricultural, mining, smelting, refining, transportation, industrial, or manufacturing purpose using this annexation method unless 100% of property owners have signed the petitions and annexation is in accordance with city's growth policy.
- Requires an election for the registered electors in the area unless petitions are signed by more than 50% of the registered electors in the area or owners of more than 50% of the area of land to be annexed.
- Does not require a public hearing – City Council can annex immediately
- City can leverage petitions to annex more property than petitions for annexation up to the 50% threshold. Some cities do leverage petitions to annex more land than just what is being petitioned to add in order to avoid checkerboard pattern of land inside city versus outside the city.

6. Annexation with the provision of services – Section 7-2-4701 MCA *et.seq.*

- Also known as the Planned Community Development Act method of annexation.
- Requires properties to be contiguous to the City.
- Requires a resolution of intention to annex, publication of a notice, and a public hearing. Does not require mailing of a notice to each property owner, but we have typically done that mailing anyway in the past.
- A majority of the real property owners in the area to be annexed can protest and prevent the annexation unless they have waived the right to protest.
- Annexation is done by ordinance, not resolution.
- Requires a plan for the provision of services to the area including the need to notify and consult with the County and Whitefish Fire Service Area if they want to meet (7-2-4731 (2) and 7-2-4732 (5). Our plan of service extension is included in the packet.
- Can do several areas in one procedure. We did this procedure for the Dalen Dental annexation several years ago.
- Requires a vote on any proposed capital expenditures for the area.

Prior City Council priorities areas to pursue for annexation

The City Council has held work sessions on annexation priorities in the past few years. The last such work session was August 5, 2013 wherein the City Council directed staff to pursue the following annexations, in priority order. Maps showing each area are enclosed in the packet.

1. **East Lakeshore Area (Jennings Landing and surrounding area)**

   This area consists of 16 properties that we could annex pursuant to the Annexation with Provision of Services method of annexation because we don't have petitions from the owners. We annexed three lots (#7, #8, and #9 on map) that petitioned to annex last year in order to connect onto the sewer. The other lots are now contiguous to these properties and can be annexed. A majority of the property owners have signed sewer agreements waiving the right to protest annexation, but these waivers were all done in 1997 when a sewer line was extended out into their area so some owners could connect. There is a list of properties in the packet and the list shows which properties are connected on to the sewer system.

   The City Council chose this area as Priority #1 last summer because we thought we had a majority of property owners who had petitioned to annex and could be annexed quickly in one meeting. However, after the City Council elevated this area to be Priority #1 and we did the research on the properties, we found that this area did not have the petitions. Thus, we would have to do a longer, more involved process to annex the properties using the Annexation with Provision of Services method of annexation. Given Mary's and my workload, Rich's departure, and the fact that some property owners in the area started complaining to the City Council about the annexation, we decided to put the annexation off to this year. Other reasons for the delay were to allow the new Council to make the priority decisions and to allow for a public hearing during the summer when many of these out of town property owners could be present.

2. **Houston Drive area**

   The City Council last year chose this area as the 2nd priority area because some areas of it have sewer mains available to it, but not all areas. See attached maps in the packet. This area contains approximately 50 properties that are outside the City limits. This area would be a wholly surround annexation, but property owners in the area are already contesting that we can annex them – see Sean Frampton letter in the packet.

   There have been many contested and uncontested annexations of multiple properties using the Wholly Surrounded method of annexation. While I was Finance Director/City Clerk for the City of Missoula in 1989, we annexed the entire Rattlesnake Valley with two annexation resolutions, one that was done by petition method and the other by the Wholly Surrounded method. These annexations were contested by lawsuit and the City of Missoula prevailed in District Court and it was not appealed to the Supreme Court. More recently, in 2012, the City of Whitefish annexed multiple properties on Hwy 93

South in one annexation resolution, so we feel very comfortable annexing more than one property in the Wholly Surrounded method.

Also, Mr. Frampton cites Resolution #05-25 (he says Ordinance 05-25) as saying we committed to not using the Lake to facilitate annexation. Mr. Frampton leaves out some of the important language in Resolution #05-25 which I have highlighted. We agreed not to use the lake to establish contiguity for many areas of the lake where contiguity did not exist (e.g. north end of the lake), but that policy declaration was not applicable to wholly surrounded areas as is clearly stated in the Resolution and John Phelp's accompanying staff report. When I arrived here, John Phelps made it very clear to me that we did not exclude using the Wholly Surrounded Method of annexation for this area.

3. **West Lakeshore Drive area**

   The third priority area for annexation was in the West Lakeshore Drive area of Whitefish and a map is included in the packet. This area was considered for annexation using the Wholly Surrounded method of annexation, but the railroad tracks and the Attorney General's opinion on whether the railroad tracks can be used to wholly surround an area are problems. However, some of the lots are wholly surrounded by the City, but not all of the lots.

4. **Ramsey Avenue area**

   The final priority area identified by staff and approved by the City Council was a small number of parcels in the Ramsey Avenue area. A map of the area is included in the packet. Again, this area could be annexed by the Wholly Surrounded method of annexation for most if not all of the lots.

Why Annex?

Many citizens and elected officials often ask why does the City want to annex people. This section will try to address some of those reasons. Because Montana State Law provides a lot of protections for property owners and a lot of limitations on municipal authority to annex, most Montana cities annex as aggressively as they can. The City of Whitefish was very aggressive in annexing areas in 1998 for many of the following reasons.

1. **Those who receive or benefit from government services should help pay for those costs.**

   Many area residents who live inside zip code 59937, but who live outside the City limits use many city services on a daily basis, but except in an indirect manner, they often don't help to pay for them. Without authority for a local income tax or local sales tax (other than the Resort Tax which will be discussed later), people who come into the City on a regular or daily basis don't pay direct taxes for services that the City has to provide in order to serve their visits. As a popular destination, we have to have a Police

Department staffed at a higher level than many comparable cities. Also, because the State Gas Tax is apportioned on the basis of road miles and city population, we do not get gas tax for road maintenance from people who buy gas inside the city and who use our roads.

While we do get our 2% Resort Tax from many of their purchases inside the City, that revenue source is earmarked for road reconstruction, trails, and property tax relief, not for road maintenance or other services. Similarly, the Library is funded primarily by City property taxes and people outside the City can use the library, but do not pay taxes for supporting the library. Planning and zoning services for the doughnut area are also not entirely covered by the fees charged for applications. The maintenance of our parks and trails are generally borne by City taxpayers while recreation programs are generally geared to be self-sufficient.

One can argue that close-in county residents do result in a higher level of commercial development inside the City because they do come in to the City to shop. However, 75% of our tax base is residential property and only 25% is commercial property, so most of our tax base and revenues come from residential property. Also, how much commercial development inside the city is attributable to county residents is speculative and very hard to quantify.

2. **Taxation equity**

Similar to the prior point, City property taxpayers subsidize many of the services that the City provides to County residents. In addition from the above examples of Police, Roads, and Library, city taxpayers pay the equivalent of 50 mills of property taxes for Fire and ambulance services. For a house with a market sales value of $300,000, that is the equivalent of $202 of property taxes. We provide the same level of fire service to the Whitefish Fire Service Area (WFSA) outside the City limits as we do for inside the City limits, only the response time might be a little longer. The same personnel and equipment respond to the same calls, inside or outside the city. However, a house in the WFSA pays only a $90 flat assessment per year for our fire service. Moreover, that flat assessment is $90 whether the residential property is a mobile home worth $50,000 or a large house valued at $5,000,000 or more.

City residents also pay a lot of property taxes to support the County services, some of which are also provided by the City. While we should be taxed for many county services like the commissioners, district court, and the jail, we provide our own police patrol to our residents. However, City taxpayers also pay the full countywide mill levy rate for the County Sheriff Deputy costs which includes patrol and response to the rural areas outside the City. This double taxation is probably the largest single reason why properties which we annex typically face around a 20% increase in their property tax bill. Many attempts have been made to end these double taxation subsidies at the Montana Legislature and they have always failed.

This discrepancy in taxation and the subsidy of county residents is one reason why people fight annexation so hard – it is always difficult to end a subsidy.

3. **Land Use and building to urban standards**

While we currently control land use and planning in the doughnut area, that could change depending upon the outcome of the Montana Supreme Court case. When counties approve urban density subdivisions around Montana cities, they typically are not designed to city standards including water and sewer lines, sidewalks, curbs and gutter or drainage, etc. Then, when we such annex properties, people who are annexed often expect the City to provide them such services.

However, those costs should be borne by the homeowner as they would typically be provided by a developer when initially developing the property and that cost would be reflected in the purchase price of the lot or home. It is costly to go in and provide water and sewer lines, sidewalks, and other infrastructure after property has already developed. We can provide low cost financing of such improvements with a Special Improvement District which allows them to pay for the costs over 10-20 years at an interest rate of 3-6%. This issue is one of the main reasons for our extra-territorial jurisdiction in the doughnut.

Also, County residents don't have to get building permits (other than electrical permits from the state).

4. **Water Quality**

Given the aforementioned financial reasons and the 20% or more discrepancy in property taxes, people generally do not want to connect to the sewer system even if a sewer main is in front of their property until their septic system fails. The cost to connect onto the City sewer system (usually $5,000 to $15,000 depending on whether a main needs to be extended) plus the 20% increase in property taxes is difficult for people to incur. However, if we take the annexation issue out of the equation by annexing people first, I think we will find more willingness to connect onto the sewer system. We found that on Hwy 93 South where, after we did the 2012 Wholly Surround annexation, a property owner said that he might as well connect onto the sewer now that he had been annexed. I think you will find similar sentiments when the annexation issue is already settled.

5. **Other Reasons**

I am sure there are many other reasons for annexing people, but the aforementioned reasons are the primary ones. It really comes down to taxation equity, paying for services one receives, and ending subsidies, which are very difficult topics for people to accept.

Benefits of Annexation

Despite the fact that we already do provide many services to people who live outside, but close in to the City limits, there are some benefits to annexation. People who are annexed get to vote for the Mayor and City Council members, they get the benefit of the Municipal Court and City Attorney services, their garbage and recycling costs typically decrease because of our bulk rate contract with North Valley Refuse. Also, if they are already on the water or sewer system, once they are annexed, they no longer pay a surcharge of 7% - 17% on sewer bills or 16% - 32% on their water bills. City residents also receive a $200 discount on any ambulance bills they incur. City residents also receive a much higher level of Police services than Flathead County is able to provide.

Incentives to connect on to the sewer system

If the City Council continues to pursue annexation of properties around the lake, we may want to consider some limited financial incentives to help properties which are annexed connect on to the sewer system. In 1988, the City Council passed Resolution #88-20 which allowed for deferral of annexation for at least two years in certain cases. However, that policy was superseded during the 1998 annexations which were challenged legally. At that point, the City Council changed their policy and instructed staff to annex people immediately when they petition instead of delaying annexation until larger groups could be annexed. They also passed Resolution 98-51 which allowed the City to disconnect people from the sewer or water system if they did not agree to annex (copy enclosed in packet).

When I worked for the City of Missoula from 1984 – 1994, we undertook many large annexations in 1989 where we annexed about 10,000 people. For the property owners who were not connected to the sewer system, we agreed to provide a $1,000 credit, payable over 11 years, to the Special Improvement District which was created to extend the sewer system into the annexed areas. For Whitefish, given that we would get from $500 to $4,000 per year from most properties annexed, we may want to provide a limited incentive for people to connect on to the sewer system.

While we can pursue grants and propose Special Improvement Districts to lower the cost to extend sewer mains, where a sewer main already exists, we may want to provide something like a $500 incentive if they connect within one year of annexation. I would prefer that any incentive be a single payment rather than paid over a number of years because of the administrative burden of tracking such payments and given that property owners change over time.

If we pursue annexations, I think we should discuss whether or not we should provide financial incentives to connect on to the sewer system and if so, to what extent those incentives should be provided. Any subsidy such as that is fraught with implications and precedents. People who connected in prior years will often as that they be given a payment after the fact and it is difficult to stop paying a subsidy once it has started.

7-2-4108 through 7-2-4110 reserved.

7-2-4111. Tax base — maintenance agreements. When a city or town is incorporated, a county may, subject to 15-10-420, retain the property within the city or town as a part of the tax base of the county for purposes of levying taxes against the property for the maintenance of property within the city or town until the city or town imposes and collects a levy for maintenance of the property for which the county mill levy is imposed. The city or town and the county may enter into an agreement for maintenance of property pending an election on a city or town levy.

History: En. Sec. 1, Ch. 353, L. 1999; amd. Sec. 10, Ch. 574, L. 2001.

Part 42
Addition to Municipalities

7-2-4201. Additions to municipalities. Whenever territory adjoining any incorporated city or town is surveyed and laid off into streets or blocks as an addition thereto, said territory may become a part of such city or town:

(1) upon filing the map or plat thereof in the office of the county clerk; and

(2) upon the approval of the mayor and a majority of the council endorsed thereon.

History: En. Sec. 4724, Pol. C. 1895; re-en. Sec. 3212, Rev. C. 1907; re-en. Sec. 4976, R.C.M. 1921; re-en. Sec. 4976, R.C.M. 1935; R.C.M. 1947, 11-401.

7-2-4202. Control of additions. The council has control of all such additions.

History: En. Sec. 4725, Pol. C. 1895; re-en. Sec. 3213, Rev. C. 1907; re-en. Sec. 4977, R.C.M. 1921; re-en. Sec. 4977, R.C.M. 1935; R.C.M. 1947, 11-402(part).

7-2-4203. Imposition of conditions for approval of addition. (1) The council has power by ordinance to compel the owners of these additions to lay out streets, avenues, and alleys, so as to have the same correspond in width and direction and be continuations of the streets, avenues, and alleys in the city or town or in the addition thereto contiguous to or near the proposed addition.

(2) The owner of any addition has no rights or privileges unless the terms and conditions of the ordinance are complied with and the plat thereof has been submitted to and approved by the mayor and council and such approval endorsed thereon.

History: En. Sec. 4725, Pol. C. 1895; re-en. Sec. 3213, Rev. C. 1907; re-en. Sec. 4977, R.C.M. 1921; re-en. Sec. 4977, R.C.M. 1935; R.C.M. 1947, 11-402(part).

7-2-4204. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 1, Ch. 130, L. 1981.

7-2-4205. Provision of services. In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 1, Ch. 447, L. 1981; amd. Sec. 1, Ch. 66, L. 1995.

7-2-4206 and 7-2-4207 reserved.

7-2-4208. Annexation across county boundaries. (1) Except as provided in subsection (2), in all instances of annexation allowed under parts 42 through 47 of this chapter, a municipal governing body may not annex territory in a county that is different from the county in which the municipality is located.

(2) Annexation by a municipality of territory in a county that is different from the county in which the municipality is located may occur only if the municipality and the county execute an

interlocal agreement that provides for a joint city-county planning board and jurisdictional equality.

History: En. Sec. 1, Ch. 296, L. 2007.

7-2-4209 reserved.

7-2-4210. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

7-2-4211. Inclusion of roads and rights-of-way in annexation. In all instances of annexation allowed under parts 42 through 47 of this chapter, the municipality shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed.

History: En. Sec. 1, Ch. 334, L. 2003.

Part 43
Annexation of Contiguous Land

Part Cross-References

Annexation of contiguous government land, Title 7, ch. 2, part 44.

7-2-4301. What constitutes contiguous lands. Tracts or parcels of land proposed to be annexed to a city or town under the provisions of this part shall be deemed contiguous to such city or town even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted.

History: En. Sec. 1, Ch. 95, L. 1945; amd. Sec. 1, Ch. 16, L. 1955; R.C.M. 1947, 11-404.

7-2-4302. Annexation of contiguous municipalities. (1) When a city or town desires to be annexed to a contiguous city or town, the council of each thereof must appoint three commissioners to arrange and report to the municipal authorities, respectively, the terms and conditions on which the annexation can be made.

(2) If the city or town council of the municipal corporation to be annexed approves of the terms thereof, it must by ordinance so declare and thereupon submit the question of annexation to the electors of the respective cities or towns. If a majority of the electors vote in favor of annexation, the council must so declare and a certified copy of the proceedings for annexation and of the ordinances must be filed with the clerk of the county in which the cities or towns so annexed are situated.

(3) When the copy of the proceedings and the ordinances is filed, the annexation is complete and the city or town to which the annexation is made has power, in addition to other powers conferred by this title, to pass all necessary ordinances to carry into effect the terms of the annexation.

(4) Such annexations do not affect or impair any rights, obligations, or liabilities then existing for or against either of such cities or towns.

History: En. Sec. 322, 5th Div. Comp. Stat. 1887; re-en. Sec. 4727, Pol. C. 1895; re-en. Sec. 3215, Rev. C. 1907; re-en. Sec. 4979, R.C.M. 1921; re-en. Sec. 4979, R.C.M. 1935; R.C.M. 1947, 11-405.

7-2-4303. Restrictions on annexation power. Except as provided in 7-2-4314(1)(d), land used for industrial, railroad, or manufacturing purposes may not be included in a city or town under the provisions of 7-2-4311 through 7-2-4314 and 7-2-4325 without the written consent of the owners of the land.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 1, Ch. 485, L. 1997.

7-2-4304. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 2, Ch. 130, L. 1981.

7-2-4305. Provision of services. In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 2, Ch. 447, L. 1981; amd. Sec. 2, Ch. 66, L. 1995.

7-2-4306 through 7-2-4310 reserved.

7-2-4311. Annexation of contiguous land by cities or towns. Any tracts or parcels of land that have been or may be platted into lots or blocks, streets, and alleys or platted for parks, the map or plat of which is filed in the office of the county clerk and recorder of the county in which the tracts or parcels of land are situated, or any unplatted land that has been surveyed and for which a certificate of survey has been filed, as provided by law, if the platted or unplatted land is contiguous to any incorporated city or town, may be embraced within the corporate limits of the city or town, and the boundaries of the city or town may be extended to include the platted or unplatted land in the manner provided in 7-2-4312 through 7-2-4314 and 7-2-4325.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 2, Ch. 485, L. 1997.

7-2-4312. Resolution of intent by city or town — notice. When, in the judgment of any city or town council, expressed by a resolution that is passed and adopted, it is in the best interest of the city or town and the inhabitants of any contiguous platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed that the boundaries of the city or town be extended to include the platted tracts or parcels of land or unplatted land within the corporate limits of the city or town, the city or town clerk shall:

(1) immediately notify, in writing, all registered voters in the territory to be embraced; and

(2) publish a notice as provided in 7-1-4127.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 2, Ch. 526, L. 1983; amd. Sec. 3, Ch. 485, L. 1997; amd. Sec. 8, Ch. 354, L. 2001.

7-2-4313. Contents of notice — protest period. The notice under 7-2-4312 must state that:

(1) the resolution has been passed; and

(2) for a period of 20 days after the first publication of the notice, the city or town clerk shall accept written comments approving or disapproving the proposed extensions of the boundaries of the city or town from registered voters residing in the area proposed to be annexed.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 3, Ch. 66, L. 1995; amd. Sec. 4, Ch. 485, L. 1997.

7-2-4314. Hearing on question of annexation — vote on question of annexation — resolution of annexation. (1) (a) The city or town clerk shall, at the next regular meeting of the city or town council after the expiration of the 20-day period provided for in 7-2-4313, forward all written communication received by the clerk for the city or town council's consideration.

(b) Except as provided in subsection (1)(d), if the city or town council, after considering all written communication, adopts a resolution approving the annexation, the implementation of the resolution must be approved by the vote of the registered voters residing in the area proposed for annexation. The resolution must state the date on which the proposed annexation is intended to take effect.

(c) Within 45 days of adopting the resolution for annexation, the city or town council shall submit the question of approving the resolution to the registered voters residing in the area proposed for annexation. A notice of election must be mailed to all registered voters residing in the area proposed for annexation.

(d) If the area to be annexed contains less than 300 recorded parcels, the city or town council, after considering all written communication, may adopt a resolution approving the annexation and the boundaries of the city or town must be extended to include the platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed. An area annexed pursuant to this subsection may include land used for railroad purposes. A city or town council may not annex by resolution an area containing less than 300 recorded parcels if the resolution is disapproved in writing by a majority of real property owners of the area proposed to be annexed. If the resolution is disapproved by a majority of the landowners, the city or town council may not on its own initiative propose further resolutions relating to the annexation of the area or any portion of the area, without petition, for a period of 1 year.

(2) Except as provided in subsection (1)(d), further resolutions relating to the annexation of the area or any portion of the area may not be considered or acted upon by the council on its own initiative, without petition, for a period of 5 years from the date of disapproval by the voters as provided in subsection (1).

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 4, Ch. 66, L. 1995; amd. Sec. 5, Ch. 485, L. 1997.

7-2-4315 through 7-2-4320 reserved.

7-2-4321. Repealed. Sec. 11, Ch. 485, L. 1997.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 1, Ch. 320, L. 1985.

7-2-4322. Repealed. Sec. 11, Ch. 485, L. 1997.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4323. Repealed. Sec. 11, Ch. 485, L. 1997.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 5, Ch. 66, L. 1995.

7-2-4324. Repealed. Sec. 11, Ch. 485, L. 1997.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 6, Ch. 66, L. 1995.

7-2-4325. Consolidation of proceedings for two or more tracts. Whenever two or more adjacent tracts taken as a whole adjoin a city or town, the tracts may be included in one resolution under this part, although one or more of the tracts taken alone may not be adjacent to the corporate limits as then existing.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(3); amd. Sec. 2, Ch. 320, L. 1985; amd. Sec. 6, Ch. 485, L. 1997.

7-2-4326 through 7-2-4330 reserved.

7-2-4331. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

Part 44
Annexation of Contiguous Government Land

7-2-4401. What constitutes contiguous land for purpose of part. The land proposed to be annexed to a municipality under the provisions of this part shall be deemed contiguous to such municipality even though such land may be separated from such municipality by a street or other roadway, a sidewalk, a public way of any kind, an irrigation ditch or drainage ditch, or some other strip too small for the erection of houses.

History: En. Sec. 2, Ch. 189, L. 1957; R.C.M. 1947, 11-512.

7-2-4402. Annexation of contiguous government land. Whenever any land contiguous to a municipality is owned by the United States or by the state of Montana or by any agency, instrumentality, or political subdivision of either or whenever any of the foregoing have a beneficial interest in any land contiguous to a municipality, such land may be incorporated and included in the municipality to which it is contiguous and may be annexed thereto and made a part thereof in the manner provided in this part.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4403. Request for annexation by government official. The administrative head of the owner of land referred to in 7-2-4402 or the administrative head of the holder of a beneficial interest in such land shall file with the clerk of the municipality a description of the land, a certification of ownership or of beneficial interest therein, and a statement that the owner of or the holder of the beneficial interest in the land desires to have it annexed.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4404. Resolution of intent to annex. Upon receiving the request provided for in 7-2-4403, the governing body of the municipality shall pass a resolution reciting its intention to annex the land and setting a time and place for a public hearing thereon.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4405. Notice of resolution — protest period. The clerk of the municipality shall forthwith cause to be published in the newspaper nearest such land, at least once a week for 2 successive weeks, a notice that such resolution has been duly and regularly passed and that for a period of 20 days after the first publication of such notice, such clerk will receive expressions of approval or disapproval, in writing, of the proposed alterations of the boundaries of the municipality. Said notice shall also state the time and place set for the public hearing on the proposed annexation.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(2).

7-2-4406. Hearing on question of annexation — resolution of annexation. (1) At the time and place set for the aforesaid public hearing, the governing body of the municipality shall hear all persons and all things relative to the proposed annexation.

(2) If the governing body shall find that it is to the best interests of the municipality and its inhabitants to annex the land, it shall adopt a resolution of annexation of the land. Said resolution shall become effective 30 days after its passage and approval, and thereafter the boundary of said municipality shall be as set forth in said resolution.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4407. Filing of resolution and other papers. Within 30 days after the passage and approval of said resolution, a copy thereof, duly certified by the clerk of the municipality, together with a map showing the corporate limits of said municipality as altered and changed, shall be filed in the office of the county clerk and recorder of the county in which said municipality is located.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4408. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 3, Ch. 130, L. 1981.

7-2-4409. Provision of services. In all cases of annexation under current Montana law, services must be provided as specified in Title 7, chapter 2, part 47, except when mutually agreed upon by the municipality and the real property owners of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 7, Ch. 66, L. 1995.

7-2-4410 through 7-2-4420 reserved.

7-2-4421. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

Part 45
Annexation of Wholly Surrounded Land

7-2-4501. Annexation of wholly surrounded land. A city may include as part of the city any platted or unplatted tract or parcel of land that is wholly surrounded by the city upon passing a resolution of intent, giving notice, and passing a resolution of annexation. Except as provided in 7-2-4502, the provisions of 7-2-4312 through 7-2-4314 apply to these resolutions and the notice requirement.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 17, Ch. 250, L. 1979; amd. Sec. 1, Ch. 200, L. 1983.

7-2-4502. Protest not available. Wholly surrounded land is annexed, if so resolved by the city or town council, whether or not a majority of the real property owners of the area to be annexed object. The question of annexing the wholly surrounded land is not subject to being voted on by the registered voters of the area to be annexed.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 8, Ch. 66, L. 1995; amd. Sec. 7, Ch. 485, L. 1997.

7-2-4503. Restrictions on annexation power. Land shall not be annexed under this part whenever the land is used:

(1) for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose; or

(2) for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery, or a place for public or private outdoor entertainment or any purpose incident thereto.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4504. What constitutes contiguous lands. Tracts or parcels of land proposed to be annexed to a city or town under the provisions of this part shall be deemed contiguous to such city or town even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted.

History: En. Sec. 1, Ch. 95, L. 1945; amd. Sec. 1, Ch. 16, L. 1955; R.C.M. 1947, 11-404.

7-2-4505. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 4, Ch. 130, L. 1981.

7-2-4506. Provision of services. In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities, when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 3, Ch. 447, L. 1981; amd. Sec. 9, Ch. 66, L. 1995.

7-2-4507 through 7-2-4510 reserved.

7-2-4511. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

Part 46
Annexation by Petition

7-2-4601. Annexation by petition. (1) The boundaries of any incorporated city or town may be altered and new areas annexed as provided in this part.

(2) The council or other legislative body of a municipal corporation, upon receiving a written petition for annexation containing a description of the area to be annexed and signed by not less than 33 ⅓% of the registered electors of the area proposed to be annexed, shall without delay submit to the electors of the municipal corporation and to the registered electors residing in the area proposed by the petition to be annexed the question of whether the area should be made a part of the municipal corporation.

(3) (a) The governing body of a municipality need not submit the question of annexation to the qualified electors as provided in subsection (2) if it has received a written petition containing a description of the area requested to be annexed and signed by:

(i) more than 50% of the resident electors owning real property in the area to be annexed; or

(ii) the owner or owners of real property representing 50% or more of the total area to be annexed.

(b) The governing body may approve or disapprove a petition submitted under the provisions of subsection (3)(a) on its merits. When the governing body approves the petition, it shall pass a resolution providing for the annexation.

History: En. Sec. 1, Ch. 168, L. 1945; R.C.M. 1947, 11-506(1); amd. Sec. 293, Ch. 571, L. 1979; (3)En. Sec. 1, Ch. 641, L. 1979; amd. Sec. 1, Ch. 279, L. 1985; amd. Sec. 10, Ch. 66, L. 1995; amd. Sec. 1, Ch. 186, L. 2011.

Cross-References

Petition requirements generally, 7-1-4130.

7-2-4602. Election on question of annexation by petition. (1) The question of annexation may be submitted at the next general municipal election to be held in the municipal corporation or it may be submitted prior to the general election, either at a special election called for that purpose or at any other municipal election, except an election at which the submission of such question is prohibited by law.

(2) The election shall be conducted and the returns made in the same manner as other city or town elections. All election laws governing city and town elections shall govern, insofar as they are applicable.

(3) Whenever the question of annexation under this title is submitted at either a general city or town election or at a special election, separate ballots, shall be provided therefor.

History: En. Secs. 1, 2, Ch. 168, L. 1945; R.C.M. 1947, 11-506(part), 11-507(part); amd. Sec. 294, Ch. 571, L. 1979.

Cross-References

Elections generally, Title 13.

General elections, 13-1-104.

7-2-4603. Notice of election. (1) The council or legislative body shall publish notice of the election as provided in 13-1-108.

(2) Such notice shall distinctly state the proposition to be submitted, i.e., that it is proposed to annex to, incorporate in, and make a part of such municipal corporation the territory or territories sought to be annexed, specifically describing the boundaries thereof.

(3) The notice of election shall designate the date of the election.

History: En. Sec. 1, Ch. 168, L. 1945; R.C.M. 1947, 11-506(part); amd. Sec. 295, Ch. 571, L. 1979.

7-2-4604. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(part).

7-2-4605. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(part).

7-2-4606. Resolution of annexation. (1) (a) If it is found that a majority of votes were cast in favor of the annexation, the city or town council or other legislative body shall, at a regular or special meeting held within 30 days of the election, pass and adopt a resolution providing for the annexation.

(b) The resolution must state that a petition has been filed with the council or other legislative body with the signatures of 33 ⅓% of the resident electors owning real property in the area proposed to be annexed; a description of the boundaries of the area to be annexed; a copy of the resolution ordering a general or special election; a copy of the notice of the election; the time and result of the canvass of the votes received in favor of annexation and the number of votes cast against annexation; and that the boundaries of the city or town will be extended to include the area described in the petition for annexation. The resolution must be incorporated in the minutes of the council or legislative body.

(2) A resolution adopted pursuant to 7-2-4601(3) must include a statement that a petition has been filed with the governing body containing the signatures of more than 50% of the resident electors owning real property or the owners of real property representing 50% or more of the total area to be annexed; a description of the boundaries of the area to be annexed; and a statement that the boundaries of the municipality are to be extended to include the area described in the petition for annexation. The resolution must be incorporated in the minutes of the governing body. Upon incorporation in the minutes, the resolution must be filed and becomes effective as provided in 7-2-4607.

History: (1)En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(3); (2)En. Sec. 1, Ch. 641, L. 1979; amd. Sec. 2, Ch. 279, L. 1985; amd. Sec. 11, Ch. 66, L. 1995; amd. Sec. 2, Ch. 186, L. 2011.

7-2-4607. Filing of resolution. (1) The clerk or other officer performing the duties of clerk of such council or legislative body shall promptly make and certify under the seal of said municipal corporation a copy of said record so entered upon said minutes, which document shall be filed with the clerk of the county in which the city or town to which said territory or territories are sought to be annexed is situated.

(2) From and after the date of the filing of said document in the office of the county clerk, the annexation of such territory or territories so proposed to be annexed shall be deemed and shall be complete. Thenceforth such annexed territory or territories shall be, to all intents and purposes, a part of said municipal corporation, and the said city or town to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

History: En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(4).

7-2-4608. Restrictions on annexation power. (1) Territory that is part of an incorporated city or town at the time a petition for proposed annexation is presented as provided in 7-2-4601 may not be annexed under the provisions of this part.

(2) Except as provided in subsection (3), a parcel of land that, at the time a petition for proposed annexation is presented to the governing body of a city or town, is used in whole or in part for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or for any purpose incident to those uses may not be annexed under the provisions of this part.

(3) The provisions of subsection (2) do not apply if the petition submitted to the governing body of the city or town is signed by 100% of the owners of the land proposed to be annexed and the annexation is in accordance with the city's or town's adopted growth policy.

History: En. Secs. 3, 4, Ch. 168, L. 1945; R.C.M. 1947, 11-508, 11-509; amd. Sec. 3, Ch. 186, L. 2011.

7-2-4609. Applicability of part. (1) This part does not repeal parts 43 and 45 having reference to extension of the corporate limits of cities of the first, second, and third classes to include contiguous land but provides an alternative method that the municipal governing body may in its discretion choose to use for the annexation of territory or territories to municipal corporations.

(2) When any proceedings for annexation of territory or territories to any municipal corporation are commenced under this part, the provisions of this part and no other apply to such proceedings.

(3) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

History: En. Sec. 5, Ch. 168, L. 1945; R.C.M. 1947, 11-510; amd. Sec. 18, Ch. 250, L. 1979; amd. Sec. 2, Ch. 641, L. 1979; (3)En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 5, Ch. 130, L. 1981.

7-2-4610. Provision of services. In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities, when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 4, Ch. 447, L. 1981; amd. Sec. 12, Ch. 66, L. 1995.

7-2-4611 through 7-2-4620 reserved.

7-2-4621. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

7-2-4622 through 7-2-4624 reserved.

7-2-4625. Annexation district. An incorporated city or town may create an annexation district outside of the city or town. Territory may be included in an annexation district only upon an agreement between the city or town and the owner of the property included in a district. The agreement may specify the duration of the district, which may not exceed 10 years. A city or town may provide the services specified in the agreement between the city or town and the property owner to the property in the district. The city or town may impose a tax levy or a fee on the owner of the property within the annexation district based upon the difference between the municipal levy or fee and the nonmunicipal levy or fee. By the end of the period specified in the agreement, the levy or fee must be the full amount that a resident of the city or town would pay in the year that the property is annexed. Unless the agreement provides otherwise, the property in the district is annexed after the period specified in the agreement, and the district is dissolved. A delinquency in a payment by the owner of property in the annexation district is collectible in the same manner that other delinquent taxes or fees are collectible.

History: En. Sec. 1, Ch. 324, L. 2001.

Part 47
Annexation With the Provision of Services

7-2-4701. Short title. This part shall be entitled "The Planned Community Development Act of 1973".

History: En. 11-514 by Sec. 1, Ch. 364, L. 1974; R.C.M. 1947, 11-514.

7-2-4702. Findings. (1) It is declared as a matter of state policy that current annexation laws and planning methods incorporated in the Montana system are in many cases discriminatory and are in many of the Montana cities causing indiscriminate growth patterns and in many cases forcing citizens of municipalities to be annexed without provision for adequate city services extended and provided for them.

(2) Likewise, in many cities city government is annexing and adding to cities not to the benefit of those being annexed, but to the benefit of the city, merely to derive a greater tax base.

(3) Likewise, in many cities there are those lying on the perimeter of the city not within the corporate boundaries of a city that are deriving many benefits from the city without paying their just and equal share for these services.

History: En. 11-515 by Sec. 2, Ch. 364, L. 1974; R.C.M. 1947, 11-515(part).

7-2-4703. Purpose. It is the purpose of this part to develop a just and equitable system of adding to and increasing city boundaries for the state of Montana, which will develop the following firm policies:

(1) Sound urban development is essential to the continued economic development of this state, and any annexation prepared must be well planned in advance.

(2) Municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety, and welfare in areas being intensively used for residential, commercial, industrial, institutional, and governmental purposes or in areas undergoing such development, and future annexations must consider these principles.

(3) Municipal boundaries should be extended in accordance with legislative standards applicable throughout the state to include such areas and to provide the high quality of governmental services needed for the public health, safety, and welfare.

(4) Areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality as soon as possible following annexation.

History: En. 11-515 by Sec. 2, Ch. 364, L. 1974; R.C.M. 1947, 11-515(part).

7-2-4704. Definitions. The following terms when used in this part have the following meanings except when the context clearly indicates a different meaning:

(1) "Contiguous" means any area that, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the state.

(2) "Municipality" means any incorporated city or town.

(3) "Real property owner" means a person who holds an estate of life or inheritance in real property or who is the purchaser of an estate of life or inheritance in real property under a contract for deed, some memorandum of which has been filed in the office of the county clerk.

History: En. 11-516 by Sec. 3, Ch. 364, L. 1974; R.C.M. 1947, 11-516; amd. Sec. 13, Ch. 66, L. 1995.

7-2-4705. Annexation by municipalities providing services. (1) The governing body of any municipality may extend the corporate limits of the municipality under the procedure set forth in this part upon the initiation of the procedure by the governing body itself.

(2) Whenever the owners of real property situated outside the corporate boundaries of any municipality, but contiguous to the municipality, desire to have real estate annexed to the municipality, they shall file with the governing body of the municipality a petition bearing the signatures of 51% of the real property owners of the area sought to be annexed and requesting a resolution stating that the municipality intends to consider annexation. Upon passage of the resolution, the governing body shall follow the procedure in 7-2-4707 through 7-2-4713 and 7-2-4731(3).

History: En. 11-517 by Sec. 4, Ch. 364, L. 1974; R.C.M. 1947, 11-517(part); amd. Sec. 19, Ch. 250, L. 1979; amd. Sec. 14, Ch. 66, L. 1995; amd. Sec. 4, Ch. 186, L. 2011.

7-2-4706. Appeal if municipal governing body fails to act on petition. If the municipal governing body fails to act within 60 days, the petitioners may appeal to the district court under the procedure set down in 7-2-4741 through 7-2-4746.

History: En. 11-517 by Sec. 4, Ch. 364, L. 1974; R.C.M. 1947, 11-517(part).

7-2-4707. Resolution of intention to annex. The governing body of any municipality desiring to annex territory under the provisions of this part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of

annexation, the date for such public hearing to be not less than 30 days and not more than 60 days following passage of the resolution.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(1).

7-2-4708. Notice of hearing. The notice of public hearing must:

(1) be published as provided in 7-1-4127;

(2) describe clearly the boundaries of the area under consideration; and

(3) state that the report required in 7-2-4731 will be available in the office of the municipal official designated by the governing body at least 14 days prior to the date of the public hearing.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(2); amd. Sec. 9, Ch. 354, L. 2001.

7-2-4709. Hearing on question of annexation. (1) At the public hearing, a representative of the municipality as designated by the governing body shall first make an explanation of the report required in 7-2-4731.

(2) Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing and all residents of the municipality shall be given an opportunity to be heard.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(4).

7-2-4710. Protest. (1) For a period of 45 days after the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body of the municipality shall accept written comments approving or disapproving the proposed annexation from real property owners of the area proposed to be annexed.

(2) If a majority of the real property owners disapprove of the proposed annexation in writing, further proceedings under this part relating to the area or any part of the area proposed to be annexed may not be considered or acted upon by the governing body on its own initiative, without petition, for a period of 1 year from the date of disapproval.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(8); amd. Sec. 1, Ch. 586, L. 1985; amd. Sec. 15, Ch. 66, L. 1995.

Cross-References

Protest, 7-1-4132.

7-2-4711. Ordinance of annexation. The municipal governing body shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by 7-2-4731 and to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of 7-2-4731 through 7-2-4733. At any regular or special meeting held no sooner than 7 days and no later than 60 days following such public hearing, the governing body shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all or such part of the area described in the notice of public hearing which meets the requirements of 7-2-4734 and 7-2-4735 and which the governing body has concluded should be annexed.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).

7-2-4712. Contents of ordinance of annexation. (1) The ordinance shall:

(a) contain specific findings showing that the area to be annexed meets the requirements of 7-2-4734 and 7-2-4735;

(b) contain a statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by 7-2-4731; and

(c) fix the effective date of annexation.

(2) The external boundaries of the area to be annexed shall be described by metes and bounds.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).

7-2-4713. Effective date of annexation. The effective date of annexation may be fixed for any date within 12 months from the date of passage of the ordinance.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).

7-2-4714. Filing of annexation order. (1) The clerk or other officer performing the duties of the clerk of the governing body of a municipality shall promptly make and certify under the seal of the municipal corporation a copy of the record so entered upon the minutes, which document shall be filed with the clerk of the county in which the municipality to which the territory or territories are sought to be annexed is situated.

(2) From and after the date of filing the document in the office of the county clerk or the effective date of the ordinance, whichever is later, the annexation of the territory or territories shall be complete. Thenceforth such annexed territory or territories shall be a part of the municipal corporation and the city or town to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

History: En. 11-521 by Sec. 8, Ch. 364, L. 1974; R.C.M. 1947, 11-521.

7-2-4715. Simultaneous proceedings for several areas. If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this part for the annexation of such areas.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(7).

7-2-4716. Effect of annexation. (1) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality.

(2) The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the effective date of annexation. Annexed property which is part of a sanitary district or other special service district which has installed water, sewer, or other utilities or improvements paid for by the residents of said district shall not be subject to that part of the municipal taxes levied for debt service for the first 5 years after the effective date of annexation.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(6).

7-2-4717. Certain expenditures authorized. (1) Municipalities initiating annexations under the provisions of this part are authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study or annexation of unincorporated territory adjacent to the municipality.

(2) In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of streets, utility lines, and other capital facilities in the annexed area.

History: En. 11-524 by Sec. 11, Ch. 364, L. 1974; R.C.M. 1947, 11-524.

7-2-4718. Construction. (1) The method of annexation authorized in this part is independent from other methods of annexation authorized by state law.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: En. 11-525 by Sec. 12, Ch. 364, L. 1974; R.C.M. 1947, 11-525(part); amd. Sec. 1, Ch. 642, L. 1979; amd. Sec. 6, Ch. 130, L. 1981.

7-2-4719 through 7-2-4730 reserved.

7-2-4731. Plans and report on extension of services required — consultation with county. (1) A municipality exercising authority under this part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in 7-2-4707 through 7-2-4709, prepare a report setting forth its plans to provide services to the area proposed to be annexed. The report must include:

(a) a map or maps of the municipality and adjacent territory to show the following information:

(i) the present and proposed boundaries of the municipality;

(ii) the present streets, major trunk water mains, sewer interceptors and outfalls, and other utility lines and the proposed extension of the streets and utility lines as required in subsection (1)(c); and

(iii) the general land use pattern in the areas to be annexed;

(b) a statement showing that the area to be annexed meets the requirements of 7-2-4734 and 7-2-4735;

(c) a statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation.

(2) Prior to making plans for the extension of services pursuant to subsection (1), the municipality shall provide notice of its decision to exercise its authority under this part to the county. If requested by the county, the municipality shall consult with the county governing body or its representatives to coordinate the orderly transfer of services.

(3) At least 14 days before the date of the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body of the municipality shall approve the report and make the report available to the public at the office of the municipal official designated by the governing body. In addition, the municipality may prepare a summary of the full report for public distribution.

History: (1)En. 11-518 by Sec. 5, Ch. 364, L. 1974; Sec. 11-518, R.C.M. 1947; (2)En. 11-520 by Sec. 7, Ch. 364, L. 1974; Sec. 11-520, R.C.M. 1947; R.C.M. 1947, 11-518(part), 11-520(3); amd. Sec. 5, Ch. 186, L. 2011.

7-2-4732. Contents of plan for extension of services. (1) The plans for the extension of services must provide a long-range plan for extension of services and the acquisition of properties outside the corporate limits. This plan must show anticipated development a minimum of 5 years into the future, showing on a yearly basis how the municipality plans to extend services and develop and add sections to the city.

(2) The plans must:

(a) provide for extending police protection, fire protection, garbage collection, and streets and street maintenance services to the area to be annexed on substantially the same basis and in the same manner as those services are provided within the rest of the municipality prior to annexation;

(b) provide for future extension of streets and major trunk water mains, sewer outfall lines, and other utility services into the area to be annexed, so that when the streets and utility lines become necessary and are constructed, property owners in the area to be annexed will be able to secure the services, according to the policies in effect in the municipality for extending the services to individual lots or subdivisions;

(c) if extension of streets and water, sewer, or other utility lines into the area to be annexed is necessary, set forth a proposed timetable for construction of the streets and utility lines.

(3) A method must be set forth by which the municipality plans to finance extension of services into the area to be annexed. If the area is serviced currently by adequate water and sewage services, streets, curbs, and gutters and capital improvements are not needed to provide adequate services stipulated by this section and 7-2-4731, the municipality shall provide the area to be annexed with a plan of how they plan to finance other services to be included within the district—mainly, police protection, fire protection, garbage collection, street, and street maintenance services, as well as continued utility service.

(4) In this annexation plan, it must be clearly stated that the entire municipality tends to share the tax burden for these services, and if so, the area may be annexed without a bond issue under the provisions of this part.

(5) If a county, special district, or improvement district currently provides services to the area to be annexed, the plan must provide specific steps for the orderly transfer of those services, including police protection, fire protection, garbage collection, street and street maintenance services, and utility services. The plan for the transfer of services must be developed in consultation with the governing body of the county and with any other departments of the county, special districts, or improvement districts that have been providing services to the area proposed to be annexed.

History: En. 11-518 by Sec. 5, Ch. 364, L. 1974; R.C.M. 1947, 11-518(part); amd. Sec. 6, Ch. 186, L. 2011.

7-2-4733. Vote required on proposed capital improvements. Included within the plan must be methodology whereby the area to be annexed may vote upon any proposed capital improvements. Should a negative vote be cast by over 50% of the residents in the section or sections to be annexed in such election, the area may not be annexed.

History: En. 11-518 by Sec. 5, Ch. 364, L. 1974; R.C.M. 1947, 11-518(part); amd. Sec. 20, Ch. 250, L. 1979.

7-2-4734. Standards to be met before annexation can occur. A municipal governing body may extend the municipal corporate limits to include any area that meets the following standards:

(1) The area must be contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) No part of the area may be included within the boundary of another incorporated municipality.

(3) The area must be included within and the proposed annexation must conform to a growth policy adopted pursuant to Title 76, chapter 1.

(4) (a) If fire protection services in the area to be annexed have been provided by a fire district organized under Title 7, chapter 33, part 21, the plan must include provisions for coordinating the transfer of fire protection services to the municipality and compensating the district, if necessary, for equipment and district expenses.

(b) Upon transfer of fire protection services, the existing boundaries of a rural fire district may be altered or the fire district may be dissolved as provided in 7-33-2401.

History: En. 11-519 by Sec. 6, Ch. 364, L. 1974; amd. Sec. 1, Ch. 81, L. 1977; R.C.M. 1947, 11-519(1), (2); amd. Sec. 1, Ch. 582, L. 1999; amd. Sec. 7, Ch. 186, L. 2011.

7-2-4735. Guidelines for new boundaries of municipality. In fixing new municipal boundaries, a municipal governing body shall:

(1) wherever practical, use natural topographic features such as ridgelines, streams, and creeks as boundaries; and

(2) if a street is used as a boundary, include within the municipality land on both sides of the street, with such outside boundary not extending more than 200 feet beyond the right-of-way of the street.

History: En. 11-519 by Sec. 6, Ch. 364, L. 1974; amd. Sec. 1, Ch. 81, L. 1977; R.C.M. 1947, 11-519(3).

7-2-4736. Preservation of existing garbage or solid waste service in event of annexation. A municipality that annexes or incorporates additional area within the service area of a motor carrier authorized by the public service commission to provide that service may not provide exclusive garbage and solid waste disposal service or impose charges or assessments for services not provided to any person or business located in the annexed or incorporated area except upon a proper showing to the public service commission that the existing carrier is unable to or refuses to provide adequate service to the annexed or incorporated area.

History: En. 11-526 by Sec. 1, Ch. 131, L. 1977; R.C.M. 1947, 11-526; amd. Sec. 1, Ch. 434, L. 1979; amd. Sec. 1, Ch. 381, L. 1987; amd. Sec. 1, Ch. 301, L. 2011.

Cross-References

Public Service Commission — certification of garbage or solid waste services, Title 69, ch. 12, part 3.

7-2-4737 through 7-2-4740 reserved.

7-2-4741. Right to court review when area annexed. (1) Within 30 days following the passage of an annexation ordinance under authority of this part, a petition seeking review of the annexation procedures of the governing body of the municipality may be filed in the district court in which the municipality is located by:

(a) either a majority of the real property owners of the area to be annexed or the owners of more than 75% in assessed valuation of the real estate in the area who believe that they will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in this part or to meet the requirements set forth in 7-2-4734 and 7-2-4735, as applied to their property; and

(b) the county from which the land is being annexed.

(2) If two or more petitions for review are submitted to the court, the court may consolidate the petitions for review at a single hearing.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(1), (2); amd. Sec. 16, Ch. 66, L. 1995; amd. Sec. 8, Ch. 186, L. 2011.

Cross-References

Service of civil process, Title 25, ch. 3, part 2.

7-2-4742. Court review and decision when area annexed. (1) The review authorized under 7-2-4741 shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs and may take evidence intended to show that either:

(a) the statutory procedure was not followed; or

(b) the provisions of 7-2-4731 through 7-2-4735 were not met.

(2) The court may affirm the action of the governing body without change, or it may:

(a) remand the ordinance to the municipal governing body for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners;

(b) remand the ordinance to the municipal governing body for amendment of the boundaries to conform to the provisions of 7-2-4734 and 7-2-4735, but the court cannot remand the ordinance to the municipal governing body with directions to add an area to the municipality which was not included in the notice of public hearing and not provided for in plans for service; or

(c) remand the report to the municipal governing body for amendment of the plans for providing services to the end that the provisions of 7-2-4731 through 7-2-4733 are satisfied.

(3) If any municipality fails to take action in accordance with the court's instructions upon remand within 3 months from receipt of such instructions, the court may in its discretion extend the time for compliance.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(3).

7-2-4743. Presumption that municipal actions lawful. All decisions and findings of the governing body of the municipality shall be presumed to be reasonable and lawful until and unless they are modified or set aside by the governing body or upon review.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(5).

Cross-References

Presumption that official action regularly performed, 26-1-602.

7-2-4744. Appeal from district court. Any party to the review proceedings, authorized under 7-2-4741 including the municipality, may appeal to the Montana supreme court from the final judgment of the district court under rules of procedure applicable in other civil cases. The appealing party may apply to the lower court for a stay in its final determination or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the higher court. The lower court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(part).

7-2-4745. Effect of appeal on effective date of annexation. If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the lower or higher court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the lower or higher court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(part).

7-2-4746. Appeal provisions exclusive. No decisions of the governing body shall be subject to collateral attack, and decisions may be reviewed or modified only in the manner provided in 7-2-4741 through 7-2-4744.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(6).

7-2-4747 through 7-2-4750 reserved.

7-2-4751. Right to court review when area not annexed. (1) If within 60 days of receiving a valid petition the governing body fails to pass a resolution of intent to annex, the petitioners may file a petition in the district court of the district in which the municipality is located.

(2) The municipality must be designated as the defendant in the cause and is required to appear and answer as in other cases.

History: En. 11-523 by Sec. 10, Ch. 364, L. 1974; R.C.M. 1947, 11-523(part); amd. Sec. 17, Ch. 66, L. 1995.

7-2-4752. Court review and decision when area not annexed. (1) The court, without a jury, shall hear and determine the questions presented in the petition.

(2) The court shall order the proposed annexation to take place, notwithstanding the provisions of any other law of this state, if the evidence establishes that:

(a) essential municipal services and facilities are not available to the inhabitants of such territory;

(b) the municipality is physically and financially able to provide municipal services to the area sought to be annexed; and

(c) at least one-eighth of the aggregate external boundaries of the territory sought to be annexed is contiguous to the boundaries of the municipality.

(3) If, however, the evidence does not establish all three of the foregoing factors, the court shall deny the petition to annex and dismiss the proceeding.

History: En. 11-523 by Sec. 10, Ch. 364, L. 1974; R.C.M. 1947, 11-523(part).

7-2-4753 through 7-2-4760 reserved.

7-2-4761. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

Part 48
Exclusion of Land

7-2-4801. Use of terms contiguous and adjacent. For the purposes of this part, the words "contiguous" and "adjacent" shall include property on the opposite side of a street or alley from the property sought to be withdrawn.

History: En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).

7-2-4802. Exclusion of land from municipalities. The boundaries of any incorporated city or town of this state may be altered and a portion of the territory thereof excluded therefrom, and the councils of such cities and towns are hereby granted power to enact resolutions for that purpose after proceedings had as required in this part.

History: En. Sec. 1, Ch. 33, L. 1927; re-en. Sec. 4979.1, R.C.M. 1935; R.C.M. 1947, 11-501.

7-2-4803. Petition to exclude land. (1) A petition in writing, signed by a number of the qualified electors residing within the corporate limits of such city or town equal to a majority of the votes cast at the last city election held therein or by the owners of not less than three-fourths in value of the territory sought to be excluded, shall be filed with the clerk of such city or town.

(2) Such petition shall be presented to the council of such city or town at the next regular meeting after the filing thereof.

History: En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).

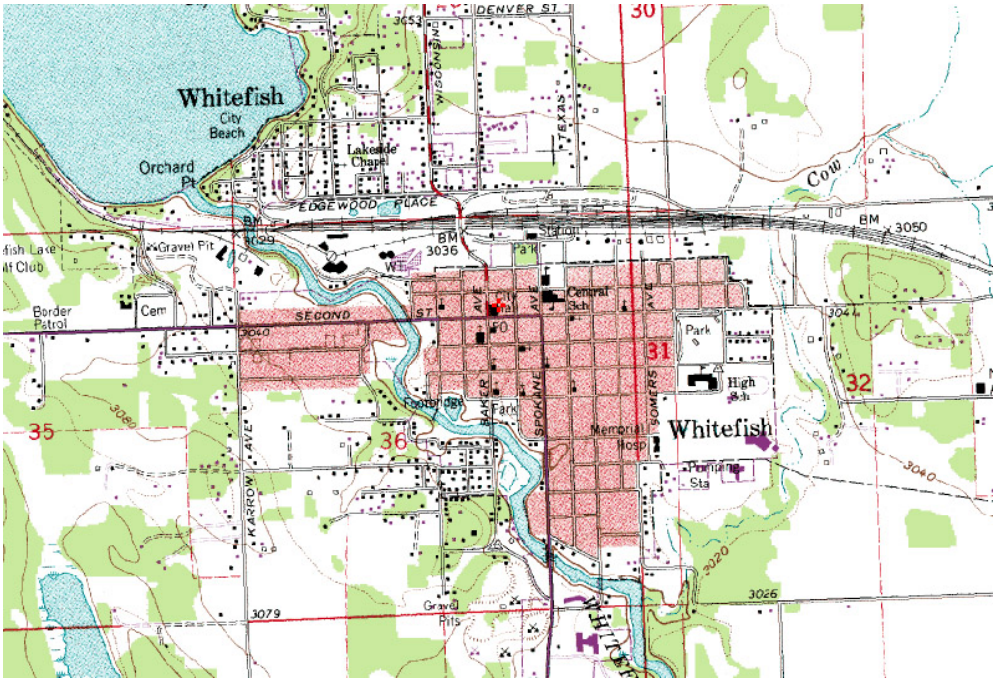
Cross-References

Petitions, 7-1-4130.

7-2-4804. Contents of petition. (1) Such petition shall set out and describe the territory to be excluded from the corporate limits, which territory must be on the border of such city or town, and the alteration of the boundaries desired by the petitioners, together with the boundaries of the city or town as it will exist after such change is made. Said petition shall also describe the streets, avenues, alleys, and public places, if any, in the territory sought to be excluded and shall distinctly specify which of said streets, avenues, alleys, or public places are to be retained for the use of the public after the territory has been excluded from the corporate limits of such city or town.

(2) Such petition shall pray that the council of such city or town shall enact a resolution altering the boundaries of such city or town and excluding therefrom the territory therein described.

History: En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).



FINAL DRAFT

CITY OF WHITEFISH
EXTENSION OF SERVICES PLAN
2009

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City Council
Turner Askew
Ryan Friel
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Note:
This plan was prepared by David Taylor, AICP, with assistance from the elected officials and department heads listed above. It also includes invaluable input from City of Whitefish employees Greg Acton, Karin Hilding, Sherri Baccaro, Mike Ferda, Doug Loy, Virgil Bench, and Wendy Compton-Ring, AICP.

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INTRODUCTION

This extension of services plan is intended to be used as a guide for the provision of city services to those areas of the city not served at this time, and for territories to be annexed into the city. The plan will serve three basic objectives: (1) to meet Montana statutory requirements for annexation of lands; (2) to provide a logical framework, in concert with the Whitefish Wastewater Utility Plan, 2006; the Whitefish Wastewater Utility Plan, 2006; the Whitefish Stormwater System Utility Plan, 2006; the 2007 Whitefish City-County Master Plan, the Southeast Whitefish Transportation Plan, 2001; and the Bike and Pedestrian Pathways Master Plan, 2007, to guide future growth of the community; and (3) to establish policies which clearly identify methods of financing and extending municipal services and the party or parties responsible.

Statutory Requirements

In order to satisfy statutes 7-2-4731, M.C.A., "Plans and Report on Extension of Services Required," and 7-2-4732, M.C.A., "Contents of Plan For Extension of Services," the City of Whitefish is required to show how it will provide services to areas proposed for annexation. Specifically, such a plan must establish at least a five-year urban growth boundary based on availability of water, sewer, storm drainage, solid waste disposal, streets, police protection and fire protection.

If it becomes necessary to extend streets, water, sewer, or other, municipal services into an area to be annexed, the plan must set forth a proposed timetable for construction and show how the municipality plans to finance extension of these services. If the area to be annexed is currently served by adequate water, sewer and streets, and no capital improvements are necessary, the municipality must provide plans of how it intends to finance other services, mainly police protection, fire protection and solid waste disposal, as well as how it will continue utility service.

The location of the urban growth boundary is determined by considering available undeveloped and underdeveloped lands in the context of existing municipal services and the logical extension of these services into undeveloped land. In addition, past community growth trends, as well as

existing community growth stimulants and deterrents, are taken into consideration in projecting growth area boundaries.

The proposed growth boundary should also conform to the adopted City-County Growth Policy and, whenever practical, should use natural topographic features such as ridge lines, streams or creeks as boundaries. If a street is used as a boundary, land on both sides of the street is included in the growth area.

Relationship to the Whitefish City-County Growth Policy

This Extension of Services Plan, by reference, hereby incorporates the Whitefish City-County Growth Policy, 2007. The Growth Policy has been used as a source of technical information presented in this document. The adoption and implementation of this plan will assist the City in achieving the goals and objectives of the Growth Policy.

URBAN GROWTH BOUNDARIES

The urban growth area is the projected service area in which municipal services can or may be extended over a period of 5 -10 years, depending upon needs and demand. Boundaries of the urban growth area are established based on prevailing and anticipated growth trends, with consideration given to growth stimulants as well as growth deterrents or impediments. Population and economic trends that affect community growth or decline are also critical factors which should be analyzed in order to accurately establish urban growth area boundaries.

Economic Conditions and Population Trends

The Flathead Valley is the economic hub for a five-county area. The valley is home for a population of roughly 85,000 persons and 29,558 households, though its retail, financial, professional and medical services are utilized by more than 130,000 people residing in the five-county trade area. The 2007 Census estimate of population for the City of Whitefish of nearly 8,100 residents is a 60% increase since 2000, making Whitefish the fastest growing city in the state of Montana. The 2005 population estimate for the entire planning jurisdiction area is around 11,500.

The area's population continues to grow at a steady pace with the potential for accelerated growth over the next twenty years. From 1990 to 2000, the population growth of Flathead County had a 26% increase, and it has continued to grow at a rate of 2% a year.

The following documents can be consulted for information relative to the area's socioeconomic trends and conditions: The 2007 Flathead County Growth Policy, the 2000 Federal Census, State of Montana Census and Economic Information Center, and the Whitefish Area Chamber of Commerce Annual Profile.

Physical Growth Trends

Due to population increases, a greater demand for utility services and other factors, the City of Whitefish physically expanded numerous times between

1997 and the end of 2008, adding 5323 acres of land to its municipal boundaries.

While ongoing small scale annexations of individual properties connecting to City utilities have a minimal affect on the actual City boundaries, the City has had many significant large subdivisions and Planned Unit Developments annex in, and they initiated several other annexations to bring in neighborhoods that were on City services.

The annexation of the Iron Horse subdivision in 1997 extended the City limits north producing more than a 12% increase in the total area of Whitefish. In 1998, 177 acres were annexed by the City in South Central Whitefish (Karrow Avenue/Highway 93 West), 36 acres on Lake Park and Patton Subdivision, 161 acres at Second Street/Armory Road, 100 acres at Colorado and Texas Avenues, and 14 acres on Nelson Lane, for a total of 510 new acres. 1338 acres were voluntarily annexed into the City between 1998 and 2005. In 2005, 95 additional acres of private land were annexed, as well as 3,458 acres of Whitefish Lake that the City annexed up to the low water mark. 2006 saw 56 acres of land added to the city limits through voluntary annexation. In 2007, 32 acres were added, and 376 acres were added in 2008.

There exist certain "influencing factors" which can either stimulate or impede the physical growth of a city. In conjunction with the ability to provide services, these influencing factors must also be given consideration in the establishment of future service and growth area boundaries.

Impediments to Growth

The identified impediments to growth in and around Whitefish are the lack of and high cost of extending infrastructure, important lands of agricultural significance, volume of land under public or corporate ownership, soils unsuitable for development, seasonally high groundwater, and steep slopes.

Many areas on the outskirts of Whitefish have no nearby utility services and other infrastructure available. Additionally, the cost of extending roads and utility services increases every year, making it more difficult for new subdivision developments to pencil out.

Certain lands to the east and southeast of Whitefish have been identified as

agriculturally significant and recognized as a finite resource. These areas are the most likely to be developed as residential subdivisions. The 1996 Whitefish City-County Master Plan contained a number of goals and objectives aimed at protecting prime agricultural lands within the planning jurisdiction. The plan stated a specific goal that would "conserve agricultural lands by allowing limited conversion only if those areas are not productive or are needed for proper urban expansion." The 2007 Whitefish City County Growth Policy removed map designations for important agricultural lands, and has more indirect objectives with regard to agricultural lands. In Recommended Action 11, under Economic Development, it states: "Establish low-density and rural zoning districts in local farming areas, and protect existing operations to the extent possible through agriculture indemnity statements on plats and prior notice conditions of approval". Land Use Goal 3F states: "Preserve important rural lands and agricultural land uses that surround the community." Additionally, the 2007 Growth Policy has established some limitations on growth in areas currently designated as agricultural lands under Policy 3 I: "Land designated Rural or Rural Residential on the Future Land Use Map shall not be redesignated by the City of Whitefish through a Growth Policy amendment, neighborhood plan, or subarea plan, except as set forth in the Implementation/Intergovernmental Element, until at least 50% of the previously entitled dwelling units, as depicted on the Approved Entitlements Map dated September 20, 2007, is actually constructed." That policy is set to be reviewed after two years.

Large tracts of land under public or corporate ownership are located north of Whitefish and along the west shore of Whitefish Lake. The vast majority of land north of Whitefish Lake and the Whitefish Mountain Ski Resort is either federal or state owned timberland which is managed for multiple uses, including logging, hunting, fishing and general recreation. Substantial acreage north of town, but south and east of the Whitefish Mountain Ski Resort, is owned by Stoltz Lumber Company, which has traditionally managed their property for timber harvesting but over the last several years has started to be involved in land development. Also, the west shore of Whitefish Lake, north of the Lion Mountain subdivision, is owned predominantly by the Burlington Northern Santa Fe Railroad, with railroad tracks at the water's edge, who have not demonstrated a trend toward development of their lands.

The existence of certain types of soils renders some areas of the valley unsuitable for urban development because of low permeability. These soils, composed of fine silts and clays, are predominant in the Whitefish area. Although some soils may be unfavorable for development, most disadvantages can be overcome through engineering solutions and construction techniques. It should be noted that while the disadvantages these soils can be overcome, such circumstances will likely result in added expense to the public, in providing services such as streets, sewer and water service, and storm drainage, and to the property owner, in terms of construction and engineering costs.

Seasonally high ground water is found throughout the Whitefish area, typically along the valley floor. Properties at lower elevations to the northeast, east, south and southeast of town are severely limited in their ability to accommodate on-site sewage disposal systems. Expensive construction techniques are required throughout the Whitefish area to build stable, long lasting roads.

Slopes generally exceeding twenty percent (20%) are considered an impediment to urban development. Development on such slopes, including buildings, roads, driveways and other improvements, can have significant impacts on existing drainage patterns, riparian vegetation, wildlife, adjacent (particularly downhill) properties, and the existing natural scenic qualities of the community. While the City of Whitefish is generally situated on the valley floor, instances of steep slopes are typically in the areas north and west of the City.

Growth Stimulants

Growth stimulants can be defined as any pressure exerted upon a city which may cause or encourage that city to grow in a particular direction. Growth stimulants may be physical factors such as a scenic environment or a proximity to services and/or utilities. An attractive quality of life or a strong economy can also stimulate the growth of a city. The physical beauty of the Flathead Valley and its perceived quality of life has spurred substantial growth in recent years. The greater Whitefish area is expected to continue to attract its share of the area's overall population growth, mainly due to its appealing life style and proximity to Glacier Park, Whitefish Lake and the Whitefish Mountain Ski Resort.

Prevailing Growth Patterns

The prevailing growth patterns in the Whitefish area, and the probable growth stimulants associated therewith, are as follows:

North

- East Lakeshore Drive

This area has been fairly extensively developed with a mixture of suburban density subdivisions and larger lake front parcels. Steep slopes and the presence of public lands generally limit development potential to a narrow strip of land between East Lakeshore Drive and the lake. While several individual properties have yet to be developed, the potential for future large scale subdivisions appears to be limited.

The Rest Haven, Deer Run and Lakewood Estates subdivisions, approximately a mile and a half north of the City limits, are presently connected to the City sewer by a pump station and pressurized force main. Un-served properties along both sides of the road between the City limits and the Lakewood Estates subdivision can potentially be served by the City sewer, if the cost of system upgrades, additional pump stations, force mains and collection facilities prove to be feasible for a given project. Although sewer service to properties north of the Rest Haven subdivision is not anticipated in the foreseeable future, a dry force main was installed by the City to accommodate that area when service is needed.

- Big Mountain Road

The area accessed by the Big Mountain Road includes a few urban density subdivisions in the vicinities of the Whitefish Mountain Ski Resort and Ptarmigan Village. The popular destination ski resort is the stimulus for this growth, which can be expected to continue. Although the subdivisions in the Big Mountain village area are served by City sewer, the distance from other City services, such as street maintenance and police protection, precludes the possibility of annexation in the near term. Sewage treatment for the Ptarmigan Village area is provided through an aerated lagoon system with spray irrigation disposal of treated liquid effluent, currently in need of upgrades or a connection to city services.

The 228 acre Lookout Ridge subdivision between Ptarmigan Village and Big Mountain Village was approved and annexed into the City in 2008, adding approximately 139 home sites. It will have a private water system maintained by a homeowner's association, but the sewer will connect with the City sewer system in Iron Horse Subdivision.

Although several homes have been built along the lower reaches of the Big Mountain Road, steep topography is expected to deter urban or suburban scale subdivisions and subsequent annexation.

- Murdock Lane - Iron Horse Drive

Another road extending to the north edge of the City limits is Murdock Lane which becomes Iron Horse Drive within the Iron Horse Subdivision. This road provides primary ingress and egress to the Iron Horse Subdivision, which includes 265 home sites (86 of which have been developed thus far) and another 50 or so cabin sites, as well as golf course, club house, restaurant, and other facilities. The 234 acre site was annexed into the City in 1997 and another 180 acres, more or less, was annexed in 1978 along with the Suncrest subdivision. All new streets, water, sewer and storm drainage systems were installed by the developer. The water system, the storm drainage system and all streets other than the lower reaches of the main access road are privately owned and maintained by the developer or the homeowner's association, with streets open to the public. The sewage collection system is owned and maintained by the City.

- Reservoir Road

Reservoir Road provides the sole ingress and egress for several subdivisions and other scattered development along this mile long dead end road. Most of the vacant land in this neighborhood has been previously subdivided into parcels 2 acres and larger in size which are expected to utilize the Northwoods community water system or private water wells, as well as on-site sewage disposal systems. Although growth can be expected to continue at a steady pace, the pattern of relatively large lots is expected to deter the extension of City utilities beyond the lower reaches of Reservoir Road.

As the name implies, the City water reservoir, as well as the site of a water treatment plant, lies one-half mile up from the City limits on Reservoir Road. A few lots between the City limits and the reservoir are

connected to the City water system. This pattern of usage is expected to expand gradually and lead to the eventual annexation of lands along the lower stretches of this road.

Northeast and East

- Texas Avenue and Denver Street

Texas Avenue and Denver Street are two dead end roads extending to and beyond the City limits at the northeast quadrant of the City. Utilities will soon be extended to the end of Texas Avenue for the Hidden Hills subdivision. Urban density development exists out to the city limits but is sparse beyond, due to the lack of existing municipal sewer services and limited potential for on-site sewage disposal due to seasonally high groundwater.

- East Edgewood Drive

East Edgewood Drive provides a vital link to the City for a rural agricultural area, several small private developments and other scattered suburban agricultural development located well beyond the urban growth boundaries of the City. The master plan shows suburban residential development adjacent to East Texas Avenue, agricultural lands further east and industrial areas along the BNSF tracks. The only development in the immediate vicinity of the City is served by wells and on-site sewage disposal systems. The 26 acre Edgewood Industrial business park received Final Plat for the corner of East Edgewood and East Second Street, which is dependant on the extension of municipal sewer across the railroad tracks at Cow Creek. Once extended, this area could experience additional growth pressure as more agricultural zoning is changed.

- East Second Street

East Second Street also provides a link to the same area as does East Edgewood. This road crosses the BNSF tracks before it joins with East Edgewood at the eastern edge of the urban growth boundary. Urban density development, with access to both City water and sewer, exists west of the railroad crossing and agricultural development prevails beyond. No city services are currently available beyond the railroad tracks. It is not anticipated that water or sewer will be extended to the

agricultural areas in the foreseeable future until the Cow Creek interceptor is extended beyond the railroad property.

- Armory Road

Armory Road connects East Second Street with Voerman Road. The section located within the urban growth boundary is served by both City water and sewer and is mostly developed to urban densities. Some potential for growth exist south of the road and also east of the City softball complex. A pressure sewer main was extended approximately one-half mile east of the Hueth Subdivision.

Southeast

- Voerman Road

Voerman Road is a collector for the mostly agricultural area southeast of the City. Rural residential and suburban agricultural development has steadily occurred along Voerman Road displacing some of the smaller agricultural tracts. The soils in the area limit on-site sewage disposal to larger lots. Since the master plan lists virtually all of this area as important productive farmlands it is doubtful that any major development will happen within a five to ten year planning window.

- Monegan Road

Monegan Road serves a rural agricultural area similar in nature to Voerman Road. The sewage treatment plant is in the vicinity, accessed off of Monegan Road, and potential odors from the plant should limit future land use. Public Works has recommended an agricultural buffer of 4000 feet around the plant. Other than the sewer plant site, the area is mostly agricultural. The area also suffers from high ground water issues, silty clay soils, and flat topography that limits effective drainage. There has been increasing pressure to redevelop the area as suburban residential, with an 82 lot residential subdivision preliminarily approved at the Southwest corner of Monegan and Voerman roads.

- J.P. Road

J.P. Road is a short east west link between the south end of the City along U.S. Highway 93 and Monegan Road. The area has seen some transitioning from agricultural to suburban densities on the West side of the river due to recent sewer extensions along Highway 93 South.

South

- Highway 93

The annexation of the highway corridor north of Highway 40 and the extension of services in that area impacted development along Highway 93 South. Commercial zoning is currently in place along both sides of the highway to its intersection with Highway 40. Although the City Council has made a policy statements in the past that services should not be extended south beyond that intersection, there is the potential to extend utility services at least as far as the Blanchard Lake Road intersection.

Southwest

- Karrow Avenue

Karrow Avenue is currently developed as rural residential properties. The density is limited due to a lack of municipal utility service, although water was recently extended to Karrow Avenue through the new Whitefish Assembly of God property from Highway 93. While higher density development will eventually occur due to the availability of services, current zoning and master plans call for the area to remain low density agricultural.

West and Northwest

- Highway 93 North

The areas to the west and northwest are primarily served by Highway 93 North. The current zoning is primarily residential with lots over 1 acre. Water and sewer service is extended to State Park Road and is generally limited beyond that due to topography. As services are incrementally extended past State Park Road, further urban density residential development will occur, such as the recent Highway 93 LLC development. Development on the west side of Whitefish Lake is limited by the location of BNSF tracks.

Infill

The undeveloped land within the City limits is limited, but there are several areas with infill development and redevelopment potential. The neighborhoods between Wisconsin and Dakota Avenues, immediately

south of Glenwood Road, and between Wisconsin and Colorado Avenues, immediately north of East Edgewood Drive are predominantly vacant lands with development potential.

Projected Growth Area

It is recognized that there are no overwhelming barriers that would impede the physical growth of the city during the next five years, although productive farmland to the east and southeast may be a limiting factor in the long term. Large subdivisions with private roads to the north and west may pose some deterrent to growth by limiting access between new development and the City. The growth patterns discussed above, particularly the availability of city utilities, will presumably steer the future urban growth of the City of Whitefish.

The boundaries of the future service area of Whitefish (the extent to which the city is willing and able to extend services) have been conceived on the basis of the city's historical growth, recent growth trends, growth stimulants and impediments, population projections, current zoning, the anticipation's of the Whitefish City-County Master Plan and the general physiography of the vicinity.

Exhibit 'B' illustrates the projected Urban Growth Boundary.

EXTENSION OF CITY SERVICES

A number of studies have been done to determine the effects of various types of development on a municipality's cost outlays. These studies have consistently shown the net public costs resulting from low-density sprawl development are higher than those resulting from higher density developments of the same number of homes. In simple terms, it costs more to extend sewer and water service, to provide police and fire protection, to fund road repair, to send out school buses, and to provide refuse collection service when homes are spread out than when they are proximate to existing services and facilities.

In order to achieve compact, orderly and efficient urban growth, plans for the extension of municipal services into growth areas must be developed and implemented. In addition to identifying the services available and a plan to physically provide those services within a defined service area, it is also essential to both identify the party responsible for service extension and a method of financing the extension.

The services which are considered for extension into the future growth areas of the city are streets, sanitary sewer, storm sewer, water, police protection, fire protection and solid waste collection.

Streets

The transportation network within and around a community plays a significant role in its physical development and growth. This network of streets, roads and highways should be coordinated to form a system that not only provides efficient internal circulation, but one that also facilitates through traffic. Since streets serve two basic functions, moving traffic and providing access to abutting lands, each street should be classified and designed for the specific function or combination of functions it is designed to serve. This functional classification system forms the basis for planning,

designing, constructing, maintaining and operating the street system. For these reasons urban streets are generally designed and developed in a hierarchy comprised of the following types:

Major Arterials

A major road or highway with moderate to high speeds and high traffic volumes. Major arterials provide access to the regional transportation network, and move traffic across the county and between cities and communities. Access to abutting lands is limited. Traffic volumes would typically exceed 15,000 vehicles per day.

Minor Arterials

A major road with moderate speeds designed to collect or move traffic from one major part of the community to another or to move traffic to and from the major arterial system. Traffic volumes would generally range from 5,000 to 15,000 vehicles per day.

Collectors

A secondary or intermediate street with moderate speeds and low to moderate volumes. Such streets would collect local traffic from neighborhoods and carry it to adjacent neighborhoods or transfer the traffic to the arterial system. Such streets would typically serve a neighborhood or area with 150 or more dwellings and carry 1,000 to 5,000 vehicles per day.

Local

These are minor streets intended to serve individual sites, buildings or lots, and provide access to residential neighborhoods. Local streets either feed into collectors or provide destination access off of collectors.

Arterial and collector streets within the Whitefish limits are listed according to functional classification in the 1998 Whitefish Transportation and Storm Drainage Plan. This document and the supplemental Street Reconstruction Priority Ratings, prepared by the Public Works staff, were developed as a tool for scheduling reconstruction, overlays and preventative maintenance for public streets, excluding State and Federal highways, in the projected urban boundary. The City of Whitefish street system currently includes 69.5 miles of streets and alleys.

The city is in the process of reviewing drafts of the proposed 2009 Whitefish Transportation Plan update. That plan will identify priority projects for the Whitefish and surrounding street systems, which, if implemented, result in a benefit to existing traffic system performance. The proposed improvements will also serve future development needs as urban development expands into the adjacent rural areas surrounding Whitefish. The plan, in addition to identifying deficiencies and recommending improvements, will also identify potential funding sources.

The top priority projects identified in the plan will involve, for the most part, either arterials or collectors. All new development, pursuant to annexation which further impacts the existing or proposed street network will be subject to conditions of approval intended to mitigate said impacts. It will be the responsibility of the developer of a new subdivision to provide streets built to city standards, including curbs, gutters, sidewalks, boulevards, street signs, street lights and street trees. Standards for such improvements are contained in the City of Whitefish's Subdivision Regulations and the City's Standards for Design and Construction. The POLICY section of this plan supports these requirements.

The City of Whitefish also levies a Special Street Maintenance Assessment on properties within the city. This assessment provides for snow removal and deicing, asphalt patching and overlays, street sweeping and sprinkling. Currently, the assessment is $2.19 per foot of property frontage on the public right of way for residential properties and $2.80 per foot for commercial properties.

Street Maintenance

The City of Whitefish maintains, sweeps and plows most dedicated streets within the incorporated area, while the Montana Department of Transportation maintains and plows U.S. Highways 93 and Wisconsin Avenue through the city.

The City’s equipment is generally adequate for the present snow plowing needs, although in the event of an unusually heavy snowfall the city will contract with local operators for assistance. The need for additional equipment and personnel should be determined and coordinated as the city grows.

A portion of the above-described Special Street Maintenance Assessment helps fund the city's snow plowing program.

Sanitary Sewer

A sanitary sewer system is a network of sewers used to collect the liquid wastes of a city for subsequent treatment. The location and capacity of main sewer lines and treatment plants are a factor in determining both the density and location of development within a community. Generally, the design of main sewer lines and plant capacity is reflective of anticipated land uses and population projections of a predetermined "service" area.

Sewage is generally collected by a gravity flow system, wherein sewer lines are laid out in a manner as to flow continually downhill. Where grades are insufficient to provide gravity flow, pressurized sewer collection systems or pumping of the sewage becomes necessary. Adding pump stations to the system correspondingly adds expense and maintenance and replacement needs and is generally discouraged. Pressurized sewer collection systems with privately maintained grinder pumps are becoming more common where gravity sewer systems are not feasible. The City Public Works Department currently maintains more than 65.5 miles of gravity and pressure sewer mains, 15 major sewage lift stations and 68 individual, single and multi-family sewage pumping systems or septic tank effluent pumps.

The City of Whitefish operates an aerated lagoon wastewater treatment plant with secondary treatment by chemical phosphorus removal. The plant is located on the southeast edge of the city on Monegan Road. The current treatment plant is designed to accommodate a flow of approximately 1.8 million gallons per day (mgd). A plant of this capacity is able to serve a population of approximately 10,000. The plant is currently treating an average of .82 mgd of effluent, with .25 mgd of capacity allowed for infiltration and inflow of storm water.

The 2006 Wastewater Utility Plan recommended several priority capital improvement projects for the wastewater treatment and collection systems. Most of the projects recommended for the first five-year time frame have been completed or will be completed by the spring of 2009. These improvements will increase the treatment plant capacity to approximately 2.3 mgd and serve the projected population of Whitefish until 2025 and

beyond. Regulatory compliance will drive future improvements at the wastewater treatment plant.

High groundwater infiltration and storm runoff inflow have a significant negative impact on the city's collection and treatment systems. Infiltration and inflow are extraneous clear waters which can enter the sewer collection system and thus reduce the carrying capacity of the collection, pumping and treatment systems. As the amount of infiltration and inflow is reduced, the ability of the plant to serve a larger population is increased. Although much inflow due to storm runoff has been eliminated through the construction of underground storm drainage facilities, elimination of cross-connected stormwater catch basins and disconnection of roof drains from sanitary sewer lines, aging sewer lines and illegally connected basement sump pumps are still a serious problem. Storm drainage is being improved as the city's street reconstruction program proceeds.

The design of new sewage collection systems must meet the current requirements of the Montana Department of Health and Environmental Sciences, the Montana Public Works Standard Specifications, the city's Standards for Design and Construction and the policies for extending services described in this plan.

Outside the city limits, Whitefish is ringed by areas of suburban residential development with on-site sewage disposal systems. During the next five years, and beyond, the influences of continued property development, failing on-site sewage disposal systems, and the State's Water Quality and Non-degradation Rules may combine to bring many of these areas onto the city's sewer system.

The Big Mountain Sewer District [BMSD] owns and maintains their own sewage collection system, but sewage treatment is provided by the City wastewater treatment plant through an interlocal agreement.

Sewer collection system improvements within the Big Mountain Sewer District are designed and constructed in accordance with the Montana Department of Health and Environmental Sciences, the Montana Public Works Standard Specifications, the city's Standards for Design and Construction.

Throughout the Whitefish sewer service area, detailed engineering studies are required to determine the appropriate size, location and type of collection system based on the long- range needs of the development and area(s) surrounding the development site.

Storm Water Management

Storm water runoff is the water flowing over the surface of the ground as a result of a rainfall or snow melt. The primary goal in the management of storm water runoff is to minimize hazards to life and property. This is accomplished by using storm sewers, ditches, swales, ponds and treatment facilities to manage, collect and carry surface water to a natural water course or body of water in such a way as to prevent flooding and the resultant damage.

The 2006 Stormwater System Utility Plan identifies drainage basins in the Whitefish area. The stormwater collection facilities within the planning area are generally limited to the central portion of the City. In general, the collection system consists of plastic pipe ranging in size from 8-inch to 42-inch. Concrete manholes and catch basins collect runoff and convey it to outfalls in the Whitefish River, Cow Creek or Whitefish Lake. There are currently fifteen basins that drain to the river through fifteen separate outfalls. Four basins drain to Cow Creek through six different outfalls, and twenty-five basins drain to Whitefish Lake through three separate outfalls. Five of the largest basins flow to detention ponds that provide primary treatment before discharge to the surface waters. Four smaller basins have infiltrators or ponds with no outlet where runoff is collected and percolates to groundwater. Two other basins have no outlet to surface waters but have no developed ponds or infiltrators. The remainder of the basins have no formal conveyance system other than roadside ditches and culverts channeling flow to the river or lake.

As new city streets are constructed, and as existing streets are improved, storm drainage infrastructure will be installed or improved. Those persons developing property have the responsibility to convey storm water from their property to an appropriate point of disposal. The quantity and rate of runoff from a developed piece of property should not exceed that which would occur had the property remained undeveloped. In instances where developing property cannot be drained to an appropriate point of disposal, storm water must be detained and handled on site.

Clean Water Act regulations currently require storm water treatment for urban areas with populations in excess of 10,000. It is expected that expanded storm water regulations will apply to smaller communities in the near future.

Water

The mission of the Whitefish Water Department is to provide safe, potable drinking water for the needs of their domestic, institutional, industrial and commercial consumers and to provide adequate pressure and flow to meet irrigation demands and fire fighting needs.

Water for the Whitefish community is supplied by two surface water sources, Haskill Creek and Whitefish Lake, which are treated at the 4.0 million gallon per day (mgd) direct filtration water treatment plant prior to distribution to the customers. The Haskill Creek supply is a gravity system that is impounded in an 8.8 million gallon open reservoir prior to treatment. The Whitefish Lake supply is pumped directly to the treatment plant by a pumping plant located on the shores of Whitefish Lake. The water treatment plant meets all the current and projected requirements of the Federal Safe Drinking Water Act (SDWA).

Water storage tanks are used to equalize pressure throughout the 61.5 mile-long distribution system and to provide emergency supply in case of an interruption of power or a failure of pumping equipment. They also provide the flow necessary to meet peak demands. The amount and location of stored water represents a key component of the water system's ability to deliver water for the purpose of fire suppression. The city water distribution system currently has four pressure zones, three of which are served by separate booster pumping stations. The primary pressure zones utilizes two storage tanks, on Reservoir Road and on Grouse Mountain, with capacities of 1 million gallons and .75 million gallons. respectively.

Under the requirements of the SDWA, the water supply is tested for a wide variety of contaminants on a regular basis. Extensive testing for coliform bacteria, giardia cysts, lead and copper, and a wide range of metals, solvents and pesticides has shown that Whitefish's water is of the highest quality.

This water service plan is developed to guide the extension of water mains into areas of growth as and when development occurs. The plan is based on the objective of providing adequate water flow to meet household, commercial, industrial and irrigation demands, while meeting fire protection needs as well. The distribution system must be able to deliver water in sufficient quantity to all residents at all times. Ideally, a water distribution is of a grid layout with supply and storage facilities strategically located to equalize pressure during periods of heavy usage. Dead-end lines should be avoided to eliminate stagnant water and to reduce the number of customers who would be out of water during periods of line repair.

The provision of water for fire fighting purposes is as important as, and as consumptive as, that required for domestic and commercial uses, and must be considered when evaluating transmission, storage and distribution facilities.

Solid Waste Management

Solid waste collection and disposal services are provided within the City by North Valley Refuse, a private hauler, under contract with the City. Refuse collected within the city limits is transported by North Valley Refuse to the Flathead County landfill located approximately five miles south of Whitefish.

The city contract provides for weekly residential pick-up of refuse while businesses receive, if needed, multiple pick-ups each week. The demand for solid waste collection is typically proportionate to the size of the community. Therefore, as the City of Whitefish accepts annexations, its solid waste service area will increase as well.

The extension of this service to newly-annexed areas is subject to the provisions and limitations of 7-2-4736, M.C.A., as follows:

1. A municipality that annexes or incorporates additional area receiving garbage and solid waste disposal service by a motor carrier authorized by the public service commission to conduct such service may not provide competitive or similar garbage and solid waste disposal service to any person or business located in the area for 5 years following annexation, except:

a. Upon a proper showing to the public service commission that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area; or

a. After the expiration of 5 years, if a majority of the residents of the annexed or incorporated area sign a petition requesting the municipality to provide the service.

2. If a proper showing is made that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area or, after the expiration of 5 years, if a majority of residents sign a petition requesting service from the municipality, the municipality may provide garbage and solid waste disposal service to the entire annexed or incorporated area.

3. For the purposes of determining whether an existing motor carrier provides adequate service, those services provided by the carrier prior to annexation are considered adequate services.

The refuse contract also provides for recycling efforts in the form of local drop off sites for aluminum cans, cardboard, newspaper, magazines, office paper and plastic products. Four sites are located throughout the community for residential recycling and cardboard recycling only is provided at thirteen locations in the downtown business district for commercial customers. The sites are maintained and serviced by North Valley Refuse.

Fire Protection

Fire protection is dependent upon the size and type of fire protection work force, availability of adequate water, type of equipment, and the response time involved.

The current fire department, which is a combination of paid and volunteer personnel, serves a growing population at a conservative figure of approximately 12,000 people in the City of Whitefish and the Whitefish Fire Service Area. The residents within the city limits are levied a city fire tax while the residents of the rural fire service area have a set fee for residential and businesses which is paid through their county taxes and levied back to the Fire Service Area. The Whitefish Fire Department then contracts with the Whitefish Fire Service Area.

The Whitefish Fire Department serves the City of Whitefish and the Fire Service Area of approximately 85 square miles outside the city limits. In

order to furnish fire protection for property within the city and existing fire service area, Montana law grants the department authority to provide adequate fire fighting apparatus, equipment, housing and facilities. In addition, the department has authority to request special fire district levies when necessary. Mutual aid between the Whitefish Fire Department and departments outside the Whitefish Fire Service Area provides that manpower and equipment can be requested by any of the departments if additional assistance is needed.

Currently, the Whitefish Fire Department has been evaluated by the Insurance Services Office (ISO) and has an insurance class four (4) rating in the city and a rating of dwelling eight (8) in the Fire Service Area. The department has eight paid personnel. Two administrative (Fire Chief, and Assistant Fire Chief/Fire Marshal), as well as eight line firefighters. The volunteer staffing is currently at 10 firefighters. Fire apparatus and major equipment include the following:

Station #1:
1979 Pierce/Dodge - 350 g.p.m. quick-attack pumper
1994 Central/Spartan - 1500 g.p.m. pumper/tender
1997 Central/Spartan - 1500 g.p.m. pumper/tender
1997 Central/Spartan - 1250 g.p.m. rescue/pumper
2000 Horton/Ford – Type III ambulance
2003 Horton/Ford – Type III ambulance
1991 Achilies/Yamaha - rescue boat
1995 Ford F-150 4X4 Assistant Fire Chief pickup
2002 Ford Explorer 4X4 Fire Chief vehicle

Station #2:
Located south of the city on the corner of Whitefish Stage and Hodgson Road.

1968 Howe/Duplex - 1250 g.p.m. pumper
1982 Grunmam/Ford - 1250 g.p.m. pumper/tender
1984 YankeeCoach/Ford - type III ambulance
1993 RoadRescue/Ford - type III ambulance

City Beach:
2006 Neoteric Hovercraft 65HP Rescue Craft

Currently, hydrant locations in the city could be considered adequate in most areas. The proposed annexations will require additional hydrants in

all these areas and an improved water delivery system such as mains and adequate fire flows.

Additional paid firefighting personnel are also required for future growth, not totally contingent upon annexations but by the increased growth, development, and increased emergency calls in both the city and rural areas. Currently the Whitefish Fire Department answers over 2100 calls each year.

Funding for the Whitefish Fire Department is from three sources:

1. The City general fund, through transfers, covers much of the cost of operation, wages, and maintenance of fire services;

2. The ambulance fund, supported by ambulance transport fees, covers operations, maintenance, wages, and vehicle replacement costs;

3. Contracted fees with the Whitefish Fire Service Area are used for maintenance, wages, operation, and fire apparatus for the Fire Department.

Thanks to a recent levy the Fire Department is hoping to put on 6 to 7 additional Firefighters in the very near future and begin 24/7 full time coverage for its citizens. Also, the City of Whitefish was awarded a $650,280 federal SAFER (Staffing for Adequate Fire and Emergency Response) grant from the Federal Emergency Management Agency (FEMA). The City of Whitefish will receive these funds annually for four years, on a declining amount basis. These funds will be used to implement the 24/7 program for the Fire Department to go to a round the clock operation with three shifts.

Law Enforcement

Police protection is one of the essential services that should be adequately and efficiently available to every citizen. The Whitefish Police Department, headquartered in City Hall, currently has a staff of sixteen full time police officers, four full time dispatchers, one full time animal warden, parking enforcement officer, four part time police officers, three part time dispatchers, and a part time parking enforcement officer. The primary service area is within the city limits; however, the department is party to an

Interlocal Agreement with the Flathead County Sheriff's Department for mutual assistance. Upon request from the County, and depending upon availability, the Whitefish Police Department will respond to calls for assistance outside of the City. In return, the Flathead County Sheriff's Department responds to calls for back-up and assistance within the City upon request.

At any given time the Whitefish Police Department is influenced by a much larger population than the eighty five hundred residents of the city. As a tourist destination, the City of Whitefish is estimated to have an average daytime population over fifteen thousand during the peak summer months. These factors obviously impact the efficiency and effectiveness of the police force. Other factors that impact the department are the number, frequency and location of crimes and traffic accidents. As the city grows both physically and in terms of population, it will be necessary to staff and equip the police department accordingly.

Parks and Recreation

The City of Whitefish Parks and Recreation Department has developed plans and goals for the next several years. The following is a brief description of the park facilities and program services that are either in existence or planned for future development.

Armory Park

Armory Park is 25 acres in size and is located at 305 Armory Road. The facility includes 4 softball fields, 1 soccer field (within the softball field area), a 5 acre dog park, a bicycle dirt jump park, a 15,000 square foot skate park, and a 4,000 square foot multi-use building. This facility could be defined as the largest multi-use facility in our inventory of parks. Immediate plans call for the further development of the dog park area, placement of an irrigation system in the softball fields along with permanent restrooms and concession facility. In addition, parking lots will be developed adjacent to the softball fields and the dog park. Additional building improvements have been identified for the multi-use building, including floor covering, new roofing and a new heating system. An approved Armory Park Master Plan exists identifying all of the proposed park improvements.

Baker Park

Baker Park is part of the 8 acres that adjoin the Whitefish River which

includes Riverside Park. Baker Park is bordered by Baker St. on the west side, Central Ave. on the east side and 5th St. on the north side. Baker Park contains two play equipment areas each designed for age appropriate use, a prefabricated restroom building, one gazebo, dock access to the Whitefish River, and a large grass area. The Whitefish River Trail runs along the southern portion of the park. Upcoming plans will include the installation of donated park benches at each of the play areas and the installation of landscaping surrounding the restroom facility.

City Beach

City Beach consists of a 3 acre park located along the shore of Whitefish Lake. The facility includes a boat launch, a roped off designated swim area with a floating dock, three picnic gazebos, restroom facilities, snack bar, staff office, a rental equipment facility, and an adjoining parking lot. This facility also includes an over flow parking lot located on the corner of Edgewood Ave. and Washington Ave. City Beach also contains the newly acquired hover craft utilized by the Whitefish Fire Department for lake emergencies. The City Beach facility probably receives the most intense use of the park facilities hosting such special events as the 4th of July celebration and multiple athletic events throughout the summer season. Crowds in excess of 3,000 people will attend the 4th of July event. Improvements for the future include expanding the floating dock and replacing the retaining wall.

Depot Park

Depot Park is a 1 acre park located in downtown Whitefish directly across from the Historic Whitefish Train Depot. The facility contains a statue recognizing the railroad history of the community and small pond area. It currently contains a building that was the site of Parkside Credit Union. Immediate plans for this facility will be to develop a park master plan by the end of 2009. This facility is host to a number of special events during the summer season, including but not limited to: weekly farmers market, art shows, bicycle racing events, Huckleberry Days, to name a few. Depot Park is a key element to the downtown master plan for Whitefish and serves as a key focal point for the downtown area.

Kay Beller Park

Kay Beller Park is a 1 acre park located along the shore of the Whitefish River and is in the downtown area. The facility is adjacent to the Whitefish Senior Citizens Center and the Mountain View Manor assisted living facility.

The Whitefish River Trail runs through Kay Beller Park. The facility also has a boat dock that provides access to the Whitefish River.

Grouse Mountain Park

This four acre park is located on Highway 93 and Fairway Drive and contains two soccer fields and three tennis courts. The facility also hosts a rest area with seasonally operated restrooms. The parking area (approximately 20 cars) is undersized for the scope of activities that occur at this site. Future plans for this facility include upgrading and expanding the parking lot and the addition of support amenities for the athletic fields.

Memorial Park

Memorial Park is a 10 acre site with facilities including a baseball stadium that is used for American Legion Baseball and utilized by Whitefish High School for their football games. The stadium is lighted and includes bleachers, dugouts and a concession stand. Currently the facility is leased to the American Legion Baseball Association (Glacier Twins Baseball) and includes a cooperative agreement with the School District for football use. In addition to this stadium, 3 small little league size baseball fields are on the site, which are leased to the Whitefish Little League organization. The area surrounding these fields includes 2 tennis courts and a basketball court along with some out dated play ground equipment. The park is surrounded by perimeter parking that is not paved. Immediately plans for future improvements would include substantial improvements in the bleachers for the stadium and support amenities for the little league fields including restrooms. Future plans will include the renovation of the tennis courts, upgrading the perimeter parking, repair of the support amenities for the sports fields including bleachers, fencing, irrigation system for the little league fields and a permanent restroom facility.

Mountain Trails Park

Mountain Trails Park is a 5 acre park and is the site of the Stumptown Ice Den, our indoor ice skating facility that was constructed in 2005. In addition, it is the location of the Saddle Club activity building, and an adjoining storage facility. The park area includes paved parking for the above mentioned facilities and 2 outdoor sand volleyball courts. Future improvements to this facility include the placement of signage on Wisconsin Ave., upgrading the volleyball courts, landscaping improvements, and facility improvements to the Stump Town Ice Rink.

Riverside Park

Riverside Park is the companion park to Baker Park. Riverside Park is adjacent to the Whitefish River and includes a portion of the Whitefish River Trail and a footbridge connecting the trail to O'Brien Avenue to the south. The park includes a storm water retention pond owned by BNSF that overflows into the Whitefish River. In addition to the trail system, the park includes 3 tennis courts, dock access to the river, and supportive paved parking adjacent to Baker Ave. Improvements for the future include enhancement of the northern entrance to the park at O'Brien Ave., rebuilding the tennis courts, addition of one dock, and additional paved parking at the end of O'Brien Ave.

Soroptimist Park

Soroptimist Park is a neighborhood park of approximately 1 acre and contains a small soccer field, and playground equipment. It serves primarily residents of the neighborhood. Future improvements for this park include the replacement of the playground equipment.

Whitefish Golf Club

Whitefish Golf Club is 36-hole facility with the original 18 holes located north of the Highway 93, under the ownership of the City of Whitefish and leased to the Whitefish Golf Club. The facility includes a club house, pro-shop, restaurant, and driving range.

During the winter months cross-country skiing is offered on the course with lights for night skiing. As a footnote to the golf course, the current lessee also maintains the City of Whitefish Cemetery, which is adjacent to the golf course. The cemetery is in need of an in-ground automated irrigation system and should be in any plans for future improvements.

Whitefish Trails

Currently the City of Whitefish has approximately five miles of paved trails that run throughout the city. Two and a half miles of the trail system runs along Wisconsin Ave. The remainder of the trail system consists of a number of smaller sections that serve specific section of the community. Future plans include the completion of the connecting sections that remain undeveloped.

The City of Whitefish also has the following undeveloped facilities:

Canoe Park
Canoe Park is a .06 acre parcel located on Riverside Ave. and will serve as an access point to the Whitefish River. Improvements will include a ramp and dock along with supportive parking.

Creekwood Park
Creekwood Park is a four acre undeveloped site within the Creekwood subdivision. Future development of this site will begin with the establishment of a park master plan.

Crestwood Park
Crestwood Park is two and a half acre facility that currently has two horseshoe pits and open space that is minimally maintained. When completed, this facility will primarily serve the residents of the northeast quadrant of the community.

Riverside at Whitefish River
Riverside at Whitefish River is a linear park that is adjacent to the Whitefish River and The Lakes subdivision.

Riverwood Park
Riverwood Park is a 4.6 acre linear park along the bank of the Whitefish River and is a companion park to the Whitefish River Trail.

River Edge Park
River Edge Park is a linear park along the bank of the Whitefish River and will support the Whitefish River Trail.

River Trails Park
River Trail Park is a two acre linear park along the Cow Creek drainage and will serve as a natural area to be retained as open space.

RECOMMENDED POLICIES FOR EXTENDING SERVICES

General Policies

The following general policies shall be pursued for all properties proposed to be developed with or without annexation into the City of Whitefish ("City"):

1. It is the responsibility of the developer or property owner to construct all water lines, reservoirs, pump stations, culverts, drainage systems, sewer systems, roadways, sidewalks, curbs, gutters, street lighting, and rights-of-way in accordance to the Extension of Services Plans contained herein as well as the Subdivision Requirements of the City of Whitefish and the Standards for Design and Construction. The infrastructure improvements shall be of adequate size and design to accommodate the needs of the proposed development. In the event that a development creates impacts requiring off-site improvements, the City Council will determine whether the developer shall wholly or partially bear the costs of such improvements.

2. The developer or property owner shall be responsible for providing fire protection appurtenances and required water flow pressures, to the satisfaction of the City Fire Chief, based on the use of land and the type of construction employed.

3. Water systems and sewer systems shall be designed in such a manner as to avoid the provision of booster pumps or lift stations if

feasible. All proposed booster pump stations and lift stations shall receive the approval of the City Engineer.

4. Before a development beyond city limits is allowed to connect to a City-owned utility, an Agreement for Annexation and City Water/Sewer Services form shall be properly filed with the City Attorney.

5. Prior to receiving services, the developer or property owner annexing must initiate and secure a rezone to appropriate City of Whitefish zoning when necessary. If the City initiates an annexation, it will assume responsibility for needed zoning map amendments.

Policies for Extension of Services to Undeveloped Areas

Each development should be considered an integral part of the comprehensive services plan of the City. Therefore the following general policies for extension of services to undeveloped areas should be observed:

1. Any subdivision or development of property within the identified growth area should be designed in accordance with the current edition of the City's "Standards for Design and Construction".

2. Any subdivision or development of land beyond the Whitefish city limits, but within the urban growth boundary, should be reviewed and commented upon by the City's Site Development Review Committee. For development outside the planning jurisdiction, the City shall recommend to the Board of County Commissioners that new development within the identified growth area be in accordance with the service plans contained herein.

3. Where construction of a sewerage system is being considered, the future drainage basin of the system should be identified and lines sized accordingly. The cost and construction of all sewerage systems are the responsibility of the developer or property owner. Under certain circumstances, the City Council will determine whether the City will participate in financing the oversizing of infrastructure.

4. It is the responsibility of the developer or property owner to have designed and constructed water mains and lines of adequate size to provide the required flows for the intended land use and fire protection.

5. It is the responsibility of the developer or property owner to provide all required infrastructure improvements, as well as rights-of-way and easements.

Policies for Services in Existing Developed Areas

As a general policy, properties within the service area with existing utilities and facilities shall be required to upgrade those improvements to City standards and specifications as a prerequisite to receiving City services or additional City utility services. In such situations, the following policies shall apply:

1. Prior to making the municipal service(s) available to an existing developed area within the service area, the City may require a report describing the following:

   a. The approximate year or period in which the existing area was developed.

   b. The location, size and condition of existing water lines or systems.

   c. The location and condition of, the existing sewer system, including the size, material and grades of all pipe.

   d. The size, location and legal purpose of all existing rights-of-way and easements.

   e. The surface type, condition and width of all roadways.

   f. The existing storm drainage into and out of the area.

   The report shall also include the estimated costs associated with correcting the deficiencies and bringing the utility or improvement to City standards. The City may require such a report to be prepared by a

professional engineer, with the cost of the report borne by the developer or property owner.

2. If the property is to be annexed, the City's annexation ordinance or resolution shall specifically state the method and time frame for bringing the existing conditions into compliance with City standards, and shall identify the parties responsible for the improvements.

3. If City services are to be extended without concurrent annexation, the property owner shall sign an Agreement for Annexation and City Sewer/Water Service. The agreement shall be recorded with the County Clerk and Recorder's Office. The property owner shall also sign, and the City shall record, a waiver of the right to protest participation in and the formation of any special improvement district that may be formed to improve the existing services, utilities, streets or other improvements.

Policies for Meeting the Cost of Services

1. For the purpose of setting aside adequate funds to replace components of the physical plant, the following shall be considered as the estimated life of each of the components:

a.	Structures	30 Years
b.	Pipelines	50-100 Years
c.	Stationary Equipment (motors, pumps, conveyors, etc.)	10 Years
d.	Asphalt Surfaces:	
	Local Streets	20 Years
	Collector Streets	15 Years
	Arterial Streets	10 Years

The amount to be set aside each year for the replacement of municipal infrastructure components shall be the cost of construction, if new, or the total estimated replacement cost divided by the remaining- number of years of the life of the component.

2. It shall be the responsibility of the developer or property owner to extend all roadways and utilities from the existing City facilities to the site of development in accordance with all City standards and

specifications or provide appropriate easements. It shall further be the responsibility of the developer or property owner to construct all streets and utilities to the furthest boundary of the property to be developed in order to facilitate future development.

3. The ability of the City to increase existing utility line capacities to meet the demands of growth is dependent upon the availability of funding. If the City's ability to finance the necessary enlargement cannot keep pace with development, or if the improvements schedule does not mesh with that of the developer, it shall be the responsibility of the developer to finance and construct City-approved alterations to the existing infrastructure sufficient to accommodate the development. In the event of this occurrence, the developer may be reimbursed by the City through utility service connection fees for said development. Said reimbursement shall not exceed the cost, including interest, of the improvements to the existing City system, nor shall the reimbursement exceed the value of the connection fees collected from the specific development.

4. If the developer bears the costs of extending services and/or utilities, a Developer's Extension Agreement may be entered into between the developer and the City. This agreement, with a term not to exceed ten (10) years, allows the developer to recoup costs associated with the extension of services or utilities by charging future entities wishing to connect to or use the extended service or utility a "Latecomer's Fee". The Developer's Extension Agreement shall set forth the specific parcels which could benefit from the extension (those within a described "design area") and specify the amount to be assessed to each parcel. The specific parcels and assessments to be included in the Developer's Extension Agreement are subject to approval by the City Council.

5. The late-coming customer shall pay the extender a pro-rata share of the extension costs, including design and inspection fees. The pro-rata share may be based on lot area, front footage, or other means agreeable to both the City Council and the developer which is equitable to both parties as well as future customers.

6. If the City requires the customer or developer extending a sewer or water line to install a larger size than that required by City standards for a particular project, the City Council will determine whether the City

will participate in financing the oversizing of infrastructure.

7. The City reserves the right to further extend sewer or water mains installed by the preceding developer or property owner without paying compensation. The City also reserves the right to charge future sewer or water utility users beyond those areas identified in the Developer's Extension Agreement, if applicable, for their pro-rated share of the City's cost for the oversizing of the line. This in no way shall diminish the preceding developer's right to collect service line connection fees within the limits of a Developer's Extension Agreement. In the case of water lines, the pro-rata cost shall be based on the domestic capacity plus fire flow capacity existing at the point of extension as opposed to the domestic plus fire flow capacities required by the development.

8. Financing the construction of new streets in a proposed development, or the upgrading of streets in an existing developed area, shall be accomplished in one, or a combination of, the following methods:

   a. In an undeveloped area, the developer shall provide all necessary right-of-way, or additional right-of-way if less than adequate right-of-way exists.

   b. The developer shall bear the cost of constructing all improvements within the right-of-way in accord with this Plan, the City's Standards for Design and Construction, and the City of Whitefish Subdivision Regulations.

   c. Through the formation of a Special Improvement District (S.I.D.).

   d. Federal or State grant funds.

   e. State Fuel Tax monies.

9. Connection and user fees for properties located outside the City limits for sewer and water services shall be charged in accordance with rates, charges and tariffs adopted by ordinance or resolution by the City Council.

10. As new City streets are constructed, and as existing streets are improved, storm drainage infrastructure shall be installed or

improved to City standards. It is the responsibility of the developer to convey storm water from their property to an appropriate point of disposal. The quantity and rate of runoff from a developed parcel cannot exceed that which would occur had the property remained undeveloped.

12. For the purposes of fire, police, and all general government services, the tax burden for these services shall be shared by all city taxpayers.

EXHIBIT A

Annexation Forms

PETITION FOR ANNEXATION TO THE CITY OF WHITEFISH

The undersigned petitioner, who owns 100 percent of the real property described below, hereby petitions the City Council of the City of Whitefish, pursuant to Section 7-2-4601(3)(a), MCA, for annexation of such real property into the City of Whitefish. Petitioner agrees that this annexation petition is irrevocable, and that the City may act on this petition, and actually accomplish the annexation of such real property, at any time in the future, without limitation. Petitioner has had an opportunity to review the City of Whitefish Plan for Extension of Services applicable to such real property, and petitioner is satisfied with such Plan. Petitioner states that there is no need to prepare any amended or revised Plan for this annexation pursuant to Sections 7-2-4610, 7-2-4731, and 7-2-4732, MCA, since petitioner is satisfied with the provision of municipal services to such real property.

LEGAL DESCRIPTION OF PROPERTY TO BE ANNEXED:

Dated this _____ day of _____, 2009.

_____ _____

Owner Owner

STATE OF MONTANA)
:ss
County of Flathead)

Return to: Necile Lorang, City Clerk
City of Whitefish
PO Box 158
Whitefish, MT 59937-0158

PETITION

BEFORE THE CITY COUNCIL

OF THE

CITY OF WHITEFISH

PETITION FOR ANNEXATION TO CITY

Dated this _____ day of _____, _____.

The undersigned Property Owner hereby petitions the City Council of the City of Whitefish, pursuant to Section 7-2-4601(3)(a), MCA, requesting annexation of the following real property into the City of Whitefish and to remove the following real property from the Whitefish Fire Service Area.

This petition is pursuant to the Contract Agreement for Annexation and City Water and/or Sanitary Sewer Service dated the _____ day of _____, _____.

Petitioner agrees that this annexation petition is irrevocable, and that the City may act on this petition, and actually accomplish the annexation of such real property, at any time in the future, without limitation. Petitioner has had an opportunity to review the City of Whitefish Plan for Extension of Services applicable to such real property, and Petitioner is satisfied with such Plan.

LEGAL DESCRIPTION OF PROPERTY TO BE ANNEXED:

PROPERTY ADDRESS: _____

ZONED AS: _____

_____ _____

_____ _____

[Printed Name] *[Printed Name]*

STATE OF _____)
) :ss
County of _____)

On this _____ day of _____, 20___, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared _____and _____, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year last above written.

(SEAL)

_____
Notary Public for the State of _____
Print or Type Name of Notary: _____
Residing at _____
My Commission expires: _____

Return to: Necile Lorang, City Clerk
City of Whitefish
PO Box 158
Whitefish, MT 59937-0158

CONTRACT AGREEMENT FOR ANNEXATION AND CITY WATER AND/OR SANITARY SEWER SERVICE

THIS AGREEMENT is entered into as of _____ day of _____, 20___, by and between the City of Whitefish, a municipal corporation ("CITY") as grantor of City water and/or sanitary sewer services, and _____ ("OWNER"), as grantee recipient(s) of City water and/or sanitary sewer services, whose mailing address is _____ with respect to the following facts:

A. CITY owns and operates a municipal water and sanitary sewer system.

B. OWNER is the sole owner of the real property that is legally described below, or as fully disclosed and shown on Exhibit "A" attached and made a part of this Agreement ("OWNER'S REAL PROPERTY"):

LEGAL DESCRIPTION

C. OWNER'S REAL PROPERTY is located outside of the current corporate limits of the CITY.

D. OWNER desires to obtain municipal water/sewer service from the CITY to serve OWNER'S REAL PROPERTY.

E. The parties desire to enter into an Agreement pursuant to MCA § 7-13-4312, for the CITY to furnish municipal water and/or sanitary sewer service at rates adopted in accordance with Montana State Law in return for OWNER'S agreement that OWNER'S REAL PROPERTY may be annexed to the corporate limits of the CITY at any time.

In consideration of the performance of the terms and conditions of this Agreement on the part of each party, and pursuant to MCA §§ 7-13-4312 and 7-13-4314, it is hereby agreed as follows:

(1) **Furnishing of Sewer Services**: The CITY hereby agrees to furnish municipal water and/or sanitary sewer service to OWNER'S REAL PROPERTY. Unless otherwise agreed in writing between the parties, OWNER shall be solely responsible for all costs involved in extending municipal water and/or sanitary sewer service to OWNER'S REAL PROPERTY and connecting OWNER'S REAL PROPERTY to the municipal water and/or sewer system. Nothing in this Agreement shall obligate CITY to pay the costs of right-of-way acquisition, engineering, construction and other related costs involved in extending or connecting municipal water and/or sewer service to OWNER'S REAL PROPERTY.

(2) **Municipal Water and/or Sanitary Sewer Connections**: Upon approval by the CITY Public Works Department of the design and construction of all the municipal water and/or sanitary sewer lines and other facilities necessary to serve OWNER'S REAL PROPERTY, and acceptance of all of such water and/or sewer facilities by the CITY, OWNER will be given permission to connect no more than _____ connection to the CITY'S municipal water and/or sanitary sewer system. Any additional water and/or sewer connections shall require a new application for service and approval obtained from the CITY Public Works Department.

Upon approval by the CITY Public Works Department, OWNER will be given permission to extend _____ water and sanitary sewer stubs from the municipal sanitary via the _____ to the property line of the property described herein. Any additional water and/or sanitary sewer stubs shall require a new application for CITY water and/or sanitary sewer service. Prior to connecting any residential or commercial building or any other structure to the water and/or sanitary sewer service stub-out(s), a request must be submitted to CITY for municipal water and/or sanitary sewer service describing the use of the building proposed to be connected. The request is to be reviewed and approved by CITY prior to any connection of a residential or commercial building, or other structure. No residential or commercial building or any other structure shall be allowed to connect to the municipal water and/or sanitary sewer service extension unless approval has first been obtained from the CITY Public Works Department.

(3) **Transfer of Title**: Within thirty (30) days of the completion of the construction and CITY acceptance of the said water and/or sanitary sewer extension, OWNER hereby agrees to transfer, or cause to be transferred to CITY by appropriate documents any right, title and interest that OWNER may have in the municipal water and/or sanitary sewer lateral and main extensions to be built by OWNER to provide service to the herein described property.

OWNER agrees to provide necessary utility easements for construction, installation, maintenance, replacement, and repair of CITY utility mains needed to provide requested services to the OWNER'S REAL PROPERTY. OWNER also agrees to transfer

and convey to the CITY any community-served utility systems owned by OWNER that are part of the service to the OWNER'S REAL PROPERTY. OWNER agrees that the municipal water and/or sanitary sewer line extension to the property shall be constructed in a public right-of-way or on land either owned by the OWNER or subject to an appropriate easement approved by CITY, granting OWNER, CITY, and their successors and assigns the right to construct, repair, and maintain the sanitary sewer extension lines. If any portion of the lateral extension is constructed on land owned by OWNER at the time OWNER transfers their interest in the sanitary sewer extension line to the CITY, OWNER shall also grant the CITY an appropriate easement for construction, repair, and maintenance of the municipal water and/or sanitary sewer extension lines.

(4) **Maintenance**: Upon completion and acceptance of construction and the approval of access to the municipal water and/or sanitary sewer lines constructed in easements, maintenance, and repair of the mains servicing OWNER'S REAL PROPERTY shall become and remain the responsibility of CITY. Maintenance and repair of the lateral service lines serving the OWNER'S REAL PROPERTY shall become and remain the responsibility of the OWNER.

(5) **Rates, Rules and Policies**: OWNER agrees to pay to the CITY such charges, rates, and fees, including but not limited to connection fees and impact fees, as are established by the CITY in accordance with Montana Law. In addition, OWNER agrees to comply with and be subject to all of the CITY'S rules, regulations and policies, as amended from time to time, with respect to the operation of the CITY'S municipal water and/or sanitary sewer system.

(6) **Annexation**: OWNER hereby petitions the CITY to annex the OWNER'S REAL PROPERTY. OWNER consents to and waives the right to protest the annexation when the CITY elects annexation. When the CITY annexes the OWNER'S REAL PROPERTY, any obligations of this Agreement not fulfilled or completed survives the annexation and remain a burden upon the property. OWNER acknowledges and agrees that the CITY is willing to provide municipal water and/or sanitary sewer services only if OWNER provides all of the promises and representations contained in this Agreement. Pursuant to MCA § 7-13-4314, the CITY requires that any person, firm, or corporation outside of the incorporated CITY limits is required, as a condition to initiate such service(s), to consent to annexation of the tract served by the CITY, and in consideration for the CITY'S agreement to provide municipal water and/or sanitary sewer service, OWNER agrees to consent to annexation under the following conditions and in the following manner:

a) OWNER hereby irrevocably consents to the annexation of OWNER'S REAL PROPERTY, and OWNER irrevocably waives any right of protest to any annexation proceedings initiated by the CITY. OWNER agrees that the CITY may initiate annexation of OWNER'S REAL PROPERTY, relying upon this consent and waiver of protest, at any time in the future, without limitation. OWNER acknowledges that, but for this waiver, OWNER would have a right to protest the annexation of OWNER'S REAL PROPERTY.

b) OWNER hereby petitions to have OWNER'S REAL PROPERTY annexed to the CITY, pursuant to Montana law. OWNER agrees that the CITY may act on this petition at any time in the future, without limitation. OWNER furthermore expressly waives the provisions of MCA § 7-2-4608, which provides, in effect, that no property used for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purposes or for any purpose incident thereto shall be annexed pursuant to the provisions of MCA § 7-2-4601, et seq.

c) OWNER hereby signs the petition requesting annexation attached to and made a part hereof under this Agreement for municipal water and/or sanitary sewer services at the time of signing this Agreement. Such Petition shall be filed with the City Clerk.

d) OWNER acknowledges and agrees that OWNER has had an opportunity to inspect the contents of the CITY'S Plan for Extension of Services, as adopted by the CITY, and which describes the manner in which CITY services may be extended to properties annexed by the CITY. OWNER acknowledges and agrees that OWNER is satisfied with the CITY'S Plan for Extension of Services, and that the CITY'S Plan for Extension of Services adequately provides for the extension of CITY services to OWNER'S REAL PROPERTY. OWNER hereby waives the right to object or otherwise challenge the CITY'S Plan for Extension of Services.

e) OWNER hereby irrevocably waives for all time the right to file an action in court to challenge, for any reason, the CITY'S annexation of OWNER'S REAL PROPERTY, whether such annexation occurs now or in the future.

f) OWNER acknowledges and agrees that all of OWNER'S REAL PROPERTY, as described above, will clearly and immediately, and not merely potentially, be serviced by the municipal water and/or sanitary sewer service to be provided by the CITY pursuant to this Agreement.

g) OWNER agrees that if ever OWNER, their heirs, assigns, successors, purchasers, administrators, personal representatives or subsequent holders of title to OWNER'S REAL PROPERTY, breach, challenge, disregard, or otherwise violate any of the terms of this Agreement, the CITY may, after providing twenty (20) days written notice, terminate water and/or sanitary sewer services to OWNER'S REAL PROPERTY, in addition to any other remedies that the CITY may have.

h) OWNER agrees that if OWNER, in violation of this Agreement, submits a protest to the annexation of OWNER'S REAL PROPERTY, the CITY may disregard such protest, in addition to any other remedies that the CITY may have.

i) The promises, covenants, representations, and waivers provided pursuant to this Agreement are voluntarily and knowingly given, with full knowledge of the OWNER'S legal rights. OWNER acknowledges and agrees that it is has had an opportunity to consult with legal counsel of its choice regarding the provisions of this Agreement.

(7) **Recording; Binding Effect**: OWNER agrees that this entire Agreement shall be recorded in the office of the Clerk and Recorder of Flathead County, and OWNER agrees that this Agreement shall run to, with, and be binding upon OWNER'S REAL PROPERTY and OWNER'S title to such real property, and shall be binding upon the OWNER'S heirs, assigns, successors, administrators, personal representatives and any and all subsequent holders or owners of OWNER'S REAL PROPERTY.

(8) **Future Deeds**: Subsequent to this Agreement all deeds to parcels of land within the property subject to this Agreement granted by OWNER shall contain the following consent to annexation and waiver:

> The Owner hereby covenants and agrees that acceptance of this deed does constitute a waiver of the statutory right of protest against any annexation procedure initiated by the City of Whitefish with respect to the property described herein. Owner also agrees that acceptance of a deed constitutes an obligation on the part of Owner to initiate annexation procedures per the Petition to Annex on file at the City Clerk's Office.
>
> This consent to annexation and waiver shall run with the land and shall forever be binding upon the Owner, transferees, successors and assigns.

OWNER agrees that this Agreement shall be binding even if OWNER fails to include the language set forth above in future deeds. After annexation of OWNER'S REAL PROPERTY, future deeds need not contain the language set forth above.

(9) **Term**: This Agreement shall be in perpetuity.

(10) **Entire Agreement**: This Agreement contains the entire agreement between the parties and any additional agreement hereafter made shall be ineffective to alter, change, modify or discharge it in whole or in part, unless such additional agreement is in writing and signed by the parties hereto.

(11) **Partial Invalidity**: Each term, covenant, condition or provision of this Agreement shall be viewed as separate and distinct, and in the event that any such term, covenant, condition or provision shall be held by a court of competent jurisdiction to be invalid, the remaining provisions shall continue in full force and effect.

(12) **Necessary Acts**: Each party to this Agreement agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to

carry out the provisions of this Agreement.

CITY OF WHITEFISH

By: _____
Charles C. Stearns, City Manager

OWNER(S)

_____
_____
[Printed Name]

_____
_____
[Printed Name]

ATTEST:

_____
Necile Lorang, City Clerk

STATE OF MONTANA)
) ss.
County of Flathead)

On this _____ day of _____, 20___, before me, the undersigned, a Notary Public in and for the State of Montana, personally appeared CHARLES C. STEARNS and NECILE LORANG, known to me to be the City Manager and City Clerk of the City of Whitefish, whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year last above written.

_____
Notary Public for the State of Montana

STATE OF MONTANA)

) ss.
County of Flathead)

On this _____ day of _____, 20___, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared _____ and _____, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year last above written.

_____

(SEAL) Notary Public for the State of _____

_____

[print or type name of Notary]

Residing at _____

My Commission expires: _____

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF MONTANA

OPINION No. 41

1987 Mont. AG LEXIS 9; 42 Op. Atty Gen. Mont. No. 41

November 18, 1987

SYLLABUS:
[*1]

ANNEXATION - What constitutes "wholly surrounded land"; MUNICIPAL GOVERNMENT - What constitutes "wholly surrounded land"; PROPERTY, REAL - What constitutes "wholly surrounded land"; *MONTANA CODE ANNOTATED - Sections 7-2-4201* to *7-2-4210*, *7-2-4204*, *7-2-4301* to *7-2-4331*, *7-2-4304*, *7-2-4401* to *7-2-4421*, *7-2-4408*, *7-2-4501* to *7-2-4511*, *7-2-4502* to *7-2-4505*, *7-2-4601* to *7-2-4621*, *7-2-4609*, *7-2-4701* to *7-2-4761*, *7-2-4718*.

HELD: A parcel of land is "wholly surrounded" under *section 7-2-4501, MCA*, when access may be gained only by crossing through the municipality.

REQUESTBY:

Leo W. Tracy
Whitefish City Attorney
6336 Highway 93 South
Whitefish MT 59937

OPINIONBY:

MIKE GREELY, Attorney General

OPINION:

You have requested my opinion concerning the following questions:

1. May a municipality annex under sections 7-2-4501 to 4511, MCA, an area which is bordered on three sides by the municipality and on the remaining side by a large navigable lake?

2. May a municipality annex under sections 7-2-4501 to 4511, MCA, an area which is directly bordered on three sides by the municipality, on one side by a railroad right-of-way for trackage, and on one side by a railroad right-of-way for station grounds?

I conclude that [*2] the municipality may annex the area described in the first question but not the area in the second under sections 7-2-4501 to 4511, MCA.

Montana provides various methods for municipalities to annex additional territory. §§ 7-2-4201 to 4210, MCA (additions to municipalities); §§ 7-2-4301 to 4331, MCA (annexation of contiguous lands); §§ 7-2-4401 to 4421, MCA (annexation of contiguous government lands); §§ 7-2-4501 to 4511, MCA (annexation of wholly surrounded lands); §§ 7-2-4601 to 4621, MCA (annexation by voter petition); §§ 7-2-4701 to 4761, MCA (annexation under the Planned Community Development Act); see *State ex rel. Hilands Golf Club v. City of Billings, 198 Mont. 475, 477-78, 647 P.2d 345 (1982);* Montana Legislative Council, Montana's Annexation Laws 12-18 (Nov. 1980). More than one of these annexation procedures may apply to a given parcel of land, and the municipality's governing body is authorized to select that procedure "appropriate to the circumstances of the particular annexation." See *§§ 7-2-4204(2), 7-2-4304(2), 7-2-4408(2), 7-2-4505(2), 7-2-4609, 7-2-4718(2), MCA.* Presently, the City of Whitefish desires to utilize the "wholly surrounded land" provision with respect [*3] to two parcels of land. Whether annexation may be effected under this provision is significant because, unlike the other applicable procedures, consent by a majority of resident freeholders is not required. *§ 7-2-4502, MCA*; see Comment, Annexation in Montana -- A Time for Change, *35 Mont. L. Rev. 71, 73, 77-78 (1974).*

The first parcel includes land which is bordered by Whitefish Lake on one side and the city on the remaining sides. The second parcel is irregularly shaped but basically five-sided. The city abuts this parcel on three sides, while a railroad right-of-way abuts it on the remaining two sides. Although part of the right-of-way is used only for trackage, the railroad's large station grounds are directly contiguous to one side of the parcel. The station grounds are not surrounded by the city.

Section 7-2-4501, MCA, states that "[a] city may include as part of the city any platted or unplatted tract or parcel of land that is wholly surrounded by the city upon passing a resolution of intent, giving notice, and passing a resolution of annexation." Certain types of property, including that used for transportation purposes such as the railroad right-of-way, are excluded [*4] from this method of annexation, but the property sought to be annexed here is not among them. *§ 7-2-4503, MCA.* While not statutorily defined, the term "wholly surrounded" was construed in *Calvert v. City of Great Falls, 154 Mont. 213, 217, 462 P.2d 182, 184 (1969),* to include land which, while not completely contiguous with the municipality, was nonetheless surrounded by it: "The term 'wholly surrounded' means that . . . where all lands on the side of the tract are within the city and where it is impossible to reach the tract without crossing such territory, the tract is 'wholly surrounded'." The term "wholly surrounded" in *section 7-2-4501, MCA*, must therefore be practically interpreted to achieve the legislative objective of permitting annexation when a particular parcel has become, in essence, landlocked by a municipality. Under this analysis, the first tract is "wholly surrounded" because, as to all sides bordered by land, it is surrounded by the municipality. The applicability of *section 7-2-4501, MCA*, is not vitiated by the lake's presence on the remaining side since all land access to the parcel must be through the municipality.

In contrast, the second parcel is not "wholly [*5] surrounded." Access to the parcel is possible from the railroad's station grounds, and those grounds are not surrounded by the municipality. Because of this access, it is unnecessary for me to address the issue of whether the railroad right-of-way, insofar as it is used exclusively for trackage, is "a street or other roadway . . . or a strip of unplatted land too narrow or too small to be platted," which may be ignored for purposes of contiguity under *section 7-2-4504, MCA.*

THEREFORE, IT IS MY OPINION:

A parcel of land is "wholly surrounded" under *section 7-2-4501, MCA*, when access may be gained only by crossing through the municipality.

Legal Topics:

For related research and practice materials, see the following legal topics:

GovernmentsLocal GovernmentsBoundariesReal Property LawAdjoining LandownersGeneral Overview

No. 03-229

IN THE SUPREME COURT OF THE STATE OF MONTANA

2004 MT 262

JAMES R. GREGG, et al.; DOUGLAS L. OLIVER, et al.; MARK VANNYHUIS, et al.; DAVID R. LAUBER, et al.; KAY DEAN DENNING, et al.,

Plaintiffs and Appellants,

v.

THE WHITEFISH CITY COUNCIL and THE CITY OF WHITEFISH,

Defendants and Respondents and Cross-Appellants.

APPEAL FROM: District Court of the Eleventh Judicial District,
In and for the County of Flathead, Cause Nos. DV-99-037, 99-038, 99-039, 99-040 and 99-041
The Honorable Ted O. Lympus, Judge presiding.

COUNSEL OF RECORD:

For Appellants:

William E. Astle, Astle & Astle, Kalispell, Montana

For Respondents:

John M. Phelps, Hedman, Hileman & Lacosta, Whitefish, Montana

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Submitted on Briefs: October 30, 2003

Decided: September 21, 2004

Filed:

_____
Clerk

Justice John Warner delivered the Opinion of the Court.

¶1 James R. Gregg is one of 277 property owners (Property Owners) who collectively appeals from an order of the Eleventh Judicial District Court, Flathead County, upholding the proceedings of the City of Whitefish (City) to annex their property. The City cross-appeals the District Court's order holding the Property Owners properly sought court review of the annexation proceedings. We affirm.

¶2 We address the following issues:

¶3 1. Did the District Court err in concluding a recorded waiver of protest to annexation executed by a previous landowner is a covenant running with the land that precludes a current landowner from protesting annexation?

¶4 2. Did the District Court err in concluding the City could require consent to annexation for continued receipt of utility services by enacting City of Whitefish Resolution 98-43?

¶5 3. Did the District Court err in concluding that in following City of Whitefish Resolution 98-43, the City could imply consent to annexation from Property Owners who continued to receive utility services after the City gave notice requiring them to disconnect the utilities?

¶6 4. Did the District Court err in concluding the Property Owners could secure judicial review of the City's annexation procedures under § 7-2-4741, MCA, even though a majority did not successfully protest the annexation under § 7-2-4710, MCA?

¶7 5. Did the District Court err in concluding the City met the statutory annexation requirements of Title 7, Chapter 2, Part 47?

I. FACTUAL AND PROCEDURAL BACKGROUND

¶8 During the final four months of 1998, the City took steps to annex six residential areas contiguous to existing City boundaries. In order to stop the annexations, a majority of property owners in each of the areas protested under § 7-2-4710, MCA. However, after the protests were submitted, the City invalidated a number of the protests on certain grounds, two of which are at issue here. First, the City invalidated protests if a previous landowner had waived the right to protest annexation and the waiver was properly recorded with the county clerk and recorder.[1] Second, the City implied consent to annexation and invalidated protests from property owners who failed to arrange to disconnect from the City water and sewer services after notice of such requirement from the City. After discounting protests, the City determined that a majority of property owners failed to protest in five of the areas, while one of the areas successfully protested the annexation. Of the landowners in those five areas, approximately 78% are on City water or sewer or both, and the majority have been on the City's system for at least 37 years. These five areas were then annexed pursuant to City Ordinance No. 98-11. The City also adopted an Extension of Services Plan and addressed the annexation of each area pursuant to statute.

¶9 In January 1999, a majority of the property owners in the five annexed areas filed five separate lawsuits challenging the process of annexation and the sufficiency of the City's Extension of Services Plan. Upon stipulation of the parties, the five cases were consolidated into one. The Property Owners complained in two counts that give rise to this appeal. Count

[1] The Property Owners do not contest the City properly invalidated protests from current property owners who signed waiver of protest agreements.

I alleged the City improperly invalidated a number of their protests to annexation. Count II alleged the City's annexation Extension of Services Plan failed to meet specific requirements of Title 7, Chapter 2, Part 47. In response, the City asserted, in part, that if a given Property Owner's protest to annexation was invalid, that property owner could not then request judicial review of the City's subsequent annexation proceedings. Therefore, the City asserted that because a majority of Property Owners failed to protest annexation, the majority required for judicial review was not met and the Property Owners had no standing to assert Count II. The parties stipulated to various facts and submitted the issues to the District Court for decision.

¶10 Regarding Count I, the District Court held the City properly invalidated both the protests of landowners whose predecessors in interest had waived the right to protest and the protests of landowners whose consent the City deemed was implied because they did not make plans to disconnect from City water and sewer.

¶11 The court held the right to protest annexation was separate from the right to request judicial review. Therefore, the court held the Property Owners could still request judicial review of the City's compliance with Title 7, Chapter 2, Part 47, as alleged in Count II because a majority of property owners were joined in the suit. Regarding Count II, the District Court reviewed ten separate challenges to the City's annexation procedures and held the City properly met the statutory requirements of each one.

¶12 The court then upheld all five annexations.

¶13 The Property Owners now appeal the rulings invalidating their protests and the rulings upholding the annexations under Title 7. The City cross-appeals the ruling allowing the

Property Owners to request judicial review of the statutory annexation requirements. Further facts are discussed below.

II. STANDARD OF REVIEW

¶14 Section 7-2-4742, MCA, provides for court review of whether statutory annexation procedures were followed and requirements met. To seek the District Court's review under § 7-2-4742, MCA, the parties stipulated to numerous facts and then simultaneously submitted "trial" briefs on the issues and then both submitted "reply" briefs. In those cases reviewing the propriety of municipal actions under § 7-2-4742, MCA, the proper procedure would be for a party to move for summary judgment if that party believes there are no genuine issues of material fact.

¶15 As to our review of whether the City's annexation procedures and plans were in conformity with the law, the parties disagree on the applicable standard of review. The Property Owners assert the District Court and this Court must strictly construe the statutes when reviewing whether an annexation was proper. They cite *Pool v. Town of Townsend* (1920), 58 Mont. 297, 191 P. 385; *Gregory v. City of Forsyth* (1980), 187 Mont. 132, 609 P.2d 248; and *Nilson Enter., Inc. v. City of Great Falls* (1980), 190 Mont. 341, 621 P.2d 466, in support of their strict construction argument. In addition, the Property Owners argue that even though the City is a charter government with self governing powers, the statutory directives of § 7-1-114(1)(a) & (2), MCA, and § 7-2-4742, MCA, limit the City's authority so it must strictly comply with all portions of the annexation statutes.

¶16 The City asserts that because it is a self-governing municipality, it is entitled to a presumption that its actions were proper and reasonable doubts are to be resolved in its favor.

Art. XI, Sec. 6, Mont. Const.; § 7-1-106, MCA. In addition, the City cites *State ex rel. Swart v. Molitor* (1981), 190 Mont. 515, 621 P.2d 1100, to argue that although the City must comply with the annexation statutes as indicated by § 7-1-114, MCA, it may act where the statutes are silent. Under *Schanz v. City of Billings* (1979), 182 Mont. 328, 597 P.2d 67, and § 7-2-4743, MCA, the City argues its annexation ordinances, like legislative enactments, are entitled to a presumption of reasonableness. Finally, the City asserts two of the cases cited by the Property Owners, *Gregory* and *Nilson*, do not stand for strict and complete compliance, but instead stand for substantial compliance.

¶17 In *Gregory*, a case in which the City of Forsyth argued the method provided for annexation of territory to a municipality was not exclusive, we stated:

> The general rule is that municipal boundaries may be extended only as prescribed by law. 2 McQuillin, Municipal Corporations § 7.14 at 317 (3rd rev. ed. 1979). Since the jurisdiction of a city to extend its boundaries is a special power, conferred by the legislature, a substantial compliance with all the mandatory requirements of statutory law is essential. McQuillin, supra, § 7.29 at 422; *Pool v. Town of Townsend* (1920), 58 Mont. 297, 304, 191 P. 385, 386.

Gregory, 187 Mont. at 135, 609 P.2d at 250. Thus, we concluded the only way to extend municipal boundaries was that provided by statute. The standard requiring substantial compliance with mandatory statutes was established.

¶18 In *Nilson*, the City of Great Falls annexed land without filing either a land description, a certificate of ownership, or an owner's consent to annexation, as specifically required by statute. The *Gregory* standard of substantial compliance was reaffirmed by inserting the above quotation. Then, the Court went on to say:

> Moreover, we reaffirm this Court's decisions in *Pool, Balock* and *Gregory*,

> supra. When statutory language provides the manner in which a city or town may annex a portion of contiguous property, it must completely and strictly comply with the statute's requirements. Annexation, and the taxation implications that accompany it, should not be approached lightly. The procedure should not be haphazard. Although *Gregory* reaffirmed the rule of substantial compliance, the complete failure to secure the documents necessary to the proper annexation of property is not substantial compliance. The complete disregard of the mandates of what is now section 7-2-4403, MCA, was an error fatal to the City's power to annex.

Nilson, 190 Mont. at 347, 621 P.2d at 470. Thus, as the City of Great Falls did not comply at all with the mandatory requirements of the annexation statute, and the owner of the property did not consent to the annexation, it was declared void. In this context, the words "completely and strictly" were added in discussing the standard of substantial compliance with the annexation statutes.

¶19 Both *Gregory* and *Nilson* involved facts where the respective cities did not follow a mandatory statutory procedure at all. Thus, in those cases both of the phrases "substantial compliance" and "completely and strictly comply" were appropriate. In this case the City did comply with each and every one of the statutory mandates as we discuss below. It is the degree of such compliance that is called into question by the Plaintiffs.

¶20 The municipal annexation statutes contain numerous and detailed requirements for a city to annex property. Some of these, especially those concerning plans for the future, charge city planners to make subjective value judgments and statements of opinion. The cardinal considerations for requiring substantial compliance with the annexation laws are public notice and participation, particularly for those affected by a proposed annexation. *Gregory*, 187 Mont. at 136, 609 P.2d at 251. If all of the substantive and procedural requirements of the annexation statutes are included and complied with by a municipality in

the annexation procedure, the law will necessarily have been followed. And, in addition, if each of the statutory mandates that contain a subjective component are considered and included in the required plans, i.e., substantially complied with, those citizens whose property is in the annexed area, as well as the residents of the entire city, will have notice and the opportunity to participate. We hold compliance with the annexation statutes must be complete and municipalities must follow all of the directives of the statutes. Compliance must be substantial where a statute requires a municipality to exercise discretion in making its planning decisions. If there are no disputed issues of fact, this Court will review a district court's decision on whether there was compliance with the law *de novo*.

III. DISCUSSION

ISSUE ONE

¶21 **Did the District Court err in concluding a recorded waiver of protest to annexation executed by a previous landowner is a covenant running with the land that precludes a current landowner from protesting annexation?**

¶22 Under Montana's statutory scheme for annexation of land adjoining a city, a landowner has the right to protest a proposed annexation. This right is codified at § 7-2-4710, MCA, which reads:

> **Protest**. (1) For a period of 45 days after the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body of the municipality shall accept written comments approving or disapproving the proposed annexation from real property owners of the area proposed to be annexed.
> (2) If a majority of the real property owners disapprove of the proposed annexation in writing, further proceedings under this part relating to the area or any part of the area proposed to be annexed may not be considered or acted upon by the governing body on its own initiative, without petition, for a period of 1 year from the date of disapproval.

At the same time, a municipality may require consent to annexation as a condition of

initiating service to a parcel of land. Section 7-13-4314, MCA, provides:

> **Annexation as a requirement for receiving service**. Any person, firm, or corporation receiving water or sewer service outside of incorporated city limits may be required by the city or town, as a condition to initiate such service, to consent to annexation of the tract of property served by the city or town. The consent to annexation is limited to that tract or parcel or portion of tract or parcel that is clearly and immediately, and not potentially, being serviced by the water or sewer service.

¶23 In 1966, the City adopted a policy requiring that in order to receive City water and sewer utilities a landowner outside City boundaries had to agree to waive their right to protest a later annexation by the City. The waivers used by the City are entitled either "Consent to Annex Agreement" or "Waiver of Protest Agreement" (collectively referred to as waiver of protest agreements or waivers). Despite the difference in title, both waiver of protest agreements read as follows:

> That for and in consideration of the sum of One Dollar and other good and valuable consideration ($1.00 o.v.c) to us in hand paid, and certain premises, mutual terms, covenants, provisions, conditions, and agreements, we do hereby waive any and all right to protest which we may have in regard to any attempt made or to be made by the City of Whitefish, Montana, to annex to and make a part of the said City of Whitefish, and incorporate within its boundaries the following described real property situated in the County of Flathead, State of Montana, to-wit: . . .
>
> We do hereby further agree that this covenant shall run to, with, and be binding upon the title of the said real property, and shall be binding upon our heirs, assigns, successors in interest, purchasers, and any and all subsequent holders or owners of the above-described real property.

These waivers were properly recorded after being executed by previous landowners. The waivers were used by the City to invalidate protests submitted by current Property Owners. As a result, two of the areas no longer had a majority of property owners protesting annexation and the City annexed those areas.

¶24 The District Court concluded the waivers constitute covenants running with the land because the waivers were for the direct benefit of the property itself. The District Court also stated the statutory right of protest is premised on property ownership and that when such right was waived and recorded, it runs with the land. Finally, the District Court noted the consent requirements of § 7-13-4314, MCA, allow a city to extend water and sewer service to a specific tract of land if the owner of the land consents to annexation. The court held that because this statute is also tied to a specific parcel of land based on ownership, the waivers constitute a covenant that runs with the land.

¶25 On appeal, the Property Owners argue the statutory right to protest in § 7-2-4710, MCA, resides with the current landowner and therefore a recorded waiver executed by a previous landowner cannot invalidate a protest to annexation. They argue the statutory consent to annexation authorized by § 7-13-4314, MCA, only applies to the initiation of service and therefore cannot transfer to subsequent purchasers. The Property Owners again cite *Pool, Gregory,* and *Nilson*, to assert that in order for such a waiver to be valid, the Legislature must expressly authorize municipalities to record these waivers by enacting another annexation statute.

¶26 The City argues such waivers are valid and binding on subsequent owners of the property because the waivers were executed by the previous owners to secure a benefit for the land, because the waivers were properly recorded, and because the language of the waivers indicates an intent that subsequent purchasers of the land be bound by the waiver. Finally, the City argues if future purchasers are not bound by the covenants, the entire process of development and subdivision of land would break down and property would have

to be annexed one parcel at a time.

¶27 *Molitor* addressed an analogous situation in which a self-governing county enacted an ordinance requiring the payment of a fee to the examining land surveyor. *Molitor*, 190 Mont. at 520-24, 621 P.2d at 1103-05. The plaintiff asserted that under § 7-1-114, MCA, a self-governing entity must follow the state planning and zoning laws and therefore, the fee was improper because those laws did not expressly provide for such a fee. We disagreed, holding § 7-1-113, MCA, allows a self-governing entity to act even where there are controlling state laws as long as the local government's actions are not inconsistent with or "lower or less stringent" than state requirements. We held § 7-1-103, MCA, and § 7-1-106, MCA, both require that we give self-governing powers a broad interpretation.

¶28 The same reasoning applies to this case. Section 7-1-114(1)(a), MCA, requires the City to comply with the state annexation laws. Section 7-13-4314, MCA, allows the City to require consent to annexation for supplying its utility service. The waiver of protest agreements are executed to obtain this consent. Recording the waivers in order to create covenants that run with the land and bind subsequent purchasers is not inconsistent with or less stringent than the state requirements. The purpose of § 7-13-4314, MCA, is to ensure that property owners outside a municipality can request utility service and to ensure that a local government can later require annexation in exchange for its utilities. Creating a covenant that runs with the land furthers these purposes. The alternative would be to require utilities to be disconnected every time a property changes hands so that the City can again require consent to annexation for its utilities under § 7-13-4314, MCA. Such a result is not contemplated by the statutory language of § 7-2-4710, MCA, or § 7-13-4314, MCA.

¶29 The Property Owners argue there is no statutory authority for such covenants. We disagree. Section 70-17-203, MCA, provides that "Every covenant . . . which is made for the direct benefit of the property or some part of it then in existence, runs with the land." The plain language of this statute indicates the present waivers are allowed as they directly benefit the property. *Hampton v. Lewis & Clark County*, 2001 MT 81, ¶ 25, 305 Mont. 103, ¶ 25, 23 P.3d 908, ¶ 25. Therefore, the waivers are proper because the waivers directly benefit the property and are not inconsistent with or "lower or less stringent" than the state annexation requirements. We note here the Property Owners focused only on their statutory argument that the annexation statutes do not allow for such covenants. They did not argue the waivers do not meet all the necessary elements of a covenant running with the land. Therefore, we need not assess all the elements of covenants running with the land.

¶30 In sum, the District Court properly concluded the waiver of protest agreements recorded by the City constitute covenants that run with the land that comply with the state annexation statutes. These covenants are binding on subsequent purchasers including the Property Owners joined in this case. Therefore, the City properly invalidated protests from these Property Owners and two of the areas annexed by the City did not have a majority of property owners protest the annexation.

ISSUE TWO

¶31 **Did the District Court err in concluding the City could require consent to annexation for continued receipt of utility services by enacting City of Whitefish Resolution 98-43?**

¶32 A number of tracts in the areas to be annexed have been receiving utility services since before 1966 when the waiver of protest agreements were initiated. In order to address

the continuation of services to property that receives water and sewer utilities from the City, the City adopted Resolution 98-43 (the Utility Rule) in September 1998. The Utility Rule provides that upon notice to the property owner, the City can imply consent to annexation if the property owner continues to use the utility services. The rule reads in part as follows:

> The City may, at any time, require a property owner's consent to annexation as a condition of continued sewer and/or water service. When the City determines to require such consent from a particular property owner, the City may notify the property owner, in writing, that the City seeks such consent, and that if such consent is not given, the City will require that the property owner discontinue receiving sewer and water service. . . . If . . . the property owner has not, within ten (10) days, made firm written arrangements to discontinue sewer and water service, then the City shall be entitled to treat the property owner as having consented to annexation of his or her property upon expiration of such 10-day period. . . . If the property owner consents to annexation [by failing to make arrangements to disconnect], then the City shall be entitled to disregard any protest that such property owner makes to a proposed annexation of his or her property.

This rule is based on 46 Op. Att'y Gen. No. 12 (1995) (AG Opinion) which held that municipalities can establish rules requiring consent to annexation for continuing service.

¶33 Pursuant to the Utility Rule, the City gave notice to the affected Property Owners that it would imply their consent to annexation if they failed to make written arrangements to disconnect from the City's utilities. Although numerous Property Owners protested the annexations in writing, few made arrangements to disconnect their utilities. Because they did not make arrangements as required by the Utility Rule, the City invalidated these protests and implied consent to annexation. When these protests were subtracted by the City, none of the five areas had a majority of landowners protest annexation.

¶34 The District Court held that § 7-13-4314, MCA, and the AG Opinion properly supported the City's position that consent to annexation may be required for receipt of

continued utility service.

¶35 Analogous to their first argument, the Property Owners assert § 7-13-4314, MCA, does not provide statutory authority for the Utility Rule and that the City cannot by virtue of the rule equate receipt of services to consent to annexation. Further, the Property Owners disagree with the AG Opinion that a municipality can require consent to annexation as a condition of continued receipt of services. The City argues it properly relied on the AG Opinion when it adopted the Utility Rule.

¶36 The District Court is correct. The AG Opinion concludes a municipality "may adopt a rule for the operation of its municipal sewer and/or water utility requiring a property owner's consent to annexation as a condition of continued sewer and/or water service." This conclusion is based on § 69-7-201, MCA, which governs the operation of public municipal utilities. This statute reads:

> **Rules for operation of municipal utility**. Each municipal utility shall adopt, with the concurrence of the municipal governing body, rules for the operation of the utility. The rules shall contain, at a minimum, those requirements of good practice which can be normally expected for the operation of a utility. . . . The rules shall outline the utility's procedure for discontinuance of service and reestablishment of service as well as the extension of service to users within the municipal boundaries and outside the municipal boundaries. The rule shall provide that rate increases for comparable classifications and zones outside the municipal boundaries may not exceed those set within the municipal limits under the provisions of this chapter.

As the Attorney General noted, the provisions of this statute indicate a legislative intent to give municipalities broad authority to adopt rules for the operation of water and sewer utilities.

¶37 Specifically, § 69-7-201, MCA, makes clear a municipality has authority to establish

rules regarding users outside its boundaries. Further, the "requirements of good practice which can be normally expected for the operation of a utility" must, by necessity, include rules governing continued use. Therefore, § 69-7-201, MCA, gives a municipality authority to set rules for continued use of its utilities by users outside its boundaries. So, § 7-13-4314, MCA, allows a municipality to require consent to annexation in order to initiate service, and § 69-7-201, MCA, allows a municipality to make rules regarding the discontinuance and reestablishment of service. Therefore, a municipality may require consent to annexation for continued use as well as initial use.

¶38 Rules of statutory construction support this interpretation. We interpret related statutes to harmonize and give effect to each. *Chain v. Mont. DMV*, 2001 MT 224, ¶ 15, 306 Mont. 491, ¶ 15, 36 P.3d 358, ¶ 15. Different language is to be given different construction. *In re Kesl's Estate* (1945), 117 Mont. 377, 386, 161 P.2d 641, 646. Given these rules, the phrase "extension of service" in § 69-7-201, MCA, does not have the same meaning as the word "initiate" in § 7-13-4314, MCA. In addition, we avoid statutory construction that leads to absurd results if a reasonable construction will avoid it. *Chain*, ¶ 15. By allowing a municipality to demand consent to annexation as a requirement of continued service, all parties avoid the duplicative and unnecessary step of discontinuing service if the landowner wishes to continue to receive service and consent to annexation. At the same time, a landowner who does not want to consent to annexation can simply make arrangements to disconnect from service. We affirm the District Court's determination that the City complied with the state annexation statutes when it adopted the Utility Rule in Resolution 98-43 and thereby required consent to annexation as a condition of continued service.

ISSUE THREE

¶39 **Did the District Court err in concluding that by following City of Whitefish Resolution 98-43, the City could imply consent to annexation from Property Owners who continued to receive utility services after the City gave notice requiring them to disconnect the utilities?**

¶40 Under the Utility Rule set out above, after notice property owners must make "firm written arrangements to discontinue sewer and water service" if they do not wish to consent to annexation. If a property owner fails to do so, "the City shall be entitled to treat the property owner as having consented to annexation." Further, the City is entitled to "disregard any protest" submitted by such a property owner.

¶41 The District Court held that because § 7-13-4314, MCA, does not require a specific type of consent such as express, written or implied, implied consent was a valid form of consent. The court also held implied consent was proper under § 28-2-503, MCA.

¶42 The Property Owners argue there is no statutory authority for implying consent to annexation under the annexation statutes. They also assert that under the contract statute regarding voluntary acceptance of a benefit codified at § 28-2-503, MCA, there can be no meeting of the minds given that the Property Owners submitted written protests. Finally, the Property Owners argue ambiguity and confusion in the City's letters prevented any meeting of the minds that would validate implied consent by the Property Owners. The City argues the implied consent provided for in the Utility Rule is allowed by § 28-2-503, MCA.

¶43 As already decided above, the Utility Rule properly requires consent to annexation for continued service. The rule simply establishes a procedure which puts the burden on the property owner to make written arrangements to disconnect if they wish to express their

protest to annexation. Contrary to the Property Owners' argument, there is statutory authority for this approach. Pursuant to § 7-2-4710, MCA, a property owner's consent to annexation is implied if they fail to file written protest. Indeed, a property owner must file written protest under § 7-2-4710, MCA, in order to be counted towards a majority protesting annexation. Section 7-2-4710, MCA, and the Utility Rule simply embody the procedure that once proper notice is given, both action and inaction constitute a decision. Finally, as the District Court noted, nothing in the language of § 7-13-4314, MCA, requires a specific type of consent regarding annexation. Therefore, the Utility Rule's procedure which implies consent from failure to submit written arrangements to disconnect upon notice from the City is acceptable.

¶44 The Property Owners' argument that no meeting of the minds occurred under § 28-2-503, MCA, misses the point. While it is true that implied consent can form a contract under Montana law as indicated by § 28-2-503, MCA, this statute is inapplicable here as the City was not seeking to form a contract with the Property Owners. The City was simply giving the Property Owners notice regarding their options. Indeed, no meeting of the minds was ever to occur and no contract was ever to be formed. Finally, any ambiguities in the letters from the City are irrelevant because no contract was to be formed. The Property Owners do not assert the letters failed to inform them that written arrangements to disconnect were required.

¶45 We conclude the City's procedure to imply consent as allowed in the Utility Rule is a proper method to determine if a property owner wishes to continue receiving City services or, in the alternative, wishes to protest annexation. We affirm the District Court's conclusion

the City properly invalidated protests from users who did not make arrangements to disconnect from the City's utilities. Therefore, none of the five areas annexed by the City had a majority of property owners protest the annexation.

ISSUE FOUR

¶46 **Did the District Court err in concluding the Property Owners could secure judicial review of the City's annexation procedures under § 7-2-4741, MCA, even though a majority did not successfully protest the annexation under § 7-2-4710, MCA?**

¶47 The City argues the Property Owners cannot challenge the remaining annexation proceedings because a majority of property owners did not successfully protest. The District Court disagreed with the City and concluded:

> The right to protest under Section 7-2-4710, M.C.A., and the right for judicial review for failure of the governing body to comply with the statutory procedures and requirements under Section 7-2-4741, M.C.A., are separate and distinct rights. Section 7-2-4710, M.C.A., provides that a majority of the real property owners who validly protest may stop or block annexation. Section 7-2-4741, M.C.A., is available after annexation and allows a majority of the property owners to seek judicial review to force or compel the municipal governing body to comply with statutory procedures. The relief available to [the Property Owners] is controlled by Section 7-2-4742, M.C.A., and appears to be limited to forcing conformance by the governing body. Since the rights are separate and distinct, clearly, failure to exercise the right to protest and a waiver of the right to protest, would not waive any property owner's right to seek judicial review.

¶48 The City asserts the Property Owners subject to a waiver of protest agreement cannot challenge the annexation because they bargained away that right in exchange for city services. The City also argues the Property Owners who were deemed to have consented to annexation under the Utility Rule cannot challenge annexation because they impliedly agreed to accept city services in exchange for their consent.

¶49 The City also argues it is unfair to allow a property owner to consent to annexation to receive the City's services and then allow that same person to reverse their position and file suit against the annexation. The City argues if such action is allowed, municipalities will have to annex one property at a time in order to avoid costly litigation. The City asserts there is no societal benefit in making annexation even more difficult than it already is because municipalities still have to comply with Title 7. The City points out after discounting these Property Owners, there is no longer the required majority for judicial review under § 7-2-4741, MCA.

¶50 The Property Owners assert the District Court properly determined the right to request judicial review under § 7-2-4741, MCA, is separate from the right to protest annexation under § 7-2-4710, MCA.

¶51 The right to protest under § 7-2-4710, MCA, is set out above. Section 7-2-4741, MCA, reads:

> **Right to court review when area annexed**. (1) Within 30 days following the passage of an annexation ordinance under authority of this part, either a majority of the real property owners of the area to be annexed or the owners of more than 75% in assessed valuation of the real estate in the area who believe that they will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in this part or to meet the requirements set forth in 7-2-4734 and 7-2-4735, as applied to their property, may file a petition in the district court of the district in which the municipality is located seeking review of the action of the governing body.

We interpret related statutes to harmonize and give effect to each and to avoid absurd results. *Chain*, ¶ 15. To hold that property owners must meet the protest requirements of § 7-2-4710, MCA, in order to request judicial review under § 7-2-4741, MCA, would fail to give effect to the separate language of § 7-2-4741, MCA. Such a holding would also mean newly

annexed citizens of a municipality could not make sure the municipality substantively and procedurally complied with the annexation statutes. Such results are not in accord with the statutes.

¶52 Regarding the waiver of protest agreements, the language clearly indicates the Property Owners waived the right to protest, not the right to request judicial review. The waivers read:

> [W]e do hereby consent to and waive any and all *right to protest* which we may have in regard to any attempt made or to be made by the City of Whitefish, Montana, to annex to and make a part of said City of Whitefish, and incorporate within its boundaries . . . . [Emphasis added].

Protest, as is indicated by § 7-2-4710, MCA, can be made before an annexation occurs. In contrast, the language of § 7-2-4741, MCA, indicates the right to request judicial review is activated after a municipality completes an annexation. Therefore, although the waiver of protest agreements unconditionally waived protest rights, the owners simply made no agreement regarding their right to demand judicial review.

¶53 We disagree with the City's assertion that the obligation of good faith and fair dealing implied in every contract requires the Property Owners to refrain from interfering with annexation in any way. This obligation cannot be so broadly construed as to waive a statutory right to judicial review.

¶54 Regarding the consent implied by continued use under the Utility Rule, as discussed above in ¶ 44, we disagree that any contract regarding annexation was formed. The "offer" to continue service in exchange for consent was not an offer to enter into a contract, but was a means to inform the Property Owner how to register a valid protest. Therefore, these

Property Owners did not waive their right to judicial review.

¶55 The judicial review allowed by § 7-2-4741, MCA, is how residents confirm the City's actions in annexing their homes comply with the law. We note the City does not dispute the Property Owners met the other requirements of § 7-2-4741, MCA. Therefore, we affirm the District Court's determination that although the Property Owners did not stop the annexation process under § 7-2-4710, MCA, they properly petitioned to assure the City met statutory annexation requirements of Title 7, Chapter 2, Part 47.

ISSUE FIVE

¶56 **Did the District Court err in concluding the City met the statutory annexation requirements of Title 7, Chapter 2, Part 47?**

¶57 The Property Owners contend the City's Extension of Services Plan (Plan) specifically violates the requirements of § 7-2-4731(1)(a)(i), MCA; § 7-2-4731(1)(a)(ii), MCA; § 7-2-4731(1)(a)(iii), MCA; § 7-2-4731(1)(b), MCA; § 7-2-4731(1)(c), MCA; § 7-2-4732(1), MCA; § 7-2-4732(2)(b), MCA; § 7-2-4732(2)(c), MCA; § 7-2-4732(3), MCA; § 7-2-4732(4), MCA; and § 7-2-4733, MCA. The Property Owners' challenge is the same with respect to the five areas to be annexed. Although we address each statute specifically below, we note, as did the District Court, the Property Owners essentially wish to establish the City may not annex their properties unless the entire City pays for the extension of new water and sewer mains. As discussed more fully below, because the City has already planned and provided for sufficient water and sewer capacity for the annexed areas, because the City's policy to require private parties to pay for main extensions is allowable under § 76-3-510, MCA, and because the Plan sets forth how new mains can be provided, we hold

the City's annexation Plan substantially complies with state statute.

¶58 We address the statutes out of numerical sequence, in order to more clearly present the parties' arguments.

A. Does the Plan include the statement regarding the extension of municipal services required by § 7-2-4731(1)(c), MCA?

¶59 Section 7-2-4731(1)(c), MCA, reads:

> **Plans and report on extension of services required.** (1) A municipality exercising authority under this part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in 7-2-4707 through 7-2-4709, prepare a report setting forth its plans to provide services to such area. This report shall include:
> . . . .
> (c) a statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation.

The parties stipulated that the only municipal services at issue are water mains, sewer mains and roads, and that all other municipal services are adequately provided for in the Plan.

¶60 The Plan and the Addendum to the Plan (Addendum) document the extensive water and sewer mains and roads that already exist within the annexed areas. These water and sewer mains already exist in the annexed areas because the City has been extending its municipal services to properties outside its boundaries for over 80 years. Regarding anticipated municipal service needs for those properties within the annexed areas that do not have access to existing mains, the Plan states that construction of any new water or sewer mains will be paid for by the private party desiring the development. This has been the City's policy both within and outside City boundaries since 1977. The Plan also states the City has no plans to extend any new services into the areas to be annexed because the need

for any additional water and sewer mains and roads will be initiated and driven by private demand and therefore cannot be predicted by the City. In addition, the Plan notes the City is not aware of any requests for and does not propose any capital improvements over the next five years that would be funded by a Special Improvement District (SID). Finally, the Plan notes that properties within the annexed areas that are currently served by their own wells and septic systems will remain on those systems until upgrades become necessary.

¶61 The parties stipulated the City's water plant and sewer plant capacities are already large enough to serve all properties in the annexed areas. In addition, the parties stipulated:

> It is a reasonable possibility that one or more individual properties within the five annexed areas, as a result of future development of individual property within those annexed areas, developed to densities authorized by present Whitefish zoning, will necessitate the extension of the Whitefish municipal water [and sewer] mains, within five years from the date of the annexation of the five areas.

The parties also stipulated it would cost approximately $2.275 million to extend water and sewer mains to reach every property in all five of the annexed areas.

¶62 In holding the Plan meets the requirements of § 7-2-4731(1)(c), MCA, the District Court concluded:

> [A] substantial number of lots within the five areas to be annexed already receive City water and sewer, or else have private water and septic systems. Those lots which are not currently receiving City water and sewer may connect at any time, and the City water and sewer facilities have adequate capacity to service those additional lots. The City has no plans to extend services in those annexed areas, as the services presently exist or are not being requested.

¶63 The Property Owners assert that because the City stipulated there is a reasonable possibility construction of water or sewer mains will be necessary within the next five years,

the Plan does not comply with § 7-2-4731(1)(c), MCA, when it states the City has no plans for the extension of these services. They argue a statement that present services are sufficient is not enough to meet the statute's requirements. The Property Owners also argue the statute does not exempt its requirement for a plan when part of the area to be annexed already receives municipal services, when part of the area to be annexed is on a private well or septic system, or for when no one is requesting additional service. The Property Owners essentially argue the City must, as a part of its annexation plan, specifically show how water and sewer mains will be extended to all unserved properties within the annexed areas.

¶64 The City argues the Plan conforms to § 7-2-4731(1)(c), MCA, because it states in the Addendum the City has no plans to extend services at this time in each area. The City also asserts the Plan conforms to the statute because the Plan also states that if properties are developed, the mains and streets will only be extended when private parties request and pay for an extension. The City notes its longstanding policy, in accord with § 76-3-510, MCA, that developers and property owners who wish to extend a main are responsible for its cost whether inside or outside City boundaries. The City also points out that because of the existing extensive urban development in the areas to be annexed, water and sewer mains are already in place through or beside much of each area. Regarding roads, the City notes the Plan states the City will assume maintenance of all existing roads in the annexed areas. Finally, the City asserts it cannot predict future extensions because as the Plan states, new mains and roads are initiated by private demand.

¶65 We hold the Plan substantially complies with § 7-2-4731(1)(c), MCA. Even though the City agrees it is reasonable to expect that private landowners in the annexed areas may

develop their property so that water or sewer main extensions become necessary in the near future, the statute does not require the City to address each specific property within the annexed area. Rather, the statute requires the City to set forth the City's plans for the extension of municipal services into the area. In this case, the City's plan regarding new water and sewer mains and roads is that the City does not intend to undertake any new construction unless requested and paid for by a landowner. This approach, when considered along with the agreed fact that the City now has adequate water and sewer plants, substantially complies with the statute for a number of reasons.

¶66 First, the City's policy to require private parties to pay for new water and sewer mains and roads is permissible under § 76-3-510, MCA, which allows local governments to require developers to pay for the extension of capital facilities. Given this policy, the City does not initiate development, nor does the City finance development. Rather, such construction is only undertaken when a private property owner decides to request it and pay for it. Although the City can assist in the financing of construction by setting up a SID so local landowners can pay the costs over time, the Plan mentions the City is not currently aware of any requests for a SID.

¶67 Second, to the extent the City can influence the decisions of local landowners within the annexed areas on whether to develop their property such that new main extensions and roads are required, the Plan illustrates the City has already done so. The Plan includes the comprehensive City-County zoning applicable to land within one mile of the City boundary and the planning district applicable to land within four and one-half miles of the City boundary. The Plan also discusses the City's predictions and preferences regarding when

and where growth will occur. This discussion addresses each possible development direction north, south, east and west of the City and also discusses the reasons for the existing development.

¶68 Third, because of the extensive development that already exists within the annexed areas in this case, this situation is distinguishable from annexation of a newly proposed subdivision. In the latter situation, the plans for the extension of services into the annexed areas would be coordinated with government approval of the subdivision itself as directed under Title 76.

¶69 Finally, as the parties stipulated, the City already has sufficient water and sewer capacity to serve each property in the newly annexed areas. This stipulation is critical because it indicates the City has in fact already addressed a very expensive component of extending new municipal services into the annexed areas. Therefore, no plan for expanding the City's overall water and sewer capacity is necessary in the Plan.

¶70 In sum, contrary to the Property Owners' argument, § 7-2- 4731(1)(c), MCA, does not require the City to extend services. Rather, it requires the City to set forth its plans as to how new services will be extended to the annexed area so that the public is informed before the hearings required by §§ 7-2-4707-4709, MCA. The City's Plan in this case complies with § 7-2-4731(1)(c), MCA, because it properly sets forth the City's plans for the extension of new water, sewer, and road services.

B. Does the Plan provide for future development in conformance with § 7-2-4732(2)(b), MCA?

¶71 Section 7-2-4732(2)(b), MCA, reads:

> [The Plan shall] provide for future extension of streets and of major trunk water mains, sewer outfall lines, and other utility services into the area to be annexed, so that when such streets and utility lines become necessary and are constructed, property owners in the area to be annexed will be able to secure such services, according to the policies in effect in such municipality for extending such services to individual lots or subdivisions.

¶72 The District Court held the Plan meets this statute because it sets out the City's policy to extend water and sewer mains only when the property owner pays the cost. The court also noted it would be unfair to current City residents if the City were to change this policy as the policy has always applied within City boundaries.

¶73 The Property Owners again argue the Plan fails to meet the statute. They argue the specific statutory language requires the Plan to provide plans for when future utility lines "become necessary" even if not currently necessary. The Property Owners again point to the stipulation between the parties that it is probable new water and sewer mains will be needed within five years.

¶74 The City argues the Plan complies with the statute because the policy for future extensions is in line with the current policy to require the property owner to pay for the extension. The City also argues because it has water and sewer capacity to serve the annexed areas and a grid of mains beside or through the annexed areas that can be accessed for future development, its Plan complies with the statute.

¶75 We hold the Plan substantially complies with § 7-2- 4732(2)(b), MCA, because it says that future development will have to meet the current "policies in effect" for extension of services and the policy is stated. In other words, the policy for landowners inside and outside the City is that new water mains, sewer mains, and roads will be financed by the

property owner requesting the construction.

C. Does the Plan include a financing method in conformance with § 7-2-4732(3), MCA?

¶76 Section 7-2-4732(3), MCA, reads:

> A method must be set forth by which the municipality plans to finance extension of services into the area to be annexed. If the area is serviced currently by adequate water and sewage services, streets, curbs, and gutters and no capital improvements are needed to provide adequate services stipulated by this section and 7-2-4731, the municipality must provide the area to be annexed with a plan of how they plan to finance other services to be included within the district--mainly, police protection, fire protection, garbage collection, street, and street maintenance services, as well as continued utility service.

¶77 The District Court held the Plan meets this requirement because the areas to be annexed are currently serviced by adequate water and sewer lines. The court also held the parties' stipulations indicated no capital improvements were needed.

¶78 The Property Owners argue the Plan fails to meet this requirement because no financing method is set forth and because, contrary to the District Court's holding, capital improvements will be needed in the future to extend water and sewer mains. The Property Owners assert the District Court mischaracterized the stipulations of the parties regarding existing services and ignored the fact that the parties also stipulated there is a reasonable possibility future development will require the extension of water and sewer mains. The Property Owners point out that the City stipulated the cost to extend water to all unserved lots in all five areas would be $966,713 and the cost to extend sewer to all unserved lots would be $1,308,387. The Property Owners also argue the City should not be able to rely on the fact that some of the newly annexed properties have their own septic systems or wells

in order to avoid addressing plans for the extension of services to those properties that will need service in the future.

¶79 The City asserts sufficient financing methods are set forth in the Plan. First, the City points out the Plan provides that new extensions must be paid for by the developer or property owner. The City also notes it is also part of the Plan to provide for "Latecomers Agreements" which allow the City to partially reimburse developers' utility costs from other properties that connect to a new main extension within ten years. The Plan also allows for the formation of SIDs to spread the cost of a main extension over all the benefitting properties. The City argues it now has water and sewer capacity to serve the annexed areas even with new development. This capacity is currently funded by already established taxes and fees as set out in the Plan. Finally, the City asserts the Plan also sets out the current revenue sources for street maintenance.

¶80 We conclude the Plan substantially complies with § 7-2-4732(3), MCA. The Plan sets forth the City's plans for financing methods that sufficiently describe how needed improvements and extensions will be paid for in the annexed areas. Further, we will not disturb the District Court's decision that the annexed areas are "serviced currently by adequate water and sewage services [and] streets" and that no capital improvements are needed to provide the services stipulated by § 7-2- 4732 and -4731, MCA, because the Plan makes clear the City has no plans to extend new services as discussed above.

D. Does the Plan include tax burden statements and voting methodology statements in conformance with § 7-2-4732(4), MCA, and § 7-2-4733, MCA?

¶81 Section 7-2-4732(4), MCA, reads:

> In this annexation plan, it must be clearly stated that the entire municipality tends to share the tax burden for these services, and if so, the area may be annexed without a bond issue under the provisions of this part.

Section 7-2-4733, MCA, reads:

> **Vote required on proposed capital improvements.** Included within the plan must be methodology whereby the area to be annexed may vote upon any proposed capital improvements. Should a negative vote be cast by over 50% of the residents in the section or sections to be annexed in such election, the area may not be annexed.

¶82 The District Court held these two provisions must be read together. The court noted the Plan states the entire City will share in the tax burden for the services that will be provided. The court went on to hold that in this instance, because no new capital improvements were proposed in the Plan that would require a bond or a SID, no methodology for a vote was necessary.

¶83 The Property Owners argue the Plan does not comply with these sections. Essentially, the Property Owners argue that because the language of § 7-2-4732(4), MCA, requires a statement that the tax burden for municipal services is shared by the entire community, the City is responsible for paying for new sewer and water main extensions and new roads. As a result, the Property Owners assert the City's policy to require private parties to pay for new main extensions or roads must be void. Further, they argue the language of § 7-2-4732(4), MCA, prevents the City from using a SID to fund development because a SID is paid for only by those properties immediately benefitted by the extended utility mains rather than the "entire municipality." They assert the City is evading the law by not proposing any new capital improvements in order to avoid the statutory requirements.

¶84 In support of their arguments, the Property Owners misquote § 7-2-4732(4), MCA.

Their brief states: "The language of § 7-2-4732(4), MCA, requires that the 'entire municipality must share the tax burden for the extension of water and sewer mains.'" This quote is in error because the statute actually reads as set out above.

¶85 The City argues the Plan complies because for each of the areas to be annexed, the Addendum states the entire community tends to share the tax burden. The City asserts § 7-2-4732(4), MCA, allows annexation without a methodology for voting because no bond issue is necessary as no capital improvements were proposed.

¶86 We conclude the City's annexation Plan substantially complies with subsections 7-2-4732(4) and -4733, MCA. The Plan and the Addendum describe various funding sources and methods for financing each of the municipal services. The Plan and Addendum also describe the City's method of financing future extensions of water, sewer, and roads by following the policy that the developer or homeowner pays for the installation when needed. The Addendum also contains the statement for each annexed area: "Nevertheless, the entire community tends to share the tax burden for City services." Further, the Plan states the City has no plans for specific capital improvements related to the annexations.

¶87 These statements in the Plan make it apparent nothing about the annexations requires special or new funding sources. Instead, all municipal services provided to the newly annexed areas, including water capacity, sewer capacity, road maintenance, police and fire protection, storm drainage, garbage disposal, recreation, and other services, will be paid for by the general tax burden shared by the entire community. Any new main extensions or roads must be paid for by the party requiring the new construction. The tax burden for the continuing cost of all municipal services extended under the Plan is to be shared by all City

residents. Therefore, the Plan complies with § 7-2-4732(4), MCA, because it sets forth the City's plan for the extension of municipal services such that no special funding sources are required to accomplish the annexations. As a result, no bond issue was necessary to proceed with the annexation as allowed under § 7-2-4732(4), MCA. Further, no voting methodology was required pursuant to § 7-2-4733, MCA, because no capital improvements were proposed by the City.

¶88 We disagree with the Property Owners' argument that § 7-2-4732(4), MCA, requires the City and its current residents "must" pay for new main extensions for annexed residents because of the Plan's statement the entire municipality tends to share the tax burden. As mentioned, the Property Owners misquote § 7-2-4732(4), MCA. "Must" is used in the statute to indicate the Plan must contain the required statement in order to annex without a bond issue. "Must" is not used in the statute to indicate the City is required to pay for new main extensions. Such an interpretation would directly contradict § 76-3-510, MCA.

¶89 Rather, the statute requires a statement the municipality "tends" to share the tax burden for services. "Tends" as used in the statute gives the City latitude to decide to finance new construction for newly annexed areas in accordance with § 76-3-510, MCA, which allows the City to charge individuals for infrastructure needed to specifically benefit their property. Again, we will not interpret § 7-2-4732(4), MCA, in a way that invalidates the plain language of § 76-3-510, MCA. Further, the City's policy to require the party requesting a new main extension to pay for it does not conflict with this statute because, as the parties stipulated, the entire municipality still tends to share the tax burden of the overall water and sewer capacity of the system, which are expensive and continuing components of

supplying water and sewer.

¶90 As to the Property Owners' argument that the City is purposefully subverting the statute by not planning capital improvements, this argument fails to recognize the City has acted within its legal authority. Perhaps in hindsight one could argue from a planning perspective the City should not have extended services to properties without annexing them. Or perhaps the City should not annex without forming a SID so that all the newly annexed properties must pay for new main extensions to be installed immediately upon annexation even if such are not currently needed. However, hindsight does not guide our review. We only review whether the City's actions substantially complied with the statute such that its annexation Plan properly informs the public how the extension of services into the annexed areas will be both planned and financed. We hold that it does.

E. Does the Plan contain a long range plan as required by § 7-2-4732(1), MCA?

¶91 Section 7-2-4732(1), MCA, reads:

> **Contents of plan for extension of services.** (1) Specifically, the plans for the extension of services shall provide a long-range plan for extension of services and the acquisition of properties outside the corporate limits. This plan must show anticipated development a minimum of 5 years into the future, showing on a yearly basis how the municipality plans to extend services, develop and add sections to the city.

¶92 The District Court concluded the City's Plan was in compliance stating:

> [The Property Owners' position] flies in the face of present-day city expansion. [Their] position ignores the fact that development and resulting annexation are driven by property owners, not by the cities. Whitefish is no longer "Stumptown," when the City initiated development; now it is the landowner, who, wishing to maximize investment in land, is developing the land and thereafter seeking municipal services. Further, as noted above, the services in the form of water, sewer, and roads already exist in all the areas to

> be annexed. There is no extension of services which can occur, beyond the individual landowner or developer paying to connect with the existing utilities.

¶93 The Property Owners argue there is no long range plan in the Plan and no statement showing anticipated development five years into the future. They assert the District Court improperly exempted the City from this unambiguous requirement and that the court's holding ignores the statutory directive. The Property Owners also argue that if the statute no longer fits the times, it is up to the Legislature to change it, not the District Court.

¶94 The City asserts the Plan conforms to § 7-2-4732(1), MCA, because it discusses factors likely to influence growth over the next five years by including sections entitled Economic Conditions and Trends, Physical Growth Trends, Impediments to Growth, Growth Stimulants, Prevailing Growth Patterns, and a map of the Projected Growth Area. The City also argues the Plan identifies three contemplated annexations that will occur within five years. Finally, the City argues the District Court correctly noted development and annexations are currently driven by property owners, not cities.

¶95 We hold the City's Plan substantially complies with § 7-2-4732(1), MCA, because it does include careful consideration of future needs. *Inter alia*, the Plan details two additional areas that will likely be annexed within five years. In addition, the part of the Plan discussing growth patterns by direction from the City mentions the City's preferred growth areas and notes where water and sewer mains would be most easily extended to facilitate new growth. This section also mentions that although the City anticipates growth, much of the growth that is expected to occur beyond the limit of current City services will most likely occur after more than five years has passed. The Plan also discusses anticipated growth

influences over a period longer than five years. Finally, the Plan makes clear the City, in conformity with a long existing policy, will not extend its services unless such is paid for by the developer. Therefore, again, to the extent the City can make long range plans without knowing the plans of private landowners, the Plan does so.

¶96 The District Court is wrong to the extent its holding implies the City can ignore the statutory mandate because "the times have changed." However, because the Plan itself substantially complies with the statute in this instance, we will affirm.

F. Does the Plan include a timetable as required by § 7-2-4732(2)(c), MCA?

¶97 Section 7-2-4732(2)(c), MCA, requires the Plan to set forth a proposed timetable for construction to extend streets, water, sewer, or other utility lines if such extension is "necessary." The District Court held that no timetable was required because no new utility extensions were "necessary." The court noted its agreement with the City that private development determines when extensions will occur and also noted the City has water and sewer capacity to meet the needs of the annexed areas.

¶98 The Property Owners argue a timetable is not in the Plan contrary to the plain language and that because the City acknowledges there will likely be development in the future, the Plan must have a timetable. They assert that even though development will be fueled by private entities, the City has an obligation to predict both the location and timing of this development. They point out the Plan is an informational document for the public that can be changed as predictions change.

¶99 The City asserts a timetable is only required when extensions are "necessary." The

City asserts because it has no plans for new water or sewer services or for new roads, extensions are not necessary and therefore a timetable is not necessary. The City argues it cannot predict future development by private parties more than it already has.

¶100 We hold the Plan does comply with § 7-2-4732(2)(c), MCA, because no timetable must be included in the Plan when no extensions are "necessary." Further, as mentioned, to the extent the City can predict or direct the timing of growth, the Plan does so by referring to the City's zoning requirements, by discussing factors influencing growth patterns, and by discussing possible growth directions outside the City.

G. Does the Plan include maps of the City's present and proposed boundaries in conformance with § 7-2-4731(1)(a)(i), MCA?

¶101 Section 7-2-4731(1)(a)(i), MCA, requires the Plan to include a map or maps showing the present and proposed boundaries of the municipality.

¶102 The Property Owners argue the Plan does not include a map of the present and proposed boundaries because the maps of the proposed boundaries are not in the Plan itself. The City asserts maps of the City are in the Plan and the proposed boundaries are shown on maps in the Addendum which includes a detailed statement for each specific area to be annexed.

¶103 We hold the Plan complies with § 7-2-4731(1)(a)(i), MCA, because the Plan includes maps of the City and because maps with a "proposed annexation boundary" for each annexation area are attached to the Plan in the Addendum so that any member of the public who wishes to know the proposed boundaries can easily determine such by reference to the Addendum.

H. Does the Plan include maps of the present and proposed streets and water mains in conformance with § 7-2-4731(1)(a)(ii), MCA?

¶104 Section 7-2-4731(1)(a)(ii), MCA, reads the Plan shall include a map of:

> the present streets, major trunk water mains, sewer interceptors and outfalls, and other utility lines and the proposed extension of such streets and utility lines as required in subsection (1)(c).

¶105 The Property Owners assert there is no map meeting these requirements. The City asserts the Addendum maps show the existing streets, water mains, and sewer mains. The City also argues it did not have to show any proposed streets or utility mains on its maps because it is not proposing any as the areas to be annexed are already fully developed urban areas.

¶106 We hold the Plan complies with § 7-2-4731(1)(a)(ii), MCA, because the maps in the Addendum show the present streets, water mains, and sewer mains for each area to be annexed. Further, the Plan complies because no new streets or utility mains are proposed as discussed above.

I. Does the Plan include maps of the general land use in conformance with § 7-2-4731(1)(a)(iii), MCA?

¶107 Section 7-2-4731(1)(a)(iii), MCA, reads the Plan shall include a map of "the general land use pattern in the areas to be annexed." The Property Owners argue there is no such map included in the Plan itself and that the District Court erred in relying on the maps in the Whitefish City-County Master Plan (Master Plan). The City asserts the Plan includes such a map because Exhibit C to the Plan is labeled with zoning codes that correspond to the City-County zoning districts applicable to land within one mile of its boundaries. The City also asserts the Plan explicitly incorporates the Master Plan by reference in the introduction and

by specific references in the Addendum.

¶108 We hold the Plan complies with § 7-2-4731(1)(a)(iii), MCA, because Exhibit C to the Plan shows the "Zoning Use Designations." These designations indicate general land use by showing already applicable zoning as adopted by Flathead County in coordination with the City. Further, while we hold there must be some map showing general land use patterns in the Plan as is done in Exhibit C, we agree with the District Court that the Plan can refer to the Master Plan for more detailed information.

J. Does the Plan include the statement regarding boundaries required by § 7-2-4731(1)(b), MCA?

¶109 Section 7-2-4731(1)(b), MCA, requires the Plan to include "a statement showing that the area to be annexed meets the requirements of 7-2-4734 and 7-2-4735." Sections 7-2-4734 and -4735, MCA, address, as the District Court noted, "the location of the area to be annexed in relation to the existing city limits" and other boundary requirements. The Property Owners assert the District Court erred because it concluded the Plan complies with § 7-2-4734 and § 7-2-4735, MCA, even if it does not have a specific statement asserting that it complies as is required by § 7-2-4731(1)(b), MCA. The City argues the Addendum has such a statement for each of the areas to be annexed. The City further argues that because § 7-2-4734, MCA, and § 7-2-4735, MCA, contain at least six requirements, it is impossible to state complete compliance in one statement. Finally, the City argues it complied with § 7-2-4734, MCA, and § 7-2-4735, MCA.

¶110 We hold the Plan complies with § 7-2-4731(1)(b), MCA, because the Addendum contains the required statement for each of the annexed areas. Each of the five areas has a

statement which reads: "**CONCLUSION** As shown in the preceding text, the area to be annexed meets the requirements of Section 7-2-4734 and Section 7-2-4735 MCA."

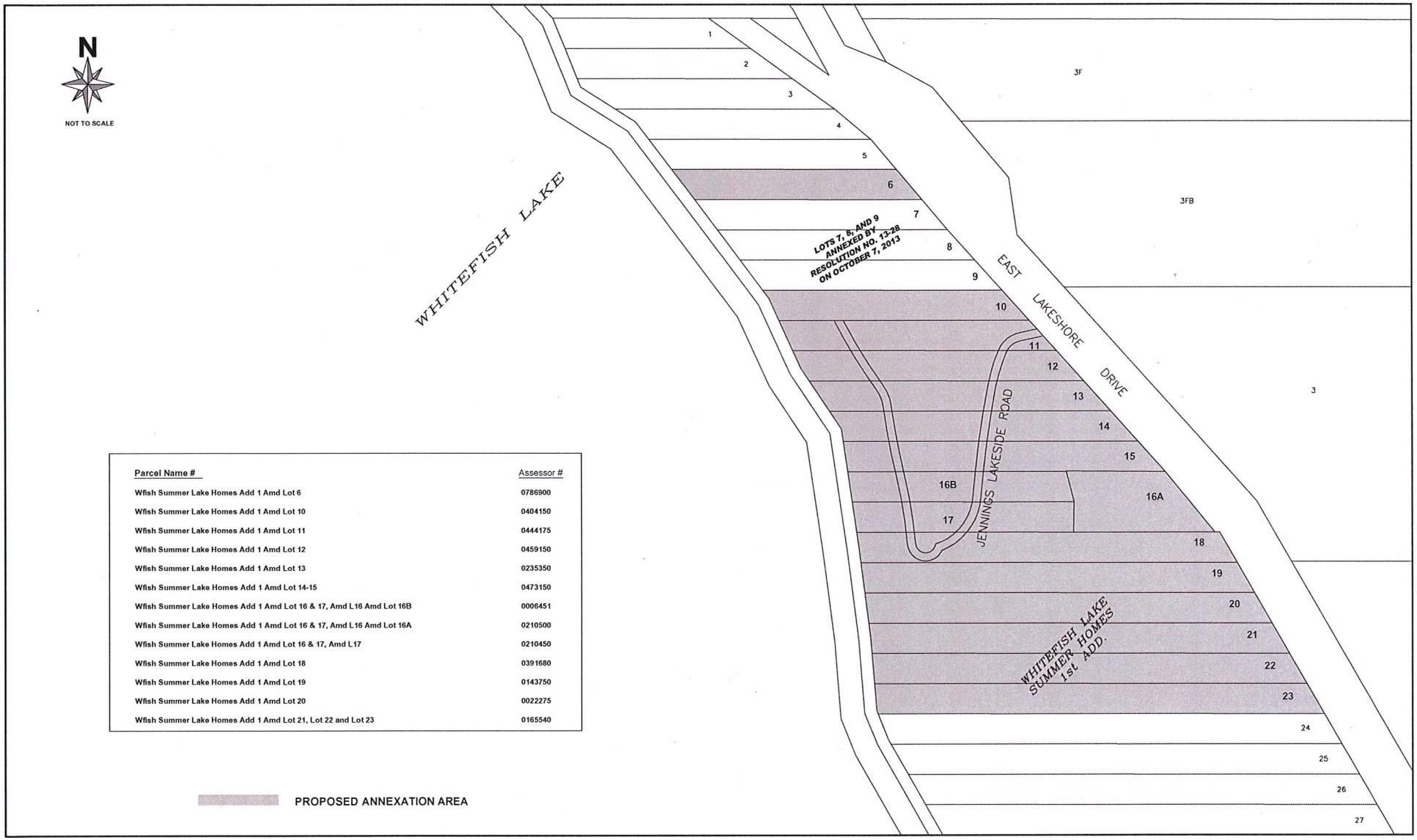
IV. CONCLUSION

¶111 In sum, the District Court correctly determined the City's procedures to invalidate protests based on waiver of protest agreements and based on the Utility Rule are proper. Further, the District Court correctly determined the Property Owners retained their right to request judicial review even though they failed to successfully protest annexation. Finally, the District Court correctly determined the City's Plan conforms with the requirements of Title 7, Chapter 2, part 47. Therefore, the annexations at issue are proper and are effective as provided by statute. We affirm.

/S/ JOHN WARNER

We Concur:

/S/ KARLA M. GRAY
/S/ PATRICIA O. COTTER
/S/ JIM REGNIER
/S/ JAMES C. NELSON



Parcel Name #	Assessor #
Wfish Summer Lake Homes Add 1 Amd Lot 6	0786900
Wfish Summer Lake Homes Add 1 Amd Lot 10	0404150
Wfish Summer Lake Homes Add 1 Amd Lot 11	0444175
Wfish Summer Lake Homes Add 1 Amd Lot 12	0459150
Wfish Summer Lake Homes Add 1 Amd Lot 13	0235350
Wfish Summer Lake Homes Add 1 Amd Lot 14-15	0473150
Wfish Summer Lake Homes Add 1 Amd Lot 16 & 17, Amd L16 Amd Lot 16B	0006451
Wfish Summer Lake Homes Add 1 Amd Lot 16 & 17, Amd L16 Amd Lot 16A	0210500
Wfish Summer Lake Homes Add 1 Amd Lot 16 & 17, Amd L17	0210450
Wfish Summer Lake Homes Add 1 Amd Lot 18	0391680
Wfish Summer Lake Homes Add 1 Amd Lot 19	0143750
Wfish Summer Lake Homes Add 1 Amd Lot 20	0022275
Wfish Summer Lake Homes Add 1 Amd Lot 21, Lot 22 and Lot 23	0165540

	H	I	J	K	L	M	N	O	P
1									
2									
3									
4								Estimated	
5		On sewer or					City Taxes and	increase in	
6	Physical Address	not	Occupancy	Parcel Name/#	Assessor #	Taxable Valuation	Assessments (FY14)	taxes	Notes
7	2526 E. Lakeshore Drive	Off		Wfish Summer Lake Homes Add 1 Amd Lot 6	0786900	$24,159.45	$3,029.06	19.50% - $2,232.65	Waiver recorded at 9223913380
8	248 Jennings Lakeside Rd.	On		Wfish Summer Lake Homes Add 1 Amd Lot 10	0404150	$21,238.25	$2,680.13	18.32% - $1,879.13	Original 1997 Agreement; abstract recorded; different owners than current signed; Mike Muldown only waiver of protest recorded at 199802109220
9	242 Jennings Lakeside Rd.	On		Wfish Summer Lake Homes Add 1 Amd Lot 11	0444175	$25,797.04	$3,226.30	19.51% - $2,383.00	Original 1997 Agreement; abstract recorded; different owners than current signed; waiver of protest recorded at 199736409450
10	236 Jennings Lakeside Rd.	On		Wfish Summer Lake Homes Add 1 Amd Lot 12	0459150	$22,821.23	$2,869.28	19.55% - $2,111.98	Original 1997 Agreement; abstract recorded; signed 1997 agreement
11	230 Jennings Lakeside Rd.	Off		Wfish Summer Lake Homes Add 1 Amd Lot 13	0235350	$22,630.91	$2,846.48	19.58% - $2,094.74	Not on sewer or water - no agreement signed
12	224 and 218 Jennings Lakeside Rd.	Both off		Wfish Summer Lake Homes Add 1 Amd Lot 14-15	0473150	$34,293.02	$4,261.18	20.38% - $3,258.45	Original 1997 Agreement; abstract recorded; signed 1997 agreement
13	212 Jennings Lakeside Rd.	On		Wfish Summer Lake Homes Add 1 Amd Lot 16 & 17, Amd L16 Amd Lot 16B	0006451	$29,946.03	$3,718.27	19.51% - $2,752.64	Original 1997 Agreement; abstract recorded; different owners than current signed
14	2506 E. Lakeshore Dr.	On		Wfish Summer Lake Homes Add 1 Amd Lot 16 & 17, Amd L16 Amd Lot 16A	0210500	$5,664.32	$830.42	20.198% - $574.79	Original 1997 agreement; abstract recorded; also current owner Petition to annex 2004
15	206 Jennings Lakeside Rd.	On		Wfish Summer Lake Homes Add 1 Amd Lot 16 & 17, Amd L17	0210450	$28,150.78	$3,502.82	19.47% - $2,589.69	Original 1997 Agreement; abstract recorded; different owners than current signed
16	200 Jennings Lakeside Rd.	Off		Wfish Summer Lake Homes Add 1 Amd Lot 18	0391680	$20,048.69	$2,534.51	19.49% - $1,858.29	Original 1997 Agreement; abstract recorded; signed 1997 agreement
17	2500 E. Lakeshore Dr.	On		Wfish Summer Lake Homes Add 1 Amd Lot 19	0143750	$24,383.28	$3,053.82	19.49% - $2,250.85	Original 1997 Agreement; abstract recorded; different owners than current signed
18	2498 E. Lakeshore Dr.	Off		Wfish Summer Lake Homes Add 1 Amd Lot 20	0022275	$20,469.25	$2,584.90	20.85% - $1,986.38	Original 1997 Agreement; abstract recorded; different owners than current signed
19	Multiple Addresses	All off		Wfish Summer Lake Homes Add 1 Amd Lot 21, Lot 22 and Lot 23	0165540	$46,965.78	$5,759.32	20.05% - $4,386.04	Original 1997 Agreement; abstract recorded; different owners than current signed
20									

City of Whitefish Tax Bill Calculator - Tax Year 2013

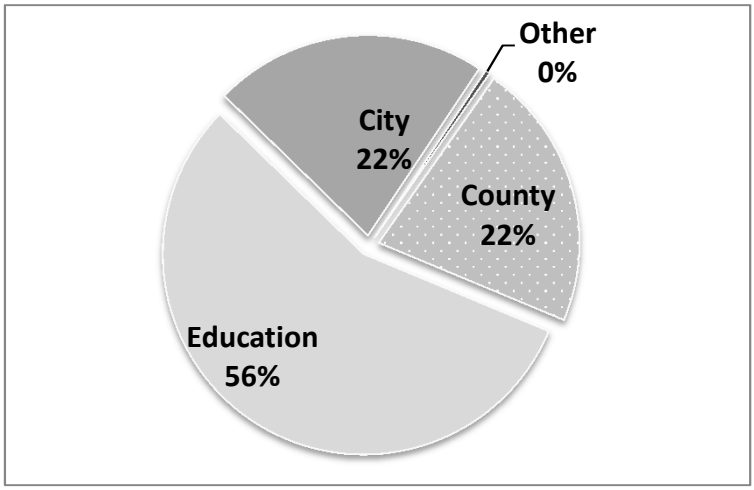
		Taxable Percent	2.54%	Residential
Assessor No.:	0006451	Personal Taxable %	3.00%	
Type of Property	Market Value	Taxable Value		Private Road
Real Estate	$789,829	$20,061.65		
Improvements	$389,149	$9,884.38		
	$1,178,978	$29,946.03		

Property Front Footage 77.02 * Verify Residential Minimum, Private Road or Maximum for MD-1

County	0.067330	2,016.26	County Library	0.000000	0.00
Sheriff	0.0362	1,084.05	County Perm Med Levy	0.005000	149.73
Noxious Weed	0.00165	49.41	Countywide Mosquito	0.000750	22.46
911 Gener Oblig Bond	0.00207	61.99	Road	0.000000	0.00
County Planning	0.000000	0.00	Board of Health	0.005740	171.89
County Land Fill		80.73			
			SUB TOTAL - Taxes for County Functions	**0.108530**	**$3,636.52**
State - University	0.006000	179.68	General Schools	0.106430	3,187.16
State - School Aid	0.040000	1,197.84	Flat Val Com College	0.014200	425.23
Whitefish Hi School	0.060000	1,796.76	Wfsh City Elem 74	0.087070	2,607.40
FVCC Permis Med Levy	0.001600	47.91			
			SUB TOTAL - Taxes for Education	**0.315300**	**$9,441.98**
Whitefish City	0.117174	3,508.90	Resort Tax Relief	-0.031369	-939.38
Whitefish Health Ins	0.010000	299.46	WF Fire/Ambulance	0.024000	718.70
Wfsh LT 1	$0.18	13.86	Wfsh City Streets		83.00
Whsh Prk/Grnwy Mnt 1		21.19	Wfsh Strmwtr Imp&Mnt		12.53
			SUB TOTAL - Taxes for City Functions	**0.119805**	**$3,718.27**
Soil & Water Consv	0.001570	47.02	Co. Water Dist	0.000130	2.61
State Forester		14.17	WFSH Fire Serv Area		0.00
			SUB TOTAL - Other Taxes and Fees	**0.001700**	**$63.80**

Total Mills Levied	0.545335	**Estimated Total Taxes and Fees**	**$16,860.57**
		2013 Existing Total Taxes and Fees	**$14,107.93**
		Estimated Additional Taxes and Fees	**$2,752.64**
		Estimated Percent Increase	**19.51%**

Levies Deleted		
Road	0.02134	639.05
County Library	0.00620	185.67
County Planning	0.00170	50.91
Wfsh Fire Serv Area		90.00
Total	0.02924	$965.63



FLATHEAD COUNTY
2013 REAL ESTATE TAX BILL

Adele Krantz, Treasurer
935 1st AVE W STE T Kalispell MT 59901
(406) 758-5680
http://flathead.mt.gov/property_tax

ASSESSOR NUMBER: 0006451
TAXBILL NUMBER: 201330807
SCHOOL DISTRICT: 44
GEO CODE: 07429214204010000

Property Location:
212 JENNINGS LAKESIDE RD
WHITEFISH MT 59937

Property Description
14 31 22 WFSH LK SUMMER HMS ADD1 L16&17 AMD L16 AMD LOT 16B

Parties with ownership interest as of January 1, 2013
Owner of Record.....ARCHER, DENISE F

Type of Property	Taxable Market Value	Taxable Value
Real Estate	789,829	20,061.65
Improvements	389,149	9,884.38
Totals	1,178,978	29,946.03

Description	Percentage	Amount
County Functions	31.98%	4512.15
Education	66.92%	9441.98
Other	1.09%	153.80

SUMMARY OF TAXES, LEVIES & FEES

COUNTY	.067330	2016.26	COUNTY LIBRARY	.006200	185.67
SHERIFF	.036200	1084.05	CO PERM MED LEVY	.005000	149.73
NOXIOUS WEEDS	.001650	49.41	COUNTYWIDE MOSQUITO	.000750	22.46
911 GENER OBLIG BOND	.002070	61.99	ROAD	.021340	639.05
COUNTY PLANNING	.001700	50.91	BOARD OF HEALTH	.005740	171.89
COUNTY LAND FILL		80.73			
SUBTOTAL - TAXES FOR COUNTY FUNCTIONS...				.147980	4512.15
STATE - UNIVERSITY	.006000	179.68	GENERAL SCHOOLS	.106430	3187.16
STATE - SCHOOL AID	.040000	1197.84	FLAT VAL COM COLLEGE	.014200	425.23
WHITEFISH HI SCHOOL	.060000	1796.76	WFSH RURAL ELEM 44	.087070	2607.40
FVCC PERMIS MED LEVY	.001600	47.91			
SUBTOTAL - TAXES FOR EDUCATION.....				.315300	9441.98
SOIL & WATER CONSERV	.001570	47.02	WF COUNTY WATER DIST	.000130	2.61
STATE FORESTER		14.17	WFSH FIRE SERV AREAS		90.00
SUBTOTAL - OTHER TAXES AND FEES.....				.001700	153.80

Total Mills Levied 0.464980

Total Taxes and Fees . . . 14107.93

30807

1st Installment due 11/30/2013 = 7053.98
2nd Installment due 05/31/2014 = 7053.95

Tax paid receipts will be mailed only if a self-addressed stamped envelope is enclosed.
To pay or view taxes online, go to **http://flathead.mt.gov/property_tax.**
A 3% fee will be charged on all credit/debit card payments. There is no fee to pay by e-check.
Payments made or postmarked after the due date must include 2% penalty & monthly interest of 5/6 of 1% (0.008333).

Keep upper portion for your records.

Return this stub with 2nd half payment. Payment must be hand delivered or postmarked by: **MAY 31, 2014**
Make checks payable to **FLATHEAD COUNTY TREASURER**
Please include your tax bill number on your check.
Pay by e-check, credit/debit card online at http://flathead.mt.gov/property_tax

ASSESSOR NUMBER: 0006451
TAXBILL NUMBER: 201330807
SCHOOL DISTRICT: 44

DO NOT PAY THIS IF IT IS INCLUDED IN YOUR MORTGAGE PAYMENT

If your address has changed, please make corrections below.

No additional notice will be sent for this installment.

Tax Amount Due: 7053.95

2ND 2013 REAL ESTATE

Return this stub with 1st half payment. Payment must be hand delivered or postmarked by: **NOVEMBER 30, 2013**
Make checks payable to **FLATHEAD COUNTY TREASURER**
Please include your tax bill number on your check.
Pay by e-check, credit/debit card online at http://flathead.mt.gov/property_tax

ASSESSOR NUMBER: 0006451
TAXBILL NUMBER: 201330807
SCHOOL DISTRICT: 44

If your address has changed, please make corrections below.

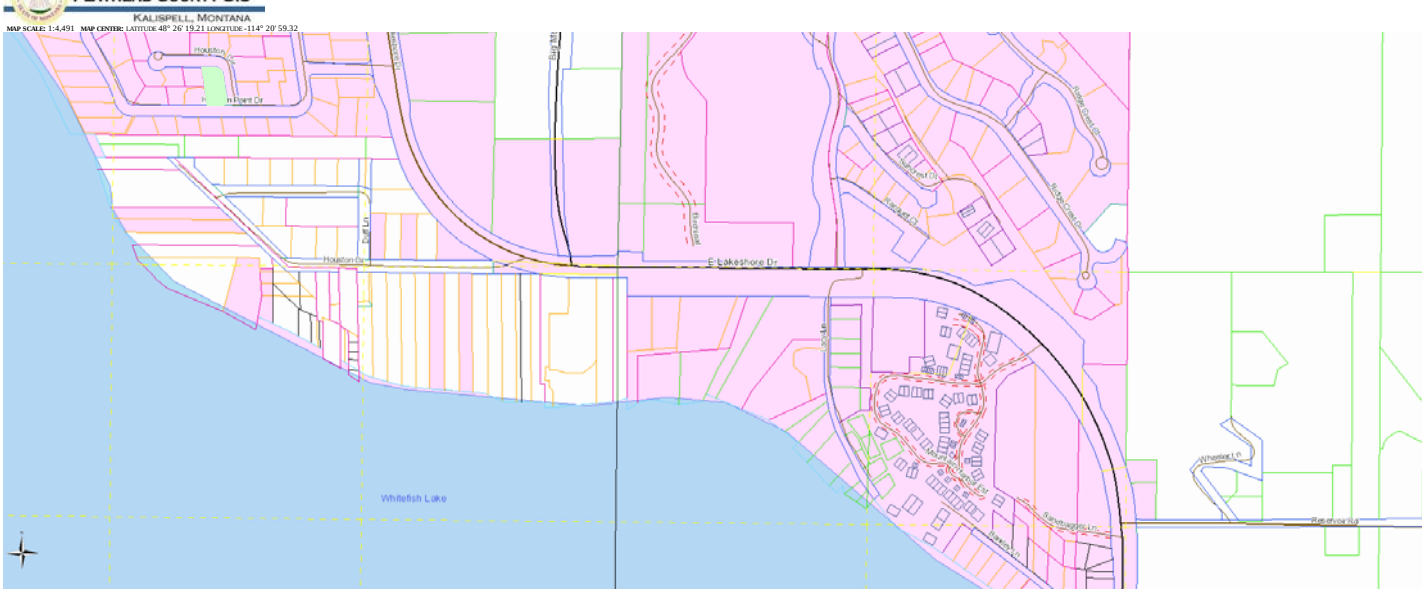
Tax Amount Due: 7053.98

Full year by 11/30/13 14107.93

1ST 2013 REAL ESTATE

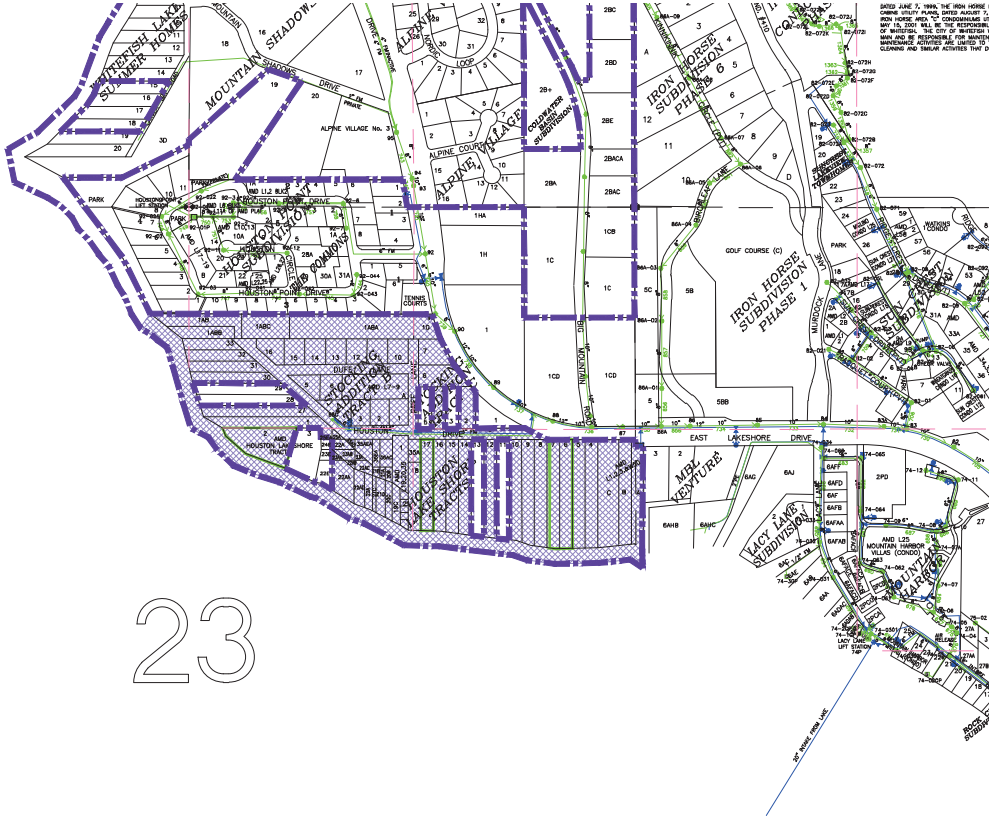
FLATHEAD COUNTY GIS
KALISPELL, MONTANA

MAP SCALE: 1:4,491 **MAP CENTER:** LATITUDE 48° 26' 19.21 LONGITUDE -114° 20' 59.32



NOTE: No warranty is made by Flathead County for the use of GIS data for purposes not intended by Flathead County.
CONTACT: 800 South Main Kalispell MT, 59901 Phone (406) 758-5540 Fax (406) 758-5840

TRACT_ID:3122X23-HPT-1
ASSRNO:0932240
GEOCODE:07429223109030000
OWN:HOFFMAN LIFETIME TRUST, JOAN E
ADDRESS:(M) 4084 RANDALL MILL RD NW ATLANTA GA 30327
ADDRESS:(P) 2279 HOUSTON POINT DR WHITEFISH MT 59937


MOUNTAIN SHADOWS
ALPINE VILLAGE
ALPINE COURT
IRON HORSE SUBDIVISION PHASE 6
IRON HORSE SUBDIVISION PHASE 1
GOLF COURSE (C)
HOUSTON POINTE DRIVE
HOUSTON LAKESHORE
EAST LAKESHORE DRIVE
MOUNTAIN HARBOR
LACY LAKE SUBDIVISION
TENNIS COURTS
PARK

23

MORRISON & FRAMPTON, PLLP
FRANK LLOYD WRIGHT BUILDING
341 CENTRAL AVENUE
WHITEFISH, MONTANA 59937
TELEPHONE (406) 862-9600
FACSIMILE (406) 862-9611

SEAN S. FRAMPTON
SHARON M. MORRISON
DOUGLAS SCOTTI *
RYAN D. PURDY
LORI B. MILLER**
JOHNNA J. PREBLE

FRANK B. MORRISON, JR. (1937-2006)
FORMER MONTANA SUPREME COURT JUSTICE

* Licensed also in State of Louisiana
** Licensed also in States of Washington and California

February 18, 2014

VIA E-MAIL

Hon. John Muhlfeld, Mayor
John Anderson, Council Member
Pam Barberis, Council Member
Andy Feury, Council Member
Jen Frandsen, Council Member
Richard Hildner, Council Member
Frank Sweeney, Council Member

City of Whitefish
PO Box 158
Whitefish, MT 59937

RE: Annexation

Dear Mayor Muhlfeld and Whitefish Council Members:

I represent both the Houston Lake Shore Property Owners Against Annexation and the Stocking Addition Property Owners Against Annexation, each of which is comprised of the majority of owners in those respective platted tracts. As the names of their associations state, they are opposed to the City annexing them. This letter is a statement of their position.

The City attempted to annex these tracts on two previous occasions. The first attempt was in 1983 and another failed attempt occurred around 2000.

The City is attempting to annex these and other tracts under Part 45 of Title 7, Chapter 2, which allows a city to annex property that is "wholly surrounded" by other city property. As you are aware, the City must follow the specific procedures proscribed in Part 45. (MCA § 7-2-4505)

Annexation under Part 45 is not available to the City because the proposed parcels of land are not wholly surrounded. The statutes provide that a city "may include as part of the city any platted or unplatted tract or parcel that is wholly surrounded by the city." (MCA § 7-2-4501) Note that "tract or parcel" is written in the singular and only references one tract or one parcel, as compared to Part 43 that allows a city to annex two or more parcels or tracts. (*Cf.* MCA § 7-2-4311) Enclosed herewith is a map of the city limits with the following separate tracts and parcels of record highlighted in a different color: Houston Lake Shore platted tracts, Stocking Addition B platted tracts, Stocking Addition C platted tracts, and unplatted tracts 1AB, 1ABB,

1ABC, 1ABA, and 1G. As the map clearly shows, each tract is not wholly surrounded by City property, which is highlighted in yellow.

Other language in Part 45 specifically prohibits the City from attempting to annex two or more tracts at the same time. It is true that the legislature allowed a city to include two or more tracts as a whole in one resolution in Part 43 (Annexation of Contiguous Land), but it specifically omitted this language from Part 45. (See MCA § 7-2-4325) The City must follow the statutory scheme set forth in Part 45, which does not authorize annexing two or more tracts under one resolution. The City has been well aware of this limitation since attorney Leo Tracy pointed it out in his letter to the City of October 1, 1983.

In addition to separate tracts precluding annexation, the areas under consideration are not wholly surrounded because Whitefish Lake is on one side. The City cannot use its annexation of the Whitefish Lake bed for purposes of annexation because the City Council, in adopting Ordinance 05-25 in 2005, expressly stated therein that it "assure[s] the public that Whitefish Lake is not being annexed for the purpose of facilitating future annexations." The Ordinance then "establishe[d] a policy that it will not use the annexation of Whitefish Lake . . . to create contiguity with other private parcels bordering Whitefish Lake, for the purpose of involuntary annexation of such private parcels."

My clients also dispute the basis under which the City is proceeding with annexation. The City has stated as its purpose in annexing my clients' properties to protect water quality, and specifically the recent Septic Leachate report lists East Lakeshore Drive (Gaines Point to Big Mountain Road) as Tier One (which includes Houston Lakeshore). However, the water quality testing found no *E. coli* bacteria in the water off the shores of Houston Lake Shore Tracts whereas it found high concentrations of the bacteria in other places on the lake. It remains clear, then, that based on the results of the City's own study, protecting water quality is not the basis upon which you seek to annex my clients' properties. Rather, the real reason for annexation is as Mr. Stearns was quoted as saying in the Whitefish Pilot on August 14, 2013, "those who are wholly surrounded are using city services every day . . . [and] should pay for them."

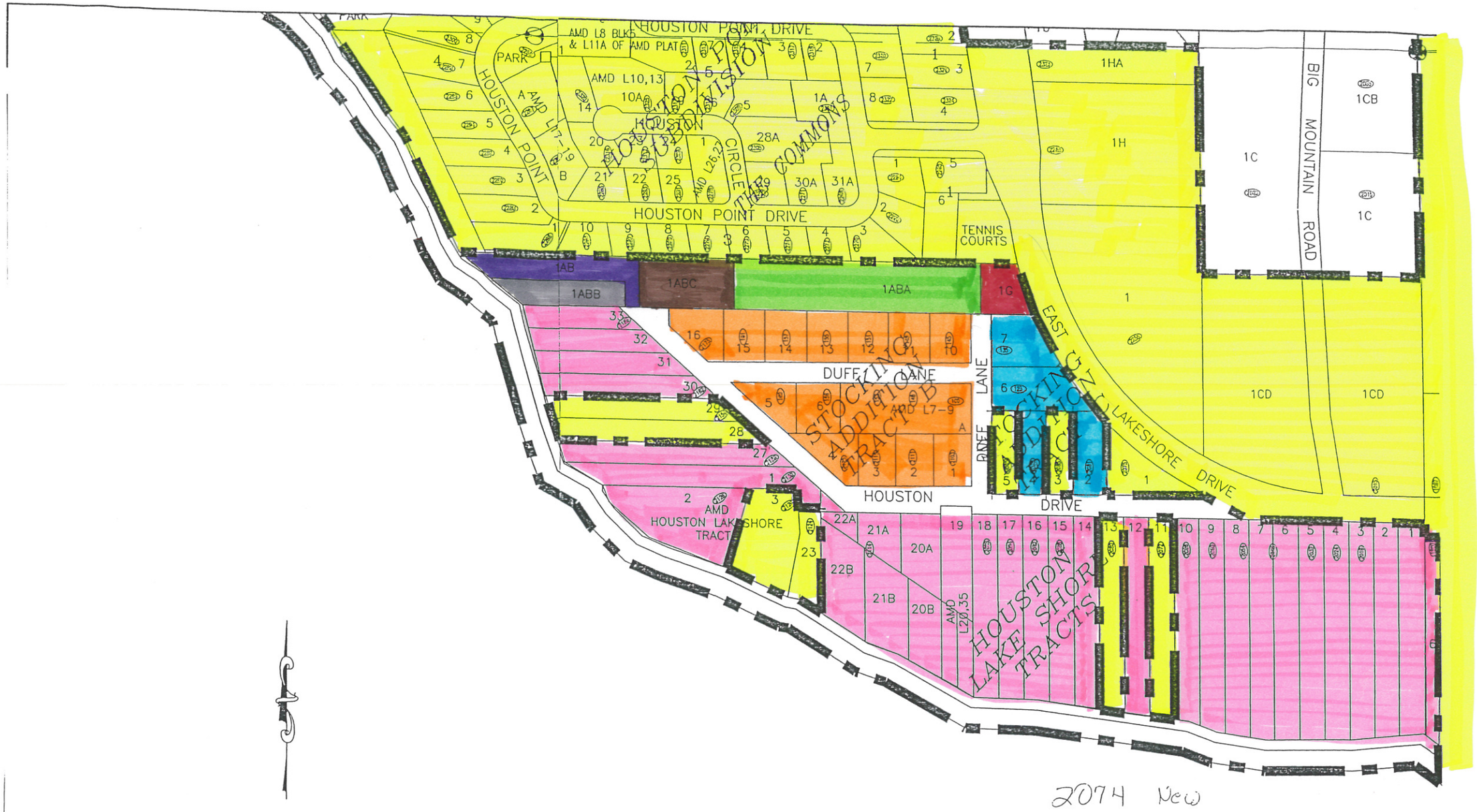
Legally, you cannot proceed with annexation of my clients' properties under Part 45. My clients therefore request that you direct the City staff to immediately cease any efforts to annex their properties. My clients are resolute in their position and are committed to contesting any further efforts by the city to annex their property. Thank you for your anticipated cooperation.

Very truly yours,

Sean S. Frampton
Morrison & Frampton, PLLP

SSF/ww
Enclosure

c: Clients
City Manager
City Attorney



2074 New

ADDRESSES FOR
NE QUARTER, SECTION 23, TOWNSHIP 31, RANGE 22
NOT TO SCALE
DATE: JANUARY 29, 2009
SHEET 11

Return to: Necile Lorang, City Clerk
City of Whitefish
PO Box 158
Whitefish, MT 59937-0158

2005271/12350

RECORDED BY City-WF
DATE 9 28 05 TIME 12:35
$ 21 PAGES 3 BY MG
PAULA ROBINSON FLATHEAD COUNTY MONTANA

RESOLUTION NO. 05-25

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ANNEXING THE BODY OF WATER KNOWN AS "WHITEFISH LAKE."

APPROVED 9/14/05

WHEREAS, on February 1, 2005, the City of Whitefish and Flathead County entered into an Interlocal Agreement which permitted the City to substantially expand its zoning and subdivision jurisdiction; and

WHEREAS, the expanded zoning and subdivision jurisdiction is scheduled to take effect on September 30, 2005; and

WHEREAS, State law, particularly Section 76-2-310(1), MCA, provides that a city of the second class may extend its zoning and subdivision jurisdiction only two miles beyond its city limits; and

WHEREAS, portions of the City's new zoning and subdivision jurisdiction, as permitted by the Interlocal Agreement, are more than two miles from the existing City limits; and

WHEREAS, in order to be able to utilize the extended zoning and subdivision jurisdiction created by the Interlocal Agreement, it may be necessary for the City to annex additional territory, so that the entire zoning and subdivision jurisdiction permitted by the Interlocal Agreement is within two miles of the City's boundaries; and

WHEREAS, the annexation of Whitefish Lake, which is a navigable body of water owned by the State of Montana, whose ownership extends to the low water mark, would enable the City to take full advantage of its new zoning and subdivision jurisdiction; and

WHEREAS, the Attorney General of the State of Montana has previously ruled, in 42 Op. Att'y Gen'l No. 41, that Whitefish Lake acts as a barrier, so that a property surrounded by the City and by Whitefish Lake is wholly surrounded for purposes of annexation; and

WHEREAS, because of the Attorney General's ruling, annexation of the Lake would not provide the City with any greater ability to wholly surround properties for the purpose of annexation; and

WHEREAS, annexation of Whitefish Lake is not proposed for the purpose of creating contiguity with parcels of property bordering Whitefish Lake, and the annexation of additional properties bordering Whitefish Lake is not a purpose of this proposed annexation; and

WHEREAS, in order to assure the public that Whitefish Lake is not being annexed for the purpose of facilitating future annexations, the City Council is determined to establish a policy that the annexation of Whitefish Lake will not be used to create contiguity with parcels surrounding the Lake, where contiguity does not otherwise exist; and

WHEREAS, the City has received a petition from the State of Montana, the owner of Whitefish Lake, to annex Whitefish Lake to and include the same within the City limits of the City of Whitefish; and

WHEREAS, in the judgment of the City Council of the City of Whitefish, Montana, it will be in the best interests of the City, and its inhabitants, that the boundaries of the City of Whitefish be extended so as to include Whitefish Lake within the corporate limits of the City of Whitefish; and

WHEREAS, an extension of services plan has been prepared with respect to such annexation, and such plan consists of the extension of services plan adopted by the City Council pursuant to Resolution No. 98-50 on November 16, 1998;

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

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

Section 2: That the City Council establishes a policy that it will not use the annexation of Whitefish Lake, as accomplished herein, to create contiguity with other private parcels bordering Whitefish Lake, for the purpose of involuntary annexation of such private parcels.

Section 3: That the City Council of the City of Whitefish, Montana, pursuant to Part 46 of Chapter 2, Title 7, MCA, does hereby annex to the City of Whitefish, Montana, that body of water known as "Whitefish Lake," extending only to the low water mark of Whitefish Lake.

Section 4: That no private property whatsoever is annexed pursuant to the terms of this Resolution.

2005271 12350

Section 5: That the City Council of the City of Whitefish, Montana, hereby approves as an Extension of Services Plan for this annexation the Extension of Services Plan previously adopted by the City of Whitefish pursuant to Resolution No. 98-50.

Section 6: That the State of Montana has acknowledged, in writing, its satisfaction with the Extension of Services Plan referenced above.

Section 7: That this Resolution shall take effect on September 15, 2005.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS 15th DAY OF AUGUST, 2005.

DOUG ADAMS, DEPUTY MAYOR

ATTEST:

Vanice Woodbeck, Assistant City Clerk

CITY OF WHITEFISH SEAL MONTANA

STATE OF MONTANA
County of Flathead } SS
City of Whitefish

I hereby certify that the instrument to which this certificate is affixed is a true, correct and compared copy of the original on file in the office of the Clerk of the City of Whitefish.

Witness my hand and the seal of the City of Whitefish, Flathead County, Montana, this 6th day of Sept., 2005

by _____ Clerk

OFFICE OF THE CITY ATTORNEY

John M. Phelps, City Attorney
jphelps@cityofwhitefish.org
(406) 863-2444

Keni L. Hopkins, Legal Assistant
khopkins@cityofwhitefish.org
(406) 863-2445

Post Office Box 158
Whitefish, MT 59937-0158
Facsimile (406) 863-1249

July 25, 2005

Honorable Mayor Feury
and City Councilors
City of Whitefish
Whitefish, Montana

Dear Mayor Feury and City Councilors:

Recommendation to Schedule a Public Hearing for Consideration of the Annexation of Whitefish Lake

Introduction/History

During the past year the City and Flathead County entered into an agreement which permitted the City to substantially expand its zoning and subdivision jurisdiction beyond the current City limits. Although the parties talked in general of the City expanding its zoning and subdivision jurisdiction "two miles," in fact it was expanded more than two miles in some areas, and less than two miles in other areas. A map showing the new zoning and subdivision boundaries, using a red border, is attached.

The City's new zoning and subdivision jurisdiction takes effect on September 30, 2005.

Current state law allows a City of the second class to extend its zoning and subdivision jurisdiction only two miles from its City limits. As indicated above, however, Flathead County was willing to cede more than two miles to the City. The area that Flathead County ceded to the City which is currently more than two miles from the existing City limits is shown on the enclosed map, in which a circle representing a two-mile radius from the nearest City limits crosses the upper portion of Whitefish Lake. The portion of the lake and surrounding territory that is outside of the circle, and yet within the new zoning and subdivision boundaries, must be dealt with before September 30, 2005.

The only way to bring the upper end of Whitefish Lake, and surrounding territory, within two miles of the City's boundaries is to expand the City boundaries. City staff has determined that the annexation of all of Whitefish Lake would accomplish that, without any harmful consequences for the City.

Current Report

I recently contacted Bob Sandman, who is the Northwest Area Land Manager for the Department of Natural Resources and Conservation. Mr. Sandman was aware of the Interlocal Agreement between the City and the County, and was willing to cooperate to enable the City to implement that Interlocal Agreement. He has provided the City with a letter petitioning the City to annex all of Whitefish Lake, up to the low water mark. A copy is attached.

While a public hearing is not legally required for a voluntary annexation of this type, staff recommends that a public hearing be conducted prior to annexation. The term "annexation" sometimes strikes fear into the hearts of those residing outside of the City, and we believe the public will have a number of questions. Given the size of Whitefish Lake, at 3,458 acres, this proposed annexation would approximately double the size of the City. So that there is no doubt, we are recommending that only Whitefish Lake, a navigable body of water owned by the State of Montana, be annexed into the City. We are not recommending that any private property be annexed.

Staff is concerned that people living beside the Lake may believe that this proposed annexation is intended to make their private property contiguous to the City, so that the City could annex their property in the future. Making private property contiguous is not the intent of this proposal, and staff recommends that the City make this point clear. To assure the public that they need not fear that the City will further expand its boundaries from the Lake to include their private property, staff recommends that the Resolution of Annexation, if adopted, contain the statement that the annexation of the Lake will not be used to support a future annexation of private property along the Lake.

Financial Requirement

The only services that the City would undertake to provide on Whitefish Lake are patrolling of the Lake by the police department and emergency rescue operations. The City fire and ambulance department has historically provided emergency rescue operations. The Montana Department of Fish, Wildlife & Parks would remain legally obligated to patrol the Lake, and so the Police Department's patrolling would augment the State's obligation. Chief Dial estimates that the City would incur expenses in providing police patrols on the Lake during the summer months, and that such patrolling might involve salary and equipment expenses of $60,000 - $75,000 per year, beginning next summer. He believes grants are available to cover some of these expenses, and he is supportive of annexation.

Recommendation

I respectfully recommend that the City Council schedule a public hearing for its August 15, 2005, meeting, for the purpose of receiving public comment regarding the proposed annexation of Whitefish Lake. A Resolution of Annexation that could be considered by the Council at its August 15, 2005, meeting is attached.

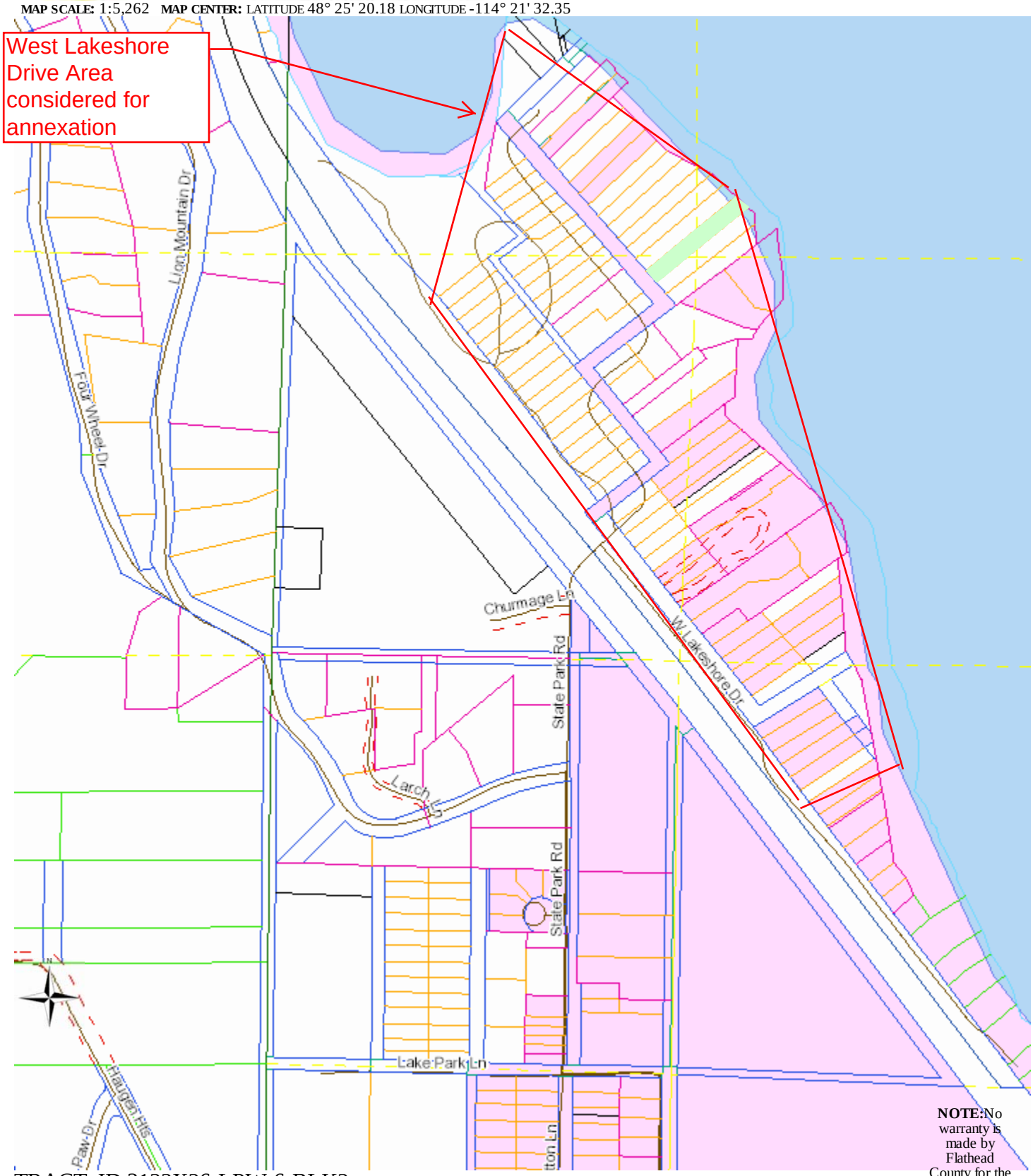
Very truly yours,

John M. Phelps

JMP/klh
Attachments

FLATHEAD COUNTY GIS
KALISPELL, MONTANA

MAP SCALE: 1:5,262 **MAP CENTER:** LATITUDE 48° 25' 20.18 LONGITUDE -114° 21' 32.35

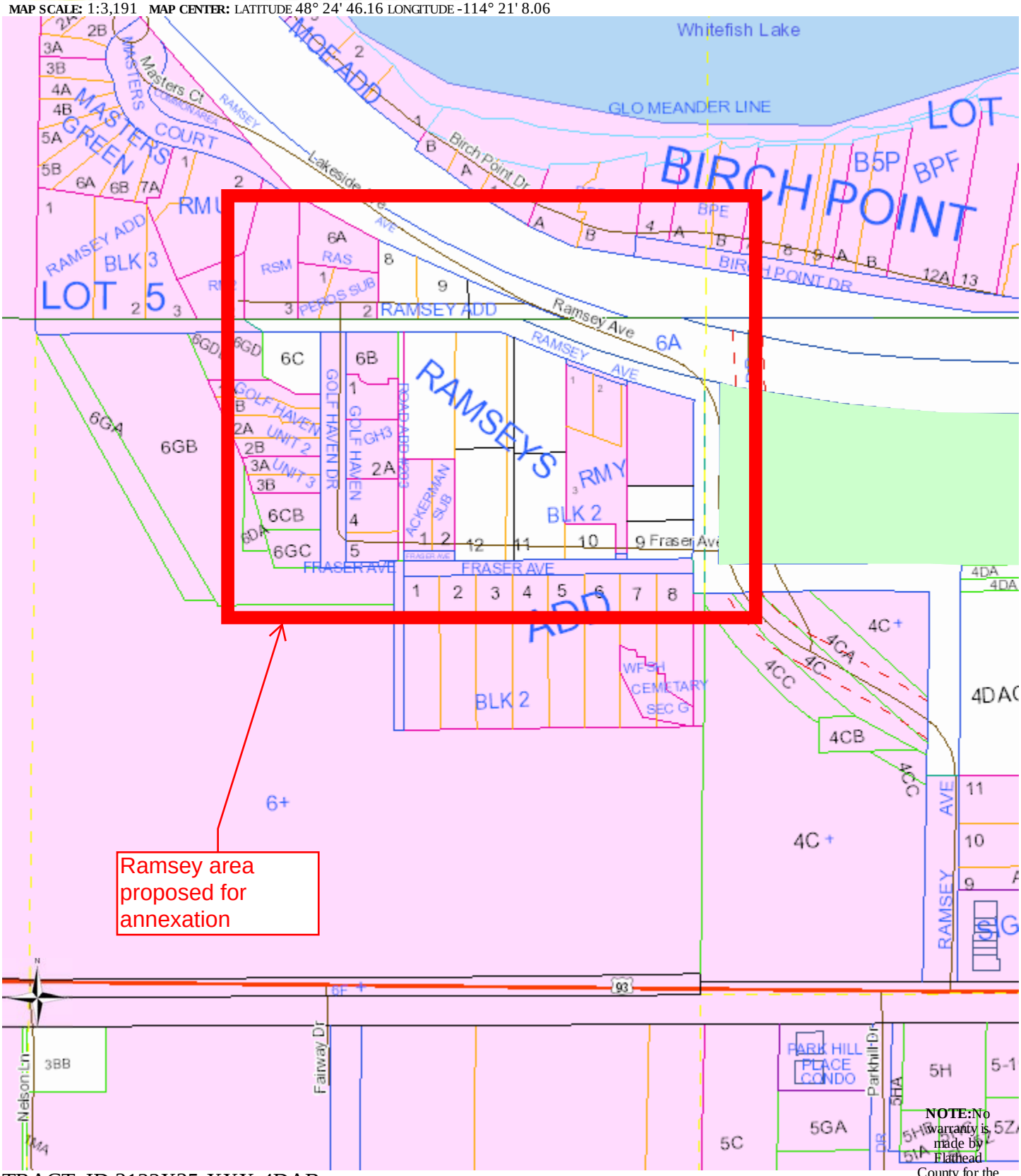


NOTE: No warranty is made by Flathead County for the use of GIS data for purposes not intended by Flathead

TRACT_ID:3122X26-LPW-6-BLK2
ASSRNO:0005060
GEOCODE:07429226208300000

FLATHEAD COUNTY GIS
KALISPELL, MONTANA

MAP SCALE: 1:3,191 **MAP CENTER:** LATITUDE 48° 24' 46.16 LONGITUDE -114° 21' 8.06



Ramsey area proposed for annexation

TRACT_ID:3122X35-XXX-4DAB
ASSRNO:0013028
GEOCODE:07429235111900000

NOTE: No warranty is made by Flathead County for the use of GIS data for purposes not intended by Flathead

RESOLUTION NO. 98-51

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, AMENDING A UTILITY RULE REQUIRING A PROPERTY OWNER'S CONSENT TO ANNEXATION AS A CONDITION OF CONTINUED SEWER AND/OR WATER SERVICE.

WHEREAS, the City has extended sewer and/or water service to various property owners located outside of the City limits; and

WHEREAS, the City has obtained signed waivers of protest from many, but not from all, of such utility customers located outside of the City limits; and

WHEREAS, from time to time the City Council determines that it is in the best interests of the City to annex the property owned by either individual utility customers, or groups of utility customers, and bring them within the corporate limits of the City; and

WHEREAS, in 46 Op. Att'y. Gen. No. 12 (1995), the Montana Attorney General ruled that a city or town may adopt a rule for the operation of its municipal sewer and/or water utility requiring a property owner's consent to annexation as a condition of continued sewer and/or water service; and

WHEREAS, By Resolution 98-43, the City adopted such a rule; and

WHEREAS, the City Council desires to amend such rule;

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

Section 1: The City Council hereby amends the rule adopted pursuant to Resolution 93-43 to read as follows:

> The City may, at any time, require a property owner's consent to annexation as a condition of continued sewer and/or water service. When the City determines to require such consent from a particular property owner, the City may notify the property owner, in writing, that the City seeks such consent, and that if such consent is not given, the City will require that the property owner discontinue receiving sewer and water service. The property owner may notify the City in writing of his or her consent to annexation. If within a reasonable period of time (as set by the City Council) of the property owner's receipt of such notice, the property owner contacts the City and makes firm arrangements, in writing, to discontinue sewer and water service, then the City shall not further pursue obtaining the property owner's consent. If, however, the property owner has not, within such time period, made firm written arrangements to discontinue sewer and water

service, then the City shall be entitled to treat the property owner as having consented to annexation of his or her property upon the expiration of such time. The failure by the property owner to respond in writing within such time period shall entitle the City to treat the property owner as having consented upon the expiration of such time period.

If the property owner consents to annexation under any of the methods described above, the property owner may not thereafter withdraw his or her consent to any proposed annexation of his or her property. If the property owner consents to annexation under any of the methods described above, then the City shall be entitled to disregard any protest that such property owner makes to a proposed annexation of his or her property. Nothing herein shall prevent the City from seeking consent even if the City has previously obtained a waiver of protest from such property owner or from his or her predecessor in interest.

Section 2: This Resolution, and the utility rule amended hereunder, shall take effect immediately upon adoption by the City Council, and signing by the Mayor.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS 2nd DAY OF NOVEMBER, 1998.

MAYOR

ATTEST:

City Clerk

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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 Monday, March 3, 2014, at **7:10 p.m.** at City Hall, 402 East Second Street.

Ordinance numbers start with 14-02. Resolution numbers start with 14-05.

1) CALL TO ORDER

2) PLEDGE OF ALLEGIANCE

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

4) COMMUNICATIONS FROM VOLUNTEER BOARDS

5) CONSENT AGENDA (The consent agenda is a means of expediting routine matters that require the Council's action. Debate does not typically occur on consent agenda items. Any member of the Council may remove any item for debate. Such items will typically be debated and acted upon prior to proceeding to the rest of the agenda. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)
   a) Minutes from the February 18, 2014 Council regular meeting (p. 138)
   b) Ordinance No. 14-01; An Ordinance amending discharge time limits and penalty provisions of the Fireworks Regulations in Whitefish City Code Section 9-1-6(C) and (E) (2nd Reading) (p. 149)
   c) Consideration of approving application from Don Robb of Blackhawk Capital Corporation for Whitefish Lake Lakeshore Permit (#WLP-14-W01) to install a 515.45 square foot 'F' shaped EZ dock, construct approximately 20 feet of dry-set stone stairs, remove an existing pump house, and replace an existing waterline within the Lakeshore Protection Zone at 2072 Houston Drive subject to 27 conditions (p. 153)
   d) Consideration of approving the final plat for Whitefish Lakefront Estates, a two lot subdivision by City Beach (p. 178)

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))
   a) Ordinance No. 14-___; An Ordinance amending Zoning Regulations in Whitefish City Code Section 11-3-23 to streamline review standards and length of permits for mobile food vendors not associated with a community event in the Limited Business District (WB-1), Secondary Business District (WB-2) and General Business District (WB-3) Zoning Designations (First Reading) (p. 209)

b) Ordinance No. 14 -___; An Ordinance amending Zoning Regulations in Whitefish City Code Section 11-3-14 regarding issuance of a Conditional Use Permit (CUP) for multiple uses on the same lot (First Reading) (p. 235)
c) Ordinance No. 14-___; An Ordinance amending Zoning Regulations in Whitefish City Code Section 11-2K-2 to identify Business Services as a permitted use in the Secondary Business District (WB-2) and adding the definition of Business Services and amending the definitions of Personal Services and Professional Services in Section 11-9-2 (First Reading) (p. 251)

7) COMMUNICATIONS FROM CITY MANAGER
   a) Written report enclosed with the packet. Questions from Mayor or Council? (p.267)
   b) Other items arising between February 26th and March 3rd
   c) Resolution No. 14-___; A Resolution authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (Intercap Revolving Program), Approving the form and terms of the loan agreement and authorizing the execution and delivery of documents related thereto – Fire Ambulance (p. 273)
   d) Resolution No. 14-___; A Resolution authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (Intercap Revolving Program), Approving the form and terms of the loan agreement and authorizing the execution and delivery of documents related thereto – Police Chief pickup truck (p. 307)
   e) Resolution No. 14-___; A Resolution approving and adopting the Montana Municipal Interlocal Authority Revised and Restated Workers' Compensation Program Agreement dated July 1, 2014 (p. 341)
   f) Mid-year financial report – Assistant City Manager/Finance Director Corey Swisher (p. 371)

8) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS
   a) Letter from Sean Frampton regarding potential annexation of Houston Drive area (p. 381)
   b) Email from Mary Ciganek about Resort Tax street reconstruction priorities and Texas Avenue (p. 384)
   c) Proposal from Mayor Muhlfeld and Whitefish Lake Institute for budget for Aquatic Invasive Species work in FY15 (p. 386)

9) 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 26, 2014

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

Mayor Muhlfeld and City Councilors:

Monday, March 3, 2014 City Council Agenda Report

There will be a work session beginning at 5:00 p.m. on annexation. 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 18, 2014 Council regular meeting (p. 138)
b) Ordinance No. 14-01; An Ordinance amending discharge time limits and penalty provisions of the Fireworks Regulations in Whitefish City Code Section 9-1-6(C) and (E) (2nd Reading) (p. 149)
c) Consideration of approving application from Don Robb of Blackhawk Capital Corporation for Whitefish Lake Lakeshore Permit (#WLP-14-W01) to install a 515.45 square foot 'F' shaped EZ dock, construct approximately 20 feet of dry-set stone stairs, remove an existing pump house, and replace an existing waterline within the Lakeshore Protection Zone at 2072 Houston Drive subject to 27 conditions (p. 153)
d) Consideration of approving the final plat for Whitefish Lakefront Estates, a two lot subdivision by City Beach (p. 178)

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

Item a is an administrative matter. Item b is a legislative matter. Items c and d are quasi-judicial matters.

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 Zoning Regulations in Whitefish City Code Section 11-3-23 to streamline review standards and length of permits for mobile food vendors not associated with a community event in the Limited Business District (WB-1), Secondary Business District (WB-2) and General Business District (WB-3) Zoning Designations (First Reading) (p. 209)

From Planning and Building Director Dave Taylor's transmittal letter:

Summary of Requested Action: This item is a request by the City of Whitefish to streamline review standards and length of permits for mobile food vendors not associated with a community event in the WB-1, WB-2 & WB-3 zoning designations.

Planning Board Recommendation: The Whitefish City-County Planning Board held a public hearing on February 20, 2014. Following this hearing, the Planning Board unanimously recommend approval of the above referenced text amendments, and adopted the findings of fact contained within the staff report. (Anderson absent).

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

Public Hearing: At the public hearing, there was one public comment received regarding the proposed text amendments. Comments were received from Michael Tighe, who owns a previously approved mobile vending operation. Mr. Tighe was in support of the changes, The draft minutes of the Planning Board hearing are included as part of the packet.

There is a full staff report in the packet.

RECOMMENDATION: Staff respectfully recommends the City Council, after considering testimony at the public hearing and the recommendations from staff and the Planning Board, approve An Ordinance amending Zoning Regulations in Whitefish City Code Section 11-3-23 to streamline review standards and length of permits for mobile food vendors not associated with a community event in the Limited Business District (WB-1), Secondary Business District (WB-2) and General Business District (WB-3) Zoning Designations at first reading and approve the staff report as findings of fact.

This item is a legislative matter.

b) Ordinance No. 14 -___; An Ordinance amending Zoning Regulations in Whitefish City Code Section 11-3-14 regarding issuance of a Conditional Use Permit (CUP) for multiple uses on the same lot (First Reading) (p. 235)

From Planner II Bailey Minnich's transmittal letter:

Summary of Requested Action: This application is a request by the City of Whitefish to amend criteria #6 within Section 11-3-14(B) for issuance of a Conditional Use Permit (CUP) for multiple uses on the same lot.

Planning Board Recommendation: The Whitefish City-County Planning Board held a public hearing on February 20, 2014. Following this hearing, the Planning Board recommended approval of the proposed amendment with the exception of retaining 'shall not be granted' instead of 'may be denied' as recommended by staff and adopted the supporting findings of fact in the staff report. The motion carried 5-1 (Workman voted in opposition; Anderson was absent)

Public Hearing: At the public hearing, no member of the public wished to speak on the proposed amended draft ordinance. The draft minutes of the Planning Board hearing are included.

City Staff Recommendation: Staff continues to recommend approval of the text amendment as originally proposed in the attached staff report.

There is a full staff report in the packet.

RECOMMENDATION: Staff respectfully recommends the City Council, after considering testimony at the public hearing and the recommendations from staff and the Planning Board, approve An Ordinance amending Zoning Regulations in Whitefish City Code Section 11-3-14 regarding issuance of a Conditional Use Permit (CUP) for multiple uses on the same lot at first reading and approve the staff report as findings of fact.

This item is a legislative matter.

c) Ordinance No. 14-___; An Ordinance amending Zoning Regulations in Whitefish City Code Section 11-2K-2 to identify Business Services as a permitted use in the Secondary Business District (WB-2) and adding the definition of Business Services and amending the definitions of Personal Services and Professional Services in Section 11-9-2 (First Reading) (p. 251)

From Senior Planner Wendy Compton-Ring's transmittal letter:

Summary of Requested Action: This application is a request by the City of Whitefish to add a definition for 'business services' and add 'business services' as a permitted use in the WB-2 zone.

Planning Board Recommendation: The Whitefish City-County Planning Board held a public hearing on February 20, 2014. Following this hearing, the Planning Board unanimously recommended approval of the amendments and adopted the supporting findings of fact in the staff report. (Anderson was absent)

City Staff Recommendation: Staff recommended approval of the text amendment attached to the staff report.

Public Hearing: At the public hearing, one member of the public spoke in favor of the proposed amended draft ordinance. The draft minutes of the Planning Board hearing are included.

There is a full staff report in the packet.

RECOMMENDATION: Staff respectfully recommends the City Council, after considering testimony at the public hearing and the recommendations from staff and the Planning Board, approve An Ordinance amending Zoning Regulations in Whitefish City Code Section 11-2K-2 to identify Business Services as a permitted use in the Secondary Business District (WB-2) and adding the definition of Business Services and amending the definitions of Personal Services and Professional Services in Section 11-9-2 at first reading and approve the staff report as findings of fact.

This item is a legislative matter.

COMMUNICATIONS FROM CITY MANAGER

a) Written report enclosed with the packet. Questions from Mayor or Council? (p.267)
b) Other items arising between February 26th and March 3rd
c) Resolution No. 14-___; A Resolution authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (Intercap Revolving Program), Approving the form and terms of the loan agreement and authorizing the execution and delivery of documents related thereto – Fire Ambulance (p. 273)

This year's budget anticipated purchasing a new Fire Ambulance and financing it through the State of Montana INTERCAP program. The INTERCAP financing program provides short term financing (up to 10 years) for capital equipment and other capital assets with a variable interest rate which is reset each February. The current interest rate is 1.00% which is a very good interest rate and for the ambulance we are doing a five year loan.

On May 20, 2013, the City Council awarded the contract for the purchase of the ambulance to Braun NW up to the amount of $155,597. The ambulance was delivered last December and is currently in use. The final cost of the ambulance was $153,780. The loan amount is still $155,597, but we will only draw and use the $153,780.

The INTERCAP program has approved our application and sent us the documents which we need to execute for the loan. The documents enclosed in the packet are:

1. A Resolution authorizing the loan
2. A Loan Agreement
3. A Promissory Note
4. A Security Agreement

City Attorney Mary VanBuskirk and I have reviewed these documents and found them to be in order.

For the next five years, each year's budget will have to include approximately $30,000 - $32,000 per year (decreasing as the principal balance is paid off) to repay this loan. Our first payment will not be until next year's budget, FY15, because we have already passed the two, semi-annual debt payments dates for FY14.

RECOMMENDATION: Staff respectfully recommends the City Council approve Resolution No. 14-___; A Resolution authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (Intercap Revolving Program), Approving the form and terms of the loan agreement and authorizing the execution and delivery of documents related thereto – Fire Ambulance (p.)

This item is a legislative matter.

d) Resolution No. 14-___; A Resolution authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (Intercap Revolving Program), Approving the form and terms of the loan agreement and authorizing the execution and delivery of documents related thereto – Police Chief pickup truck (p. 307)

From Assistant City Manager/Finance Director Corey Swisher's staff report:

The proposed Resolution is intended to authorize the financing of a Police Department Administrative Vehicle (2014 Ford F150 pickup). The total amount that would be financed is $16,339. The vehicle has replaced a 2003 Chevy pickup.
The Loan Agreement will be dated as of the date the Resolution is approved, in the principal amount of $16,339.00 and will constitute a valid and legally binding obligation of the City. The obligation to repay the loan will be in the form of a promissory note payable over a 36 month period. The initial rate of the loan will be 1.00% per annum through February 15, 2014 and thereafter at the adjusted interest rate, plus up to 1.5% per annum as necessary to pay the cost of administering the INTERCAP program. The 2014, base loan rate is currently not known but will be provided to the City prior to Council consideration. It is anticipated if there is an increase, it will be negligible.

The INTERCAP loan program administered through the State of Montana Board of Investments provides low interest loans to Montana local governments, state agencies, and universities for a variety of purposes.

RECOMMENDATION: Staff respectfully recommends the City Council approve a Resolution authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (Intercap Revolving Program), Approving the form and terms of the loan agreement and authorizing the execution and delivery of documents related thereto – Police Chief pickup truck.

This item is a legislative matter.

e) Resolution No. 14-___; A Resolution approving and adopting the Montana Municipal Interlocal Authority Revised and Restated Workers' Compensation Program Agreement dated July 1, 2014 (p. 341)

The City of Whitefish has been a member of the Montana Municipal Interlocal Authority (MMIA) Workers' Compensation program for the required workers' compensation insurance since 1987. MMIA provides very good rates and very good training on avoiding accidents for this insurance program. When we approved participation in 1987, we had to approve a program agreement which defines the terms and regulations of the program.

At their January Board meeting, the MMIA Board authorized some changes to the Workers' Compensation Program Agreement. Necile Lorang, our Administrative Services Director/City Clerk is a member of the Board of Directors of MMIA. The revised Program Agreement needs approval from each of its members, including the City of Whitefish.

As described in an attached memo from MMIA's Executive Director, these changes provide a more quantitative method for determining capital reserves and adjusting rates as compared to the current method. The program agreement also describes all of the regulations and procedures regarding the program, most of which are unchanged.

City Attorney Mary VanBuskirk and I have reviewed these documents and found them to be in order.

It is not anticipated that these changes have any direct or predictable effects on our workers' compensation rates. While rates may change because of their quantitative methods, such rates could go up or down and can't be predicted at this time.

RECOMMENDATION: Staff respectfully recommends the City Council approve Resolution No. 14-___; A Resolution of the City Council of the City of Whitefish, Montana, approving and adopting the Montana Municipal Interlocal Authority Revised and Restated Workers' Compensation Program Agreement dated July 1, 2014

This item is a legislative matter.

f) Mid-year financial report – Assistant City Manager/Finance Director Corey Swisher (p. 371)

Assistant City Manager/Finance Director Corey Swisher has a mid-year financial report in the packet and will be available at the meeting to present it and answer questions. The City's finances are getting much better and FY14 looks to be a good financial year.

COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

a) Letter from Sean Frampton regarding potential annexation of Houston Drive area (p. 381)
b) Email from Mary Ciganek about Resort Tax street reconstruction priorities and Texas Avenue (p. 384)
c) Proposal from Mayor Muhlfeld and Whitefish Lake Institute for budget for Aquatic Invasive Species work in FY15 (p. 386)

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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WHITEFISH CITY COUNCIL MINUTES
February 18, 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, City Clerk Lorang, Assistant City Manager/Finance Director Swisher, City Attorney VanBuskirk, Planning and Building Director Taylor, Public Works Director Wilson, Parks and Recreation Director Cozad, Police Chief Dial, and Fire Chief Kennelly. Approximately 35 people were in attendance.

2. PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Chas Cartwright to lead the audience in the 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)

Chas Cartwright, the Chairman of the Flathead Basin Commission (FBC) said the leadership the City of Whitefish has shown on the aquatic invasive species sets a standard that will hopefully engender more support in other areas across the basin and across the state. He thanked them for their leadership and financial support and said they planned on taking advantage of the City's incredible leadership as they moved forward. This issue is not going away and firming up the program is important.

Caryn Miske, Executive Director of the Flathead Basin Commission, said this is the first year they operated their own inspection station. She said they inspected just short of 3,000 boats. They learned some things that they will improve for next year. She said the majority of the boaters are considered low risk, but 7% were higher risk, coming from states that had zebra or quagga mussels. She said FBC worked with the City, 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. The station was open 9AM-7PM most days, but they modified it on some weekends and stayed open until 9 PM. They discovered that the highest number of boats came through between 7-8 PM and most stations traditionally close at 7:00 PM. 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. To secure long-term funding they have contacted the legislature about boat sticker fees to fight AIS and there was skepticism about boaters being willing to pay for a sticker. FBC's survey shows that over 90% of the boaters said they would be willing to pay this fee to keep the waters protected. Miske said they experienced a higher non-compliance rate than they thought. MDT let them use their variable alert message sign and it made an 11% increase in compliance. She said MDT was cooperative and wonderful to work with, but MDT pulled the sign when they needed it for construction sites. FBC is working to raise money for their own sign and they talked with MDT about leveling the site and taking out trees to improve the visibility of the site. They want to make the station mandatory which will help increase the compliance rate. She said Fish, Wildlife and Parks (FWP) is willing to consider a partnership which would give them the authority to make it mandatory. She said the downside of any partnership is compromise. Idaho starts operating their check stations in February and they show that April is the busiest season for high risk boats (snow birds coming from lakes with AIS.) If they do the

partnership they may not get to open as soon as they'd like. Ultimately, the FBC wants to have an early open date and a mandatory station, but FWP doesn't open its stations until the middle of May. She said this partnership is a work in progress. Chas Cartwright said in this partnership they would be turning over authority to FWP in exchange for mandatory authority. Miske said an optimal opening date would be March 1st. She is going to meet with MDT to see if there are cameras on the Highway 2 corridor to view how many boats are going by. She said the Idaho data may not be true for Coram. Idaho may get the heavy traffic with snowbirds. She said boaters from Alberta come down for the summer and may have been exposed to quagga in Canada, so that is Montana's primary concern. She said the City was a major funder for the station last year and she thanked them. They also received funds from Bureau of Reclamation ($13,000), DNRC ($12,000), Trout Unlimited ($2500) and the Basin Commission (about $2500.) She would like to fund it mid-April through Labor Day until at least 8 PM each day, but it will depend on funding.

Councilor Hildner said he heard a program on National Public Radio about dogs that can sniff AIS. Caryn Miske said the FBC is working with Alberta on a partnership with working dogs for conservation. They want to train them to sniff out aquatic invasive species. It would be a pilot effort and they would determine if they could employ it on a regular basis. Mayor Muhlfeld said the City's contribution is important and this budget item will probably come to Council in the next 4-8 weeks. Caryn Miske thanked them and said Whitefish is a model for the state and it speaks volumes to their commitment to keep the water clear and clean. Mayor Muhlfeld said he met with County Commissioner Gary Krueger to ask them to contribute as well.

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)

Paul Johannsen, 329 Fairway Drive, encouraged the Council to keep the W. 7th Street improvements as a high priority. It took a beating this past summer with the 2nd Street construction, which, he noted, looks fabulous. There is no room for vehicles and pedestrians on that road. He said he doesn't think it needs to be built to City standards with sidewalks on both sides, but a bike path would be a major improvement. He said some of the folks on Fairway have been waiting for sewer to come up to their property so they would like to see the sewer come up to Fairway Drive.

Greg Beck, 338 Fairway Drive, said he and his wife would like to speak in favor of the proposed W. 7th Street rebuild with sidewalk, bike and pedestrian paths. He said this route is a by-pass now because of the construction on Highway 93. He has gone into the ditch while walking to avoid being hit on this narrow road. He said the rural designation of this area has long since passed. He said 6-7 years ago they attended public meetings about a bike path on W. 7th Street, but it never happened, and they need it even more now. He said the increased police presence speaks to the fact that the rural feel has passed. He asked the Council to keep this on the top of the project list.

Kent Morrison, Pastor of True Life Church on W. 7th Street, said he observes the traffic and pedestrians on this street. The traffic has increased dramatically. He said the speed limit needs to be addressed because people are traveling 45 MPH down this street. He said a wider, improved street may increase speeds, so the speed limit might need to be changed. He is in favor of the street improvements. Children play in the church playground during the summer and they need a safe access. He said it is in the community's interest to improve this road, to add lighting and to have a sidewalk on one side of the street. He would like to see it go forward.

Roland Newton, 1040 W. 7th Street, said he has lived there since 1977 and has seen the growth through the years. He said they need to maintain that road and improve it. It is time. He said Orchard View subdivision was platted back in the mid-70's and they were all on septic tanks, but they do have City water. They signed waivers and did not protest annexation, but they never got sewer service and they need it. Unhealthy situations are developing out there, so he is in favor of this project and its priority. He said the City has done a wonderful job with most of the construction projects and he has confidence that they can make this work. He asked them to continue the sewer to Fairway Drive.

Jim Trout, 416 W. 7th Street, said he built his home 30 years ago and voluntarily annexed because he wanted to vote in City elections and sit on City commissions. For the 20% raise in his taxes he expected the road to be improved from County standards. It was overlaid once by the County before annexation. He appreciates the folks who like the rural flavor out there, but they aren't in Kansas anymore. He said the City has grown. He said W. 6th Street was upgraded and the street lights aren't obtrusive. It is attractive and well done. He said one car goes down 6th Street compared to 50 down 7th Street. He said someone said the residents on 7th street weren't clamoring for improvements, but this is his attempt to clamor. It is a through street, not a country road anymore.

Bob Driggers, 535 W. 7th Street, said he is clamoring for a new road, too. He said the pavement is gone in front of his street. He said the drain pipe through the low land isn't large enough and the water backs up in his yard. He said they need a sewer line through here so they can get off the septic systems.

Ron Thompson, 448 W. 7th Street, said the sewer line up 6th Street, which goes across the back of his property, he said he doesn't think that sewer is enough to handle that part of town. He said they gave the City an easement to the gully on their property and to build a bike path there. He said they have been waiting a long time for the improvements. They want to tie the west end of town to the bike paths in the community. He said lighting would be good to protect folks from accidents with the wildlife.

Mayre Flowers, Citizens for a Better Flathead, 35 4th Street West in Kalispell, said she appreciates the public process that is outlined in John Wilson's packet. She encouraged this process. She asked the Council to consider looking at some alternatives to the utility boxes that have popped up along Highway 93. She said there must be an alternative so everyone doesn't need to have a large box placed right next to the sidewalk. She asked them to consider that in future reconstruction projects. She passed out a guide for people to know where to recycle in the Flathead. She said curbside recycling is available in Whitefish and she wanted the public to know that. She said the recycling document is available on their website. She thanked Manager Stearns for participating on the panel for recycling in the Flathead. She said two of the primary facilities, Valley Recycling and Pacific Steel and Recycling take different materials. Valley Recycling takes all plastics and metals. She said they hope to conduct more outreach and publicity on how to recycle more. She invited them to an upcoming workshop. Greg Acton represents the City well on the County Landfill Board and knows about an upcoming meeting where a couple of folks from Michigan will present information about a bioreactor landfill that injects a liquid and results in a faster disintegration. She invited the Councilors to attend Tuesday morning 8-12 at the Earl Bennett building.

Marcus Duffy, 326 Somers Avenue, Manager of Great Northern Brewery, thanked them for their votes of support for the Beer Barter at the last meeting. He said one of the conditions required a meeting between Chuck Stearns, Chief Dial and himself. He said they should have held that meeting 4 years ago

when they brought the Beer Barter back. He said his business downtown is important to him. He said some might not be aware that the brewery's stainless steel mugs are part of a marketing promotion they've been building on for a large number of years. He said they have given or sold those mugs for over 4 years. With the purchase the person gets a discount on the refill at Great Northern Brewery and most establishments downtown honor the refill. He said 9,500 of those mugs have been purchased and they are very present throughout the community, especially during Winter Carnival. They do not represent a disregard for the open container laws. He said laughter and family fun are a better image of what happens during the Beer Barter. Whether intentional or unintentional, the indemnification clause the Council passed at the last meeting prevented the Beer Barter from happening. He said all entities are required to insure the City for special event permits. He said special events are the lifeblood of Whitefish. They must welcome and advocate and promote this culture in Whitefish. He asked them to have consistent policies that enable Whitefish to remain Whitefish.

Rhonda Fitzgerald, 412 Lupfer Avenue, said she re-read the 2007 Growth Policy and it was refreshing to remember what came out of all of those public sessions. She said the vision is that the citizens of Whitefish value the small scale community and want to preserve traditional neighborhoods. She lives in one of those traditional neighborhoods. She said sometimes the zoning doesn't match the existing uses in different neighborhoods. Page 50 under Land Use Elements, says current zoning is often inconsistent with existing uses in neighborhoods. This means that the new developments aren't compatible with the neighborhoods. She said several neighborhoods are called out that have that problem. Future land use recommended actions say that in order to protect the character of neighborhoods the City will adopt character based zoning. It has not been addressed in seven years. She asked the Council to direct staff to re-visit the Growth Policy and look at those recommended actions and work on them.

Rebecca Norton, 530 Scott Avenue, said she hasn't forgotten about the Ethics issue. She said it is time to get W. 7th Street done. She said Director Wilson has wanted to work on this for a long time. It needs to connect to the bike path. She asked the City to have a landscape architect lay out the project because her property ended up 3 feet below the road and she had to work with the City on that for quite a long time.

Judy Husselander said she was on the Growth Policy committee and they listened to the public. She said the people behind the Post Office wanted to protect their neighborhood. She said they put the language in the Growth Policy because people like the character of the small town feel of Whitefish. She said she loves this town. She said she overheard a tourist saying they didn't like Whitefish anymore because it is starting to look like everywhere else.

Neil Wilke, 432 Geddes Avenue, inquired about the snowplowing. He said when they improved the roads they didn't think about the snow removal. There are boulevards. How do you get snow out of a ditch? He said the County didn't have problems taking care of the snow. The City plows the snow right up on the sidewalks. He said the corner of Geddes and Third is too narrow for two big vehicles to pass. He said they need to keep the drains open or the water will run into people's yards. He said if a bicyclist runs into a vehicle they should have to pay for the damage to the vehicle.

5. COMMUNICATIONS FROM VOLUNTEER BOARDS

Chad Goodwin, 1571 Franlou Park Lane in Columbia Falls, representing the Glacier Skate Club, said they wanted to create year-round ice skating at the Stumptown Ice Den. They had 25 figure skaters

in 2011-2012 and they now have 151 in Whitefish and 27 competitive and 15 power skaters. They are ready to grow into a year-round skating. They proposed to purchase ice time from the Ice Den and they held an ice skating camp. He said the current rink season is about 7 months (Sept-April.) He said closing the rink for 4 months, taking the ice out and putting it back in, costs more money than leaving the ice in. They need an evaporative cooler and a low E ceiling. They are fundraising to raise $165,000 and they've already raised $85,000. The equipment will increase the rinks efficiency and keep the facility rates low. They want to have it installed by June 29th. They need to place the order by March 15 and they have worked closely with Director Cozad who has been very helpful. He said they want to get the equipment ordered and installed and wondered who would be the liaison when Director Cozad retires.

Councilor Sweeney said he has participated with the Ice Rink Committee for a while and they are trying to figure out what upgrades are necessary. He said Director Cozad has been doing a fantastic job working with the Ice Skating Club. He said these upgrades will need to be self-funded, but he thinks it will be a good thing for everyone.

Councilor Barberis said she was at the Tree Committee meeting and they are looking at how to change the vegetation on Highway 93 as they work with MDT. She said they also looked at the tree inventory which will help them track the health of the trees in the future.

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)

6a. Minutes from the February 3, 2014 Council regular meeting (p. 19)

Councilor Hildner offered a correction on page 3, paragraph 2, in the next to the last sentence, to change "their neighborhood" to "her neighborhood." Councilor Frandsen offered a correction on page 4 regarding the stairway near 2nd Street Bridge clarifying that she voted in opposition.

Councilor Sweeney offered a motion, seconded by Councilor Hildner, to adopt the Consent Agenda, as amended. The motion passed unanimously.

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

7a. Ordinance No. 14-01; 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)

Manager Stearns said he or Chief Dial were available to answer questions, but the Councilors did not have any.

Mayor Muhlfeld opened the public hearing.

Tony Viseth, 560 Somers Avenue, represented the Whitefish Chamber of Commerce, and said they are hoping to improve the community of Whitefish. They have a concern about the 11 AM to 10 PM discharge time frame. He said the Chamber has put on a firework show that doesn't start until 10:30 PM when it gets dark. He said it would destroy the fireworks show for the City. He said he also didn't

know how they could enforce this in the community, especially all around the lake on July 4th. He said someone wanted to have environmentally friendly fireworks. He said the Chamber spends about $15,000 through local community support. If they have to go to environmentally friendly fireworks it would almost triple the cost. Mayor Muhlfeld said they aren't adding any new hours to the Code; the time restriction is already in the Code.

Tom Garretson, 1315 Old Tally Lake Road, said they own Black Widow Fireworks and they consider Whitefish their hometown. He said he is in the business of retail fireworks. He builds relationships even though he only sees folks twice per year. It is a huge part of the special event feel of the town. He said they focus on no injuries and no property damage. He said the proposed changes may not give them what they're looking for. In Missoula they're illegal and the police got over 200 calls on July 4th. He said New Years is also a fireworks season, but now they can't sell them in town. He said some neighborhoods have a supervised street party and it is a fun community event. He said no one wants to be awakened at 1:00 AM to artillery noises. He said he and his wife would like to be part of the solution. He asked them to address the New Years option. He said no one sets off fireworks before 10 PM because it isn't dark. He said visitors don't know the regulations and they will get a very punitive fine.

Rebecca Norton, 530 Scott Avenue, said she is in favor of this ordinance because she lives right in town. She said it will help contain fireworks to a couple of days. Her neighbor's dog is practically psychotic for the two weeks. She said if it doesn't work, she hopes it would help concentrate the use of fireworks.

Neil Wilke, 432 Geddes Avenue, said he is in favor of this regulation. If it is a dry season a fire could start at the base of the mountain and then how are people going to get out. There is only one exit from the mountain. He said they need to take that into consideration. He said he is in favor of it if they enforce it.

Mayor Muhlfeld closed the public hearing.

Councilor Sweeney said nothing that is being proposed effects any of the special events like the fireworks display. They have shortened the time by one day and increased the violation fines so people understand that this is important. The City is not trying to prevent families from having fun or prevent the businesses from selling fireworks.

Councilor Hildner offered a motion, seconded by Councilor Barberis, to adopt Ordinance 14-01 amending discharge time limits and penalty provisions of the Fireworks Regulations in Whitefish City Code Section 9-1-6(C) and (E) (1st Reading).

Manager Stearns said the Chamber display comes under section 9-1-6 (B) which is for public fireworks displays. They are not limited by this ordinance.

The motion passed unanimously.

7b. 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 (Staff Report WZTA-13-02). (1st Reading) (p. 36)

Director Taylor said there was a previous public hearing in December as well as tonight. 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. Specific land types are called out in the Growth Policy and the Planned Resort District is called out in this report. This is designed to have a maximum amount of public exposure. There will be a neighborhood meeting, then a neighborhood plan that will go through the Planning Board and Council. There will be a binding site plan so there will be surety on how a particular resort will develop. Allowed uses are the same as those in the County BR-4 zone, but there is room to review and/or limit some of those uses.

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. 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 remove Convention Centers and move Conference Centers from Conditional Uses to Permitted Uses.

Mayor Muhlfeld opened the public hearing.

Mayre Flowers, Citizens for a Better Flathead (CBF), said she appreciated the opportunity to address them. CBF represents 1,500 residents in the Flathead and they encourage broad public participation. She asked them to table this until there is time for more public input or to deny this proposed zone as flawed as proposed. She said neighborhood plans should be neighborhood plans. Montana State Law Growth Policy Act allows them to include neighborhood plans, but it requires a minimum criteria for jurisdictional area for a plan. She said they need to define their jurisdictional area. She said 5 acres does not constitute a neighborhood. She said the intent was to have a neighborhood plan in areas that readily include multiple property owners within a related area. They are amending the Growth Policy before they apply the zone. In doing this they are asking a few individuals to apply for a Growth Policy amendment that will lock in their rights for a particular piece of property. Those are characteristics of spot planning. She said they should amend the Growth Policy and future land use map by identifying areas they think are appropriate within their jurisdiction. She said the Big Mountain area is the only area designated like this currently. She said the case has not been made that this zone is needed. She said she isn't sure that they want more flexibility when it can be an area as small as 5 acres. They need to review best practices in similar communities. She appreciates the goal of extensive public comments, but feels it is a slippery slope. She said the notice for the public hearing doesn't meet the usual standard. The Council asked for a workshop because of the complexity of the proposal and yet she was not able to attend and a lot of the public was not able to attend. The public hasn't had a chance to look at the minutes from their work session tonight. She said legal notice was only given in the Whitefish Pilot and was in conjunction with the Planning Board. She said State Law requires 15 days prior notice and this notice was 45 days before the event which keeps it out of the public's eye. She said it would be wise to give more time for public review. She said she thinks they've also given the Council reasons to deny this and to look at other inconsistencies in the zoning.

Rhonda Fitzgerald, 412 Lupfer Avenue, said she isn't sure there is a need for this zone. She said the Growth Policy doesn't recommend adopting that type of zone. The Big Mountain has its own zones, so the only planned resort they have is covered. The future land use map doesn't have any place else

mapped for this zoning. She said they have a real town, which also has a visitation economy, but it is successful because of the character of Whitefish. They are not a resort town. She urged them to be careful when people say something like this is important for tourism. She said 5 acre parcels exist in every area of town. She asked them to have a more holistic way of looking at what these things might do. She asked how they define "resort." There are a dozen properties that call themselves resorts. She said there is a lot of talk about convention centers and they are not usually self-sustaining. They often require taxpayer subsidy, so she didn't want them to think it was a good idea for their economy.

Rebecca Norton, 530 Scott Avenue, said she is opposed to this until she knows more. It seems like a blank check. People need a chance to figure out if this is what they want. The district allows deviation from certain standards, including storm water management, and that concerns her.

Chris Hyatt, 611 Somers Avenue, said he sat in the Planning Board meeting and work session. He believes there is a need for this zone. He said they may need to tweak the acreage and usage. The future land use map shows two major resorts as out of compliance. The Whitefish Planned Resort District allows strong control by the City and the Council. Each applicant has to go through the neighborhood plan process. He said they have gone through this process several times and he is taken back by what is being said tonight. He asked them to pass the zone for making things compliant and for remaining in control of future development. He thanked staff for all of their efforts. He is not in favor of 1500 feet of notification, but he would approve of 500 feet.

Mayor Muhlfeld closed the public hearing.

Councilor Feury offered a motion, seconded by Councilor Hildner, to deny approving text amendments to the Whitefish Zoning Jurisdiction Regulations to create a new Zoning District entitled "Whitefish Planned Resort District." He offered findings for denial stating that the Planning Board failed to consider the WRB-1 or WRB-2 zone and the PUD process which offer almost all of the same tools.

Councilor Feury quoted Councilor Kahle who said this thing scares him. It is extremely broad in nature and he can't support it. He thinks the WRB-1 and the WRB-2 zone and PUD process offer almost all of the same tools. He is concerned that someone could come in and create a town within a town. He said Sun River in Bend is one of his least favorite places. He thinks they need to step back and look at the Growth Policy document and see if this is what they want today. Councilor Hildner concurred. He said the time is not right for this Ordinance right now. He said Councilor Kahle used to remind them about the grit of Whitefish. He would hate to replace grit with Teflon.

Manager Stearns said it would be incumbent upon the Council and Staff to look at the Growth Policy and to change some of the language there. It was a "To Do" item in the Growth Policy. He said they could scale it back by scaling back the permitted uses and acreage. Councilor Anderson thanked Manager Stearns for the update. He had questions about the Growth Policy being able to accommodate this. He said if they can currently accommodate a significant type of resort development, he is not convinced they need this at this point.

The motion to deny the text amendment was approved unanimously.

8. COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

8a. 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)

Director Wilson said they covered this at the last meeting and he is requesting authorization to proceed. There will be many opportunities for public involvement and two opportunities for the Council to approve designs.

Councilor Sweeney thanked Director Wilson for his informative staff report. He thinks staff has done a good job to help the Council and neighbors understand what the City wants to do out there.

Councilor Sweeney offered a motion, seconded by Councilor Feury, to approve designating the West 7th Street reconstruction project (Baker to the entrance of Grouse Mountain Subdivision) – as a 2015 Resort Tax project. The motion passed unanimously.

Councilor Sweeney offered a motion, seconded by Councilor Feury, to direct the Public Works Department to start the engineering selection process for that project. The motion passed unanimously.

Councilor Sweeney offered a motion, seconded by Councilor Feury, to designate Councilor Sweeney to participate as a non-voting member of the Selection Committee. The motion passed unanimously.

Director Wilson said there will be a meeting at the Armory on Thursday, February 20th at 5:30 PM about the E. 2nd street construction project. The public is invited.

9. COMMUNICATIONS FROM CITY MANAGER

9a. Written report enclosed with the packet. Questions from Mayor or Council? (p.118) None.
9b. Other items arising between February 12th and February 18th - None.
9c. 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)

Manager Stearns said this project is a long term 20 year loan from the State SRF program with a 3% interest rate to pay for sewer projects as part of the Hwy 93 West Phase I project. They will also have to do a loan for all of Phase II. MDT typically requires a payment in advance. He said the City paid them about $800,000 for last year's project and this is the remainder. 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. Manager Stearns, City Attorney VanBuskirk and Assistant City Manager Corey Swisher have reviewed and revised the Bond Resolution with Dorsey and Whitney.

Councilor Feury offered a motion, seconded by Councilor Frandsen, to approve a Resolution 14-04, 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.

Councilor Anderson asked and Manager Stearns said the rate can't go up, but it may go down. The whole bond debt service gets settled and then it is a fixed rate. Councilor Anderson noted for the public that there is no sewer rate increase to pay for it and Manager Stearns said there is plenty of revenue to cover this without a rate increase. However, the Council looks at rate increases every October. If they had to raise sewer rates to afford this debt they would do that tonight, but next October they will look at rate increases to cover the cost of inflation and sewer rates may increase.

The motion passed unanimously.

10. COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

10a. Letter from Dr. Glen Aasheim, Chair of Flathead City-County Board of Health regarding consolidating dog licensing within Flathead County (p. 170)

Mayor Muhlfeld said this is a good idea and it would be good to consolidate it. Councilor Sweeney agreed. Councilor Feury asked what kind of revenue they get from City dog licenses. City Clerk Lorang said the revenue is pretty small. Manager Stearns said it is a couple of thousand of dollars. Manager Stearns said this idea has been around for awhile. Kalispell doesn't seem interested and it only works if all three towns do it. He said the County Commissioners don't seem very interested. Manager Stearns said any inter-local agreement means they lose a little control. They want to schedule a time to meet and that might be difficult, it might have to be a special work session. He said staff feels that if they get through the County and Kalispell then Whitefish could move on it. Mayor Muhlfeld asked if they could appoint someone to meet with them. Councilor Hildner volunteered.

Councilor Sweeney thanked those who showed up about W. 7th Street. He spoke up last month because he wanted to be sure the public had a voice on what would be done out there.

Councilor Feury asked and Manager Stearns said the goal setting session will be in April. Councilor Hildner said he joined Mr. Stearns in Helena at a meeting with the Montana Fish and Wildlife Commission who voted 4-0 to initiate the process to consider designating a portion of the Whitefish River as limited to electric motors and manually powered craft. He said someone called and asked if there was a way for the general mailing of the Council packet to be sent earlier. Manager Stearns said he tries to send the agenda out to the public after the Council has it so the Councilors have a chance to review it before they get calls from the public. Now, they post the packet to the website on Wednesday. Councilor Hildner responded to an editorial about the Whitefish Beer Barter. He said it is unfortunate that the Great Northern failed to live up to its obligations in 2012 and 2013 and that they advertised an event before securing a permit. It is also unfortunate that they blamed the City for its failure. He wished Councilor Anderson good luck for his 50 KM race this weekend.

Councilor Anderson said public participation is the most important thing that they do and he appreciated hearing from the public about W. 7th Street tonight. He asked about the transition plan for Director Cozad's retirement. Director Cozad said they haven't had a chance to talk about it, but they are putting together a plan. Manager Stearns said it is complex because they pay off people's termination costs by leaving a position vacant. Someone will be picking up those duties, he will work with Karl on a plan. Councilor Anderson said he is on the Resort Tax Committee and the committee wanted to invite the Council to attend their meetings at 7:05 AM on the third Wednesday of each month at Coffee Traders.

Councilor Barberis thanked Tony for coming from the Chamber of Commerce. She said she hopes that in the future they continue to get quotes about environmentally friendly fireworks. She would be willing to help with that.

Mayor Muhlfeld said he spoke with Kevin Gartland from the Chamber who invited the Council to attend the Chamber meetings as well. He said the map on page 115 of the packet highlights all the projects the Resort Tax has paid for over the past 15 years. He said that 2% resort tax has had a positive impact on the infrastructure projects. He congratulated Director Cozad on his retirement. Mayor Muhlfeld asked about contract negotiations with Mosaic and Manager Stearns said they haven't even really started. He said they have to have the parking assessment district before they can work on a contract. Mayor Muhlfeld asked for a list of the work session projects.

Mayor Muhlfeld asked about the Baker Avenue Bridge and Director Wilson said he and his crews will be dealing with that. Manager Stearns said they have filled the potholes, but the freeze/thaw effects it. Councilor Hildner thanked Director Wilson's Public Works team because the team was out fixing a broken water main on a cold and nasty evening. Director Wilson said he would pass the thanks along to the crew.

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 9:40 p.m.

_____
Mayor Muhlfeld

_____
Jane Latus Emmert, Recording Secretary

Attest:

_____
Necile Lorang, City Clerk

ORDINANCE NO. 14-01

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.

DON ROBB/BLACKHAWK CAPTIAL CORP.
WHITEFISH LAKE LAKESHORE PERMIT
STAFF REPORT #WLP-14-W01
MARCH 3, 2014

Property Owner:	Don Robb/Blackhawk Capital Corporation
Mailing Address:	1211 Deer River Circle SE Calgary, AB T2J 7A1 Canada
Telephone Number:	403.686.9866
Applicant:	Bruce Boody Landscape Architect, Inc.
Mailing Address:	301 2nd Street, Suite1b Whitefish, MT 59937
Telephone Number:	406.862.4755
Contractor:	LaChance Builders
Mailing Address:	204 Wisconsin Avenue Whitefish, MT 59937
Telephone Number:	406.862.5597
Property Legal Description:	Lot 11, Houston Lake Shore Tracts, Section 23, Township 31 North, Range 22 West
Property Address:	2072 Houston Drive
Lake:	Whitefish Lake
Lake Frontage:	75' per 1935 Subdivision Plat
Project Description:	Install a 515.45 square foot 'F' shaped EZ dock, construct approximately 20 feet of dry-set stone stairs, remove an existing pump house, and replace an existing waterline within the Lakeshore Protection Zone.

Proposal: The applicant is proposing to complete multiple projects within the Lake and Lakeshore Protection Zone. The first activity is the installation of a floating 'F' shaped EZ dock, gangway, and EZ port. The main portion of the dock will be 40.53 feet long by 6.48 feet wide with a breakwater wing 19.46 feet long by 6.48 feet wide. The slip wing will be 12.97 feet long by 4.86 feet wide. The EZ port will be 10.5 feet long by 4.92 feet wide. The dock will be connected to the shoreline by a gangway 18 feet long by 3 feet wide. The dock and gangway will extend 58.53 feet out into the lake, and will be placed in the middle of the subject property. The entire dock, EZ port, and gangway will equal 515.45 square feet of impervious coverage.

The second activity will be the construction of a dry-set stone stairway, approximately 4 feet wide and 20 feet long, extending through the lakeshore protection area to the proposed dock. The stairs will include a handrail approximately 3 feet tall. The stairs will equal approximately 82.32 square feet of impervious coverage.

The third activity is the removal of an existing pump house within the Lakeshore Protection Zone. Currently the pump house is 208.55 square feet of impervious coverage. The removal of the pump house will reduce the amount of existing impervious coverage within the Lakeshore Protection

Zone, permitting the installation of the proposed dock and stairway. Without the removal of the pump house, the subject property does not have the required lakeshore frontage to permit the proposed dock. The pump house will be reconstructed outside of the Lakeshore Protection Zone and zoning setbacks.

The final proposed activity is the replacement of an existing waterline into Whitefish Lake for the purpose of domestic water. There is an existing water right associated with the property for domestic water. The pump will be positioned under the main portion of the proposed dock, and the connecting waterline will be extended below the dock and gangway. This will limit potential interference with navigation and prevent snagging. The waterline will cross through the lakeshore protection zone, underneath the proposed stairway.

The total amount of proposed impervious constructed area is approximately 597.77 square feet.

Frontage and allowable constructed area: The subject property has 75 feet of lakeshore frontage, and is eligible for 600 square feet of constructed area.

Existing Constructed Area: There is an existing pump house located within the Lakeshore Protection Zone, approximately 208.55 square feet. This will be removed and reconstructed outside of the Lakeshore Protection Zone.

Conclusion: The proposed work complies with all requirements, most specifically Section 13-3-1, General Construction Standards of the Whitefish Lake and Lakeshore Regulations.

Recommendation: Staff recommends that the Whitefish City Council approve the requested lakeshore construction permit per the recommendation of the Whitefish Lakeshore Protection Committee subject to the following conditions:

Recommended Conditions of Approval:

1. This permit is valid for a period of one year from the date of issuance. Upon completion of the work, please contact the Planning Department at 406-863-2410 for final inspection.
2. The Lakeshore Protection Zone shall be defined as the lake, lakeshore and all land within 20 horizontal feet of the average high water line at elevation 3,000.79'.
3. The proposed dock dimensions specified on the application project drawing shall not be exceeded. Changes or modifications to increase any dimension or change configuration must be approved through a permit amendment.
4. Temporary storage of vehicles, trailers, equipment, or construction materials in the lakeshore protection zone is prohibited.
5. The natural protective armament of the lakeshore and lakebed must be preserved whenever possible. Following installation, the lakeshore and lakebed shall be returned to its condition prior to construction.
6. The existing pump house shall be removed and reconstructed outside of the Lakeshore Protection Zone, and include proper measures such as straw wattle and silt fence to eliminate any potential sediment from entering lake water prior to removal of structure.

Dock

7. Only one dock is permitted per property ownership.
8. The dock shall be placed in the middle of the subject property.
9. Any wood used in construction of the new dock shall be untreated and left in its natural state. Use of a wood polymer composite (i.e. TREX) is strongly encouraged. Use of painted material, plywood, particle board or other glued composite board is not allowed.
10. If foam logs or similar easily damaged flotation systems are incorporated into the dock design, said material shall be completely encased in solid wood or a suitable impervious, non-corrosive material such as a synthetic, aluminum or galvanized sheet metal to avoid the breakup or scattering of materials. Boards may be spaced up to one-half inch (1/2") apart on the bottom or drain holes may be incorporated into other materials to aid in drainage. All foam encased floating docks shall be maintained according to these standards or else be immediately and completely removed from the Lakeshore Protection Zone. All foam shall be extruded closed-cell polystyrene (blue or pink logs) unless encased in synthetic "rotomolded" floats.
11. The dock shall be constructed outside of the Lakeshore Protection Zone. Upon completion the components may be brought to the lakeshore area and launched.
12. The floating dock shall be suitably anchored to the lake bottom to avoid drift. Anchoring methods for the dock are limited to cable; galvanized chain or nylon or polypropylene rope attached to a suitable clean weight such as solid clean concrete, rock or steel blocks.

Stairway

13. The stairs shall have a maximum width of four feet (4’) and shall be designed to provide access only.
14. Stairways and walkways constructed of impervious material, including dry laid stone, are subject to the maximum allowable constructed area.
15. Elevated stairways shall follow the natural grade of the existing shoreline and no portion of the walking surface of the stairway or landing shall be situated higher than two (2’) vertical feet above the underlying lakeshore.
16. Stairways shall be constructed of wood composite (i.e., Trex) or untreated wood left in its natural (unpainted) condition.
17. Hand railings are permitted. The railing shall not extend higher than four feet (4’) above the stairway and landing walking surface and shall have a visually open design. Metal, non-ornate railings may be painted brown or green by the manufacturer prior to installation.
18. Clean, washed gravel may be used in setting the steps but cannot be used to modify existing terrain.
19. Rock may be handpicked from the immediate lakeshore but removal of said rock shall only be allowed if a solid armament of rock remains in place. The removal of any rock which exposes silts, sands or fines is prohibited.

Waterline

20. The waterline and pump shall be located as proposed in the application. Under no circumstances shall the waterline be located closer than 10 feet from either riparian property boundary line.
21. Water rights are required to install the water line.
22. All work shall be done when the lake is at low pool and the construction site is dry.
23. During excavation, only the minimum amount of material necessary to lay the line and power cable conduit shall be removed from the trench.
24. Any rock lying over the proposed trench shall be removed prior to excavation and saved. After refilling the trench, said rock shall be restacked over the top to serve as a protective measure to inhibit washing and erosion. Any material which is not replaced back into the trench shall be completely removed from the lakeshore protection zone.
25. A trenching machine may extend its bucket or digger into the lake to extend the trench below low water line of the lake. At no time shall the wheels of any vehicle come in contact with the lake.
26. That portion of the waterline which is not buried and does lie exposed on the bottom of the lakeshore shall be weighted to prohibit floatation or snagging. No waterline shall lie on top of or be attached to a floating dock or raft.
27. A waterline using a submersible pump shall be installed in accordance with the State Uniform Plumbing and Electrical Codes. Conduit is strongly recommended for the power cable to prevent damage by ice/rocks.

Report by: Bailey Minnich

WHITEFISH LAKESHORE PROTECTION COMMITTEE
MINUTES OF FEBRUARY 12, 2014

The meeting was called to order at 6:00pm by Vice-Chairman Ron Hauf.

MEMBERS PRESENT:

- Ron Hauf, Scott Ringer, Herb Peschel (via phone), Greg Gunderson, Sharon Morrison, Jeff Jensen, Joe Malletta (via phone) and Koel Abell. Bailey Minnich of the Whitefish Planning Office was also present.

MEMBERS ABSENT: none

ADDITIONS/CORRECTIONS to TONIGHT'S AGENDA:

- Staff explained that the third item on the agenda, file #WLV-14-W03, has been tabled under the March 12th meeting.

GENERAL PUBLIC COMMENT: <none>

ADOPTION of MINUTES from LAST MEETING:

- Minutes of January 8, 2014 were reviewed with one change noted by Greg Gunderson: the spelling of wattle; motion to adopt by Scott Ringer, Sharon Morrison seconded. All in favor and motion carried.

NEW BUSINESS

WLP-14-W01 – Robb/Blackhawk Capital Corporation – Dock, Stairs, Waterline, Removal of Pump House
[Present: Bruce Boody, Applicant Representative]

Discussion:
Staff began with a presentation of the proposed project and draft lakeshore permit report. The property is located at 2072 Houston Drive. The application is for multiple activities which includes installation of a floating 'F' shaped EZ dock, approximately 20 feet of dry-set stone stairs, removing an existing pump house/boathouse from the Lakeshore Protection Zone, and replacing an existing waterline. Following staff's presentation, the board discussed locations of silt fencing and straw wattles during the boathouse removal. They recommended a modification to Condition #6 adding language *"and include proper measures such as straw wattle and silt fence to eliminate any potential sediment from entering lake water prior to removal of structure."* Additional discussion was held regarding what material will be utilized for filling in the location of boat house after it is removed. The board also discussed the proposed stairway elevation, the intended purposed of the stairs, and the waterline replacement. Extensive discussion was held regarding the proposed dock square footage. Questions were raised concerning the proposed dimensions of the dock, and the use of published numbers versus actual numbers once the dock is molded and constructed. Staff explained that if approved, the permit is granted for a specific amount of impervious coverage, and staff verifies this number during their compliance verification visit once complete. Ultimately it is up to the applicant to make sure that the dock they construct is compliant with the amount of impervious coverage permitted.

Motion:

- Scott Ringer moved to recommend approval of application #WLP-14-W01 as proposed, with the Board's amendment to Condition #6. Sharon Morrison seconded. No further discussion. Motion passed 7-1 (Joe Malletta opposed).

WLP-14-W02 – Lois Torfason – Dock, Shore Station
[Applicant not present]

Discussion:
Staff began with a presentation of the proposed project and draft lakeshore permit report. The property is located at 1516 W. Lakeshore Drive. The applicant is proposing two activities: the installation of a dock and a shore station. Staff explained that this was the project where the property owner has assumed the contractor has obtained a permit for the dock, however, the contractor never turned in the application. Also, due to the amount of constructed area allowed per the property lakeshore frontage, the applicant is not permitted to install a canopy on the shore station, which is outlined in condition 16. The Board questioned why the canopy is counted in the amount of constructed area, as well as the dock. Staff explained that the lakeshore regulations specifically state that a canopy on the shore station and the dock itself are calculated into the amount of constructed area permitted for a specific property. Discussion continued with potential periodical review of the lakeshore regulations for possible modifications, and permitting or not-permitting of wake boats on the lake. The Board questioned if the shore station could fit on the property as the regulations specify it must be 25 feet from the riparian boundary. Discussion continued about the definition of riparian boundary line and where the riparian boundary line would be measured in relation to the shore station. It was discussed splitting the dock permit from the shore station permit.

Motion:

- Joe Malletta moved to approve application #WLP-14-W02 for the dock with the addition of a condition that the dock be constructed out of materials which conform to the regulations, but table the application for the shore station until further review can be completed by staff to see if the project can conform to the regulations. Herb Peschel seconded. Further discussion occurred on the location of the riparian boundary lines and the material proposed for the dock. All in favor and motion carried.

OLD BUSINESS
None

ADJOURNMENT
Motion to adjourn the meeting was made and seconded. All approved and motion passed. The meeting was adjourned at 7:00 pm.

NEXT MEETING

March 12th, 2014 * 6:00pm
Whitefish Planning & Building Office
510 Railway Street – Whitefish, MT

DRAFT

DON ROBB/BLACKHAWK CAPTIAL CORP.
WHITEFISH LAKE LAKESHORE PERMIT
STAFF REPORT #WLP-14-W01
FEBRUARY 5, 2014

Property Owner:	Don Robb/Blackhawk Capital Corporation
Mailing Address:	1211 Deer River Circle SE Calgary, AB T2J 7A1 Canada
Telephone Number:	403.686.9866
Applicant:	Bruce Boody Landscape Architect, Inc.
Mailing Address:	301 2nd Street, Suite1b Whitefish, MT 59937
Telephone Number:	406.862.4755
Contractor:	LaChance Builders
Mailing Address:	204 Wisconsin Avenue Whitefish, MT 59937
Telephone Number:	406.862.5597
Property Legal Description:	Lot 11, Houston Lake Shore Tracts, Section 23, Township 31 North, Range 22 West
Property Address:	2072 Houston Drive
Lake:	Whitefish Lake
Lake Frontage:	75' per 1935 Subdivision Plat
Project Description:	Install a 515.45 square foot 'F' shaped EZ dock, construct approximately 20 feet of dry-set stone stairs, remove an existing pump house, and replace an existing waterline within the Lakeshore Protection Zone.

Proposal: The applicant is proposing to complete multiple projects within the Lake and Lakeshore Protection Zone. The first activity is the installation of a floating 'F' shaped EZ dock, gangway, and EZ port. The main portion of the dock will be 40.53 feet long by 6.48 feet wide with a breakwater wing 19.46 feet long by 6.48 feet wide. The slip wing will be 12.97 feet long by 4.86 feet wide. The EZ port will be 10.5 feet long by 4.92 feet wide. The dock will be connected to the shoreline by a gangway 18 feet long by 3 feet wide. The dock and gangway will extend 58.53 feet out into the lake, and will be placed in the middle of the subject property. The entire dock, EZ port, and gangway will equal 515.45 square feet of impervious coverage.

The second activity will be the construction of a dry-set stone stairway, approximately 4 feet wide and 20 feet long, extending through the lakeshore protection area to the proposed dock. The stairs will include a handrail approximately 3 feet tall. The stairs will equal approximately 82.32 square feet of impervious coverage.

The third activity is the removal of an existing pump house within the Lakeshore Protection Zone. Currently the pump house is 208.55 square feet of impervious coverage. The removal of the pump house will reduce the amount of existing impervious coverage within the Lakeshore Protection

Zone, permitting the installation of the proposed dock and stairway. Without the removal of the pump house, the subject property does not have the required lakeshore frontage to permit the proposed dock. The pump house will be reconstructed outside of the Lakeshore Protection Zone and zoning setbacks.

The final proposed activity is the replacement of an existing waterline into Whitefish Lake for the purpose of domestic water. There is an existing water right associated with the property for domestic water. The pump will be positioned under the main portion of the proposed dock, and the connecting waterline will be extended below the dock and gangway. This will limit potential interference with navigation and prevent snagging. The waterline will cross through the lakeshore protection zone, underneath the proposed stairway.

The total amount of proposed impervious constructed area is approximately 597.77 square feet.

Frontage and allowable constructed area: The subject property has 75 feet of lakeshore frontage, and is eligible for 600 square feet of constructed area.

Existing Constructed Area: There is an existing pump house located within the Lakeshore Protection Zone, approximately 208.55 square feet. This will be removed and reconstructed outside of the Lakeshore Protection Zone.

Conclusion: The proposed work complies with all requirements, most specifically Section 13-3-1, General Construction Standards of the Whitefish Lake and Lakeshore Regulations.

Recommendation: Staff recommends that the Whitefish Lakeshore Protection Committee recommend approval of the requested lakeshore construction permit to the Whitefish City Council subject to the following conditions.

Recommended Conditions of Approval:

1. This permit is valid for a period of one year from the date of issuance. Upon completion of the work, please contact the Planning Department at 406-863-2410 for final inspection.
2. The Lakeshore Protection Zone shall be defined as the lake, lakeshore and all land within 20 horizontal feet of the average high water line at elevation 3,000.79'.
3. The proposed dock dimensions specified on the application project drawing shall not be exceeded. Changes or modifications to increase any dimension or change configuration must be approved through a permit amendment.
4. Temporary storage of vehicles, trailers, equipment, or construction materials in the lakeshore protection zone is prohibited.
5. The natural protective armament of the lakeshore and lakebed must be preserved whenever possible. Following installation, the lakeshore and lakebed shall be returned to its condition prior to construction.
6. The existing pump house shall be removed and reconstructed outside of the Lakeshore Protection Zone.

Dock

7. Only one dock is permitted per property ownership.
8. The dock shall be placed in the middle of the subject property.
9. Any wood used in construction of the new dock shall be untreated and left in its natural state. Use of a wood polymer composite (i.e. TREX) is strongly encouraged. Use of painted material, plywood, particle board or other glued composite board is not allowed.
10. If foam logs or similar easily damaged flotation systems are incorporated into the dock design, said material shall be completely encased in solid wood or a suitable impervious, non-corrosive material such as a synthetic, aluminum or galvanized sheet metal to avoid the breakup or scattering of materials. Boards may be spaced up to one-half inch (1/2") apart on the bottom or drain holes may be incorporated into other materials to aid in drainage. All foam encased floating docks shall be maintained according to these standards or else be immediately and completely removed from the Lakeshore Protection Zone. All foam shall be extruded closed-cell polystyrene (blue or pink logs) unless encased in synthetic "rotomolded" floats.
11. The dock shall be constructed outside of the Lakeshore Protection Zone. Upon completion the components may be brought to the lakeshore area and launched.
12. The floating dock shall be suitably anchored to the lake bottom to avoid drift. Anchoring methods for the dock are limited to cable; galvanized chain or nylon or polypropylene rope attached to a suitable clean weight such as solid clean concrete, rock or steel blocks.

Stairway

13. The stairs shall have a maximum width of four feet (4') and shall be designed to provide access only.
14. Stairways and walkways constructed of impervious material, including dry laid stone, are subject to the maximum allowable constructed area.
15. Elevated stairways shall follow the natural grade of the existing shoreline and no portion of the walking surface of the stairway or landing shall be situated higher than two (2') vertical feet above the underlying lakeshore.
16. Stairways shall be constructed of wood composite (i.e., Trex) or untreated wood left in its natural (unpainted) condition.
17. Hand railings are permitted. The railing shall not extend higher than four feet (4') above the stairway and landing walking surface and shall have a visually open design. Metal, non-ornate railings may be painted brown or green by the manufacturer prior to installation.
18. Clean, washed gravel may be used in setting the steps but cannot be used to modify existing terrain.
19. Rock may be handpicked from the immediate lakeshore but removal of said rock shall only be allowed if a solid armament of rock remains in place. The removal of any rock which exposes silts, sands or fines is prohibited.

Waterline

20. The waterline and pump shall be located as proposed in the application. Under no circumstances shall the waterline be located closer than 10 feet from either riparian property boundary line.
21. Water rights are required to install the water line.
22. All work shall be done when the lake is at low pool and the construction site is dry.
23. During excavation, only the minimum amount of material necessary to lay the line and power cable conduit shall be removed from the trench.
24. Any rock lying over the proposed trench shall be removed prior to excavation and saved. After refilling the trench, said rock shall be restacked over the top to serve as a protective measure to inhibit washing and erosion. Any material which is not replaced back into the trench shall be completely removed from the lakeshore protection zone.
25. A trenching machine may extend its bucket or digger into the lake to extend the trench below low water line of the lake. At no time shall the wheels of any vehicle come in contact with the lake.
26. That portion of the waterline which is not buried and does lie exposed on the bottom of the lakeshore shall be weighted to prohibit floatation or snagging. No waterline shall lie on top of or be attached to a floating dock or raft.
27. A waterline using a submersible pump shall be installed in accordance with the State Uniform Plumbing and Electrical Codes. Conduit is strongly recommended for the power cable to prevent damage by ice/rocks.

Report by: Bailey Minnich

Robb Property

Whitefish Lakeshore Construction Permit Application

Owner:
Don Robb
Blackhawk Capital Corporation, President
1211 Deer River Circle SE
Calgary, AB T2J 7A1 CANADA

Date Submitted:
1/22/2014

Prepared By:
Bruce Boody Landscape Architect, Inc.
301 E. 2nd St.
Whitefish, MT 59937
(406) 862-4755ph

Attachment to Whitefish Lakeshore Construction Permit Application
For the Robb Property (Job #13-54)
Whitefish, Flathead County

Table of Contents

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Lakeshore Application: 24X36 Site Plan & Vicinity Map 1

Lakeshore Application: 24X36 Project Drawing & Lakeshore Protection Zone Area Calculations 2

I hereby authorize Bruce Boody Landscape Architect, Inc. to act on our behalf as applicant in all matters regarding my Whitefish, Blanchard, and Lost Coon Lake Lakeshore Construction Permit Application.

Signature

DONALD ROBB - BLACKHAWK CAPITAL CORPORATION, PRESIDENT
Print Name

December 30, 2013
Date

Kurt Vomfell

From: Don Robb <drobb@rawlco.com>
Sent: Monday, January 20, 2014 10:56 AM
To: 'kurt@bruceboody.com'
Subject: RE: Robb Project

Hi Kurt,

I provide this email as your authority to add the words "Blackhawk Capital Corporation-President" below my signature and name on the Authorization Form that I have signed and provided to you, authorizing Bruce Boody Landscape Architect, Inc. to act on Blackhawk's and my personal behalf as applicant in all matters regarding my Whitefish, Blanchard, and Lost Coon Lake Lakeshore Construction Permit Application.

Best regards,

Don Robb

Donald J. Robb, C.A.
Vice President, Finance & CFO
Rawlco Capital Ltd.
140, 6807 Railway Street S.E.
Calgary, Alberta
T2H 2V6
(Ph) 403-451-9893
(Dir ph) 403-686-9866
(Fax) 403-291-0037
(email) drobb@rawlco.com

City of Whitefish
Planning & Building Department
PO Box 158
510 Railway Street
Whitefish, MT 59937
Phone: 406-863-2410 Fax: 406-863-2409

File #: WLP-14-W01
Date: 1/22/2014
Intake Staff: BM
Date Complete: _____

LAKESHORE CONSTRUCTION PERMIT APPLICATION

WHITEFISH, BLANCHARD, LOST COON LAKE

FEE ATTACHED $ 630.00

A permit is required for any work, construction, demolition, dock/shorestation/buoy installation, and landscaping or shoreline modification in the lake and lakeshore protection zone – an area extending 20 horizontal fee landward from mean high water of:

- 3,000.79' msl (NAVD 1988) for Whitefish Lake
- 3,144.80' msl (NAVD 1988) for Blanchard Lake
- 3,104' msl (NAVD 1988) for Lost Coon Lake

INSTRUCTIONS:

☐ Submit the application fee, completed application and appropriate attachments to the Whitefish Planning & Building Department a minimum of **three (3) weeks prior** to the Lakeshore Protection Committee meeting at which this application will be heard.

☐ The regularly scheduled meeting of the Lakeshore Protection Committee is the second Wednesday of each month at 6:00PM in the Planning & Building Department Meeting Room.

☐ After the Lakeshore Protection Committee meeting, the application is forwarded with the Committee's recommendation to the next available City Council meeting for final action, unless it is a committee approved permit.

☐ All work will be inspected for conformity with permit. Permits are valid for one year from date of approval and can be renewed by the governing body upon request.

A. LEGAL DESCRIPTION OF PROPERTY:

Street Address 2072 Houston Dr., Whitefish, MT 59937

How many feet of the lake frontage do you own? 75LF (Per 1935 Subdivision Plat)

Assessor's Tract No.(s) 0777700 Lot No(s) 11
Block # _____ Subdivision Name Houston Lake Shore Tracts
1/4 Sec _____ Section 23 Township T31N Range R22W

I hereby certify that the information contained or accompanied in this application is true and correct to the best of my knowledge. The signing of this application signifies approval for the Whitefish Staff to be present on the property for routine monitoring and inspection during the approval and development process.

_____ _____
Owner's Signature[1] Date

Don Robb - Blackhawk Capital Corporation, President
Print Name

[1] May be signed by the applicant or representative, authorization letter from owner must be attached. If there are multiple owners, a letter authorizing one owner to be the authorized representative for all must be included

01-22-14 P01:50 IN

Bruce Boody — 01/22/14

Applicant's Signature — Date

Bruce Boody, Landscape Architect

Print Name

Bruce Boody — 01/22/14

Representative's Signature — Date

Bruce Boody, Landscape Architect

Print Name

APPLICATION CONTENTS:

Attached	ALL ITEMS MUST BE INCLUDED - INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED
X	Lakeshore Construction Permit Application
X	Written description how the project meets the criteria in Sections C-F
X	Site Plan drawn to scale
X	Project Drawing that is drawn to scale
X	Vicinity Map
X	Minimum of three (3) photos: 1 photo of property from lake; 2 photos showing lakeshore protection zoning from property boundary toward the other property boundary (e.g., from the north property line across property to the south) and photos of each existing structure or constructed area within the lakeshore protection zone (dock, boathouse, stairs, etc.)

B. OWNER(S) OF RECORD:

Name: Don Robb - Blackhawk Capital Corporation, President Phone: 403-686-9866

Mailing Address: 1211 Deer River Circle SE

City, State, Zip: Calgary, AB T2J 7A1 CANADA

Email: drobb@rawlco.com

APPLICANT (if different than above):

Name: Bruce Boody, Landscape Architect Phone: 406-862-4755

Mailing Address: 301 2nd St., Ste. 1B

City, State, Zip: Whitefish, MT 59937

Email: boodyla@bruceboody.com

CONTRACTOR:

Name: LaChance Builders Phone: 406-862-5597

Mailing Address: 204 Wisconsin Ave.

City, State, Zip: Whitefish, MT 59937

Email: info@lachancebuilders.com

C. NATURE OF THE PROPOSED WORK: (describe what you propose to build, demolish or install. Give dimensions, material and list heavy equipment, if any to be used.)

SEE ATTACHED

D. Describe any Environmental Impacts (e.g. impacts on water quality or fish and wildlife habitat, increased sedimentation, etc.). Explain what measures will be taken to alleviate these impacts.

SEE ATTACHED

E. Describe existing improvements on the property within the lakeshore protection zone along with the square footage of each such as an existing dock, stairs, deck or patio and when they were constructed, if known, or the permit number.

SEE ATTACHED

F. If a variance is requested in addition to this permit, specify the reasons or conditions which require or warrant the variance on a separate variance form. An additional fee is required for a variance request. What is the variance proposal?

N/A

FEES:

Administrative Permit no committee meeting: waterlines, dead trees, buoys, burning etc.	$75
Administrative Permit with committee meeting: docks under 60', shore stations	$255
Standard Permit (construction, rip rap, stairs, dredging, filling, excavation, clearing, machinery operations)	$350 base fee (1 activity) $140 each additional activity *(Activity is defined as a separate component or project that by itself would require a permit)*
Variance – Minor	$490/variance – added to standard permit fee; supplemental application required
Variance – Major	$1,400/variance – added to standard permit fee; supplemental application required
"After-the-Fact" Permit	4 times the normal fee

Lakeshore Application Description of Existing Conditions and Proposed Work

1. Nature of the Proposed Work (describe what you propose to build, demolish, or install. Give dimensions, material and list heavy equipment, if any to be used).

Lakeshore Activity #1: Stairs & Handrail
Activity #1 proposes to build 4' wide dry-set stone steps and walkway within the lakeshore protection zone (impervious constructed area=82.32sq. ft.). A tubular steel handrail will be provided on one side of the walkway. It will have a visually open, non-ornate design, and will be powder coated 'Bronze' by the manufacturer prior to installation. The railing will be secured using concrete footings below grade.

Lakeshore Activity #2: Dock & Gangway
Activity #2 proposes the installation of a dock and gangway by EZ Docks (impervious constructed area=515.45sq. ft.).

Lakeshore Activity #3: Pump House Removal
The project has an existing pump house and pump that is to be removed from the lakeshore protection zone. This reduction in impervious constructed area equals 208.55sq. ft. The pump house will be replaced with a new pump house located behind the 10' zoning ordinance setback. Existing gravel inside the pump house will be used to re-grade within the footprint to restore the natural grade after removal of the structure.

Administrative Activity #1: Water Line Replacement
The type and condition of the existing water line materials will be reviewed during the removal of the existing pump house. Depending on the type and condition of materials, the water line may be replaced at this time. If the existing pump cannot be reused a submersible pump will be located below the proposed dock, as seen on the plans, and the water line will be extended to the proposed pump house.

2. Describe any Environmental Impacts (e.g. impacts on water quality or fish and wildlife habitat, increased sedimentation, etc.). Explain what measures will be taken to alleviate these impacts.

As a result of this work, we anticipate no negative environmental impacts. Best management practices, such as straw wattles and silt fences, will be used to avoid lake sedimentation during the installation of stone steps and walkway within the lakeshore protection zone. All disturbed areas will be re-vegetated with native materials as soon as possible following construction activities.

3. Describe existing improvements on the property within the lakeshore protection zone along with the square footage of each such as an existing dock, stairs, deck or patio and when they were constructed, if known, or the permit number.

Previous Lakeshore Permits on file:
#WLP-09-W10: Burning in the Lakeshore and Removal of Dead Trees
#WLP-07-W13: Installation of a 3' x 20' gangway and 8' x 20' dock (220 square feet)

Existing Items	Date Constructed	Constructed Area
Existing Pump House	Unknown ("Grandfathered")	= 208.55 sq. ft.
Existing Water Line and Pump	Unknown ("Grandfathered")	N/A
Total Existing Impervious Constructed Area:		= 208.55 sq. ft.

4. If a variance is requested in addition to this permit, specify the reasons or conditions which require or warrant the variance on a separate variance form. An additional fee is required for a variance request. What is the variance proposal?

N/A

Lakeshore Activity Calculations

Bruce Boody Landscape Architecture, Inc.

Square Footage Calculations within Lakeshore Protection Zone:

Total Allowable Impervious Constructed Area: 75 LF (Per 1935 Subdivision Plat) x 8' = 600 sq. ft.

Existing Impervious Constructed Area:	
Existing Pump House (to be removed)	**208.55 sq. ft.**
Existing Total:	**208.55 sq. ft.**
Total Existing Impervious Area to Remain:	**0 sq. ft.**

Proposed Impervious Constructed Area:	
Proposed Dock	**515.45 sq. ft.**
Proposed Stone Stairs & Walkway	**82.32 sq. ft.**
Proposed Total:	**597.77 sq. ft.**
Total Proposed Impervious Area:	**597.77 sq. ft.**

Existing Lakeshore Photos:

Bruce Boody Landscape Architecture, Inc.

Photo #1: Existing Boathouse & Lakeshore Looking West

Photo #2: Existing Lakeshore Looking East

Photo #3: Existing Native Rip Rap & Gravels at Lakeshore

Department of Natural Resources & Conservation
1424 9th Ave
PO Box 201601
Helena MT 59620-1601

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Water Right Ownership Update

WATER RIGHT BUYER/SELLER
1211 DEER RIVER CIRCLE SE
CALGARY AB T2J 7A1
CANADA

OWNERSHIP UPDATE NOTICE

22-Nov-13

The DNRC processed an ownership update on the following water rights based on information received from Department of Revenue. The owner names were updated to:
Blackhawk Capital Corporation

76LJ 134574 00				

*THIS WATER RIGHT IS IN A DECREE ISSUED BY THE WATER COURT
To view copies of water right abstracts, go to http://nris.mt.gov/dnrc/waterrights
For questions, or if you don't have Internet access and would like to request water right abstracts be mailed to you, contact the regional office listed below and reference
Ownership Update #113927
Kalispell Regional Office: 406-752-2288

ABRIDGED SUMMARY

Today's Date 1/14/2014

THIS ABRIDGED SUMMMARY DOES NOT INCLUDE EVERY PIECE OF INFORMATION ABOUT THIS WATER RIGHT

TO REQUEST AN OFFICIAL ABSTRACT WATER RIGHT 76LJ 134574 00 CLICK HERE

STATE OF MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
1424 9th AVENUE P.O.BOX 201601 HELENA, MONTANA 59620-1601

Water Right Number: 76LJ 134574 00 STATEMENT OF CLAIM

Version: 1

Status: ACTV

Priority Date:(yyyymmdd): 19671015

Type of Historical Right: USE

Max Flow Rate: 15.00

Max Volume: 1.00

Max Acres: 0.25

Owners:

Owner Name	Address 1	Address 2	City	State	Zip Code
BLACKHAWK CAPITAL CORPORATION	1211 DEER RIVER CIRCLE SE	CALGARY AB T2J 7A1 CANADA			99999

Sources:

ID	Source Name	Res	Source Type	Means of Div	TR	Sec	QS	GovtLot	County	Well Depth
1	WHITEFISH RIVER (WHITEFISH LAKE)	N	SURFACE	PUMP	31N22W	23	NWSENE	2	FLATHEAD	

Uses:

ID	Irrigation Type	Purpose	ClimArea	VolAmt	Acreage	TR	Sec	QS	GovtLot	County
1		DOMESTIC		1.00	0.25	31N22W	23	NWSENE	2	FLATHEAD

Geocodes:

Geocode
07429223119010000

PROP. CONCRETE PAVING AT LOWER LEVEL

EXISTING DRY-STACK STONE WALL

POTENTIAL FUTURE TRAM ALIGNMENT

Approx. 10 foot Ordinance 07-09 Zoning Setback

20 foot horizontal offset to mean annual high-water elevation

PROPOSED DRY-SET FLAGSTONE

Elev. 3000.79 - published mean annual high-water elevation of Whitefish Lake

15' SIDE SETBACK

PROPOSED 3' WIDE TRAIL, 3" DEPTH 1/8" MINUS GRAVEL (TYP)

EXIST. PUMP HOUSE & PUMP TO BE REMOVED

20' RIPARIAN SETBACK

SILT FENCE, SEE DETAIL

STRAW WATTLE, SEE DETAIL

PROPOSED PUMP & WATER LINE

PROPOSED DOCK= 515.45.54SF, SEE ENLARGEMENT

MAIN LEVEL DECK ELEV =3008.00

PROP. EXTENSION OF WATER LINE T.B.D.

TRAM LANDING #3018.0

PROPOSED PUMP HOUSE ROOF DECK ELEV=3018.0 MAIN FLR. ELEV=3008.0

3000.8

75'

19.46'

GRADE SIDES OF TRAIL @ 5:1 (TYP)

20' LAKESHORE PROTECTION ZONE

20' RIPARIAN SETBACK

WHITEFISH LAKE

PROPOSED 4' WIDE DRY-SET STONE WALKWAY & STAIRS, SEE DETAIL

PROPOSED HANDRAIL AT EDGE OF STEPS, SEE DETAIL

RESTORE NATIVE VEGETAION IN ALL DISTURBED AREAS (TYP.)

15' SIDE SETBACK

PROP. PRESSURIZED SEWER LINE BY OTHERS (LOCATION T.B.D.)

EXISTING TREES TO REMAIN (TYP)

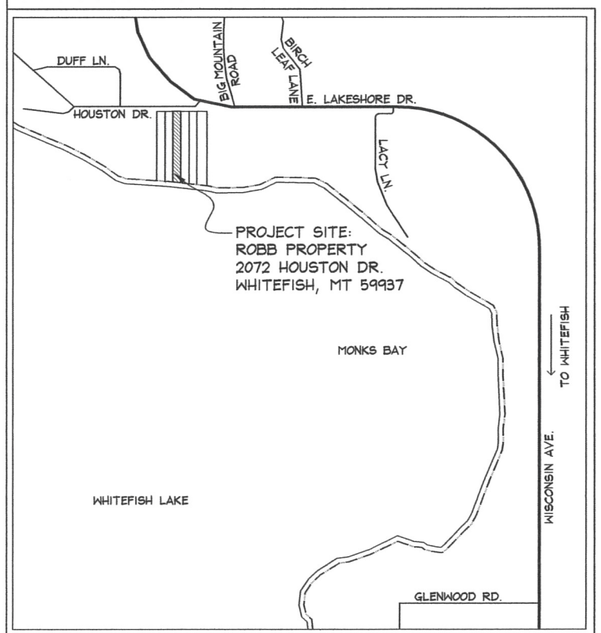
PROPOSED DRY-SET STONE STAIRS WITHIN SETBACK (TYP)

PROP. GRINDER PUMP T.B.D.

PROPOSED WATER LINE EXTENSION

Approximate low water mark of Whitefish Lake (Based on Lidar)

STRUCTURAL RETAINING WALL BY ARCHITECT



VICINITY MAP

N.T.S.

LEGEND

EXISTING

- EXISTING PROPERTY LINE BY SURVEY
- EXISTING SETBACK LINE BY SURVEY
- EXISTING EASEMENT LINE BY SURVEY
- EXISTING INDEX CONTOUR BY SURVEY
- EXISTING CONTOUR BY SURVEY
- EXISTING CENTERLINE OF ROAD BY SURVEY
- EXISTING EDGE OF ROAD/GRAVEL BY SURVEY
- EXISTING DECK LINE BY SURVEY
- EXISTING BUILDING LINE BY SURVEY
- EXISTING TREE BY SURVEY (8" DF)
- EXISTING TREE BY SURVEY TO BE REMOVED (8" DF)
- EXISTING UTILITIES
- EXISTING EDGE OF LAKE/SHORE LINE BY SURVEY
- EXISTING HIGH/LOW WATER LINE BY SURVEY
- 20' LAKESHORE SETBACK

PROPOSED

- PROPOSED CONTOUR (90)
- PROPOSED SPOT ELEVATION (90 X)
- PROPOSED PAVED/ASPHALT DRIVE
- PROPOSED GRAVEL TRAIL
- PROPOSED LARGE MORTAR-SET FLAGSTONES
- PROPOSED LARGE DRYSET FLAGSTONES
- PROPOSED DRYSET OVERSIZED ROCK RETAINING WALL
- PROPOSED BUILDING LINE w/ OVERHANG
- PROPOSED LAWN LINE
- PL PROPOSED PLANTING AREA
- PROPOSED STORM DRAIN & CATCH BASIN

0 10' 20' 40'

BRUCE BOODY Landscape Architect Inc.
301 Second Street
P.O. Box 75
Whitefish, MT 59937
phone 406 862-4785
fax 406 862-9755
bruce@bruceboodylandscape.com

SURVEY BY:
FLATHEAD GEOMATICS
5098 US HWY 93 S
WHITEFISH, MT 59937
(406) 862-4945

Revisions:

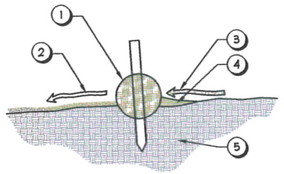
ROBB PROPERTY
HOUSTON LAKESHORE TRACT
2072 HOUSTON DR.
WHITEFISH, MT 59937
S23, T31N, R22W

SCALE: 1"=20'
DATE: 01-22-14
JOB #: 13-54

LAKESHORE APPLICATION SITE PLAN

SHEET 9 OF 10

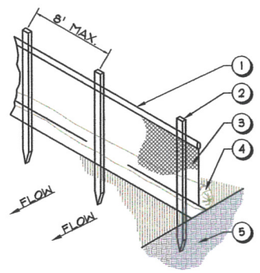
Z:\2013 Projects\13-54 Robb, Don & Bert\13-54 Drawings\13-54 Lakeshore\13-54 Lakeshore.dwg, Site Plan 11x17-20sc, 1/22/2014 10:06:35 AM



A STRAW WATTLE
NOT TO SCALE

DETAIL LEGEND

SYM.	DESCRIPTION
1	STRAW WATTLE, STAKED & ENTRENCHED, 2" MIN. BURY
2	FILTERED RUNOFF
3	SEDIMENT LADEN RUNOFF
4	COMPACTED SOIL TO PREVENT PIPING
5	EXISTING UNDISTURBED SUBGRADE

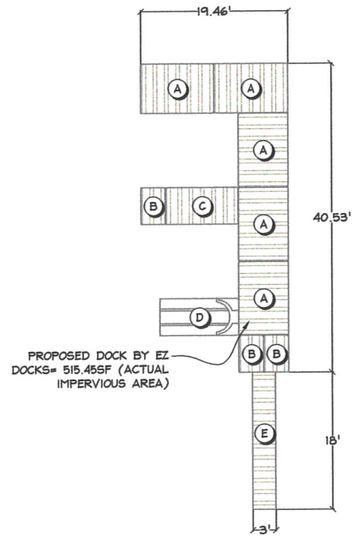


DETAIL LEGEND

SYM.	DESCRIPTION
1	PROVIDE 1" TUCK WITH ROPE IN THE HEM
2	FENCE POSTS SHALL BE ROUGH OR FINISHED 2" X 4" (NOM.); 2 1/2" DIA. WOOD; SCHED 40 STEEL PIPE; OR 1.33 LB/FT MIN. STANDARD "T" OR "U" SECTION STEEL. FENCE POSTS SHALL BE 42" MIN. IN LENGTH, DRIVEN 18" MIN. INTO GROUND.
3	SILT FENCE FABRIC, SEE NOTES
4	INSTALL STRAW WATTLES ON UPHILL SIDE OF FENCE, SEE DETAIL A, THIS SHEET
5	EXISTING UNDISTURBED SUBGRADE

NOTES:
1. SILT FENCE FABRIC TO BE FASTENED SECURELY TO STEEL FENCE POST BY USE OF WIRE TIES OR HOG RINGS (3 FASTENERS PER POST). FOR WOODEN POSTS, FASTENERS SHALL BE NO. 17 GAUGE STAPLES (3/4" WIDE X 1/2" LONG), SPACED EVENLY AT 5 PER POST OR NO. 14 GAUGE NAILS (1" LONG WITH 3/4" BUTTON HEAD) SPACED EVENLY AT 4 PER POST.
2. ENDS OF INDIVIDUAL ROLLS OF FABRIC SHALL BE SPLICED TOGETHER ONLY AT A SUPPORT POST WITH A MINIMUM 6" OVERLAP.
3. ECO BERM OR FILTERSOXX IS RECOMMENDED AS A PREFERRED OPTION TO BE USED IN PLACE OF SILT FENCING.

B SILT FENCE
NOT TO SCALE



DETAIL LEGEND

SYM.	DESCRIPTION
A	MODEL: 80"X10' ACTUAL: 6.48'X9.73'=63.05SF
B	MODEL: 40"X5' ACTUAL: 3.24'X4.86'=15.75SF
C	MODEL: 60"X10' ACTUAL: 4.86'X9.73'=47.29SF
D	MODEL: EZ PORT 2 ACTUAL: 4.92'X10.50'=51.66SF
E	MODEL: GANGWAY ACTUAL: 3'X18'=54SF

C PROPOSED DOCK
1"=20'

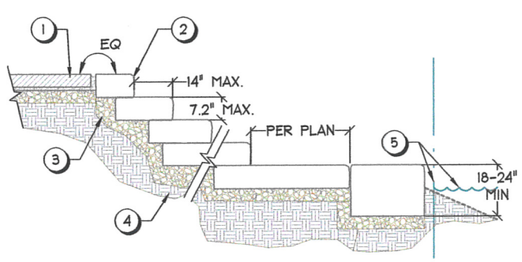
LAKESHORE PROTECTION ZONE SQUARE FOOTAGE CALCULATIONS			
TOTAL ALLOWABLE IMPERVIOUS CONSTRUCTED AREA:			
SHORELINE (LINEAR FEET)	75 LF	X 8 SF	600 SF
EXISTING CONSTRUCTED AREA:			
EXIST. PUMP HOUSE (TO BE REMOVED)		208.55 SF	
EXISTING TOTAL:		208.55 SF	
PROPOSED IMPERVIOUS CONSTRUCTED AREA:			
PROPOSED STONE STEPS & WALKWAY		82.32 SF	
PROPOSED DOCK		515.45 SF	
PROPOSED IMPERVIOUS TOTAL:		597.77 SF	

LAKESHORE PROTECTION ZONE PLANT SCHEDULE

SYMBOL	BOTANICAL NAME	COMMON NAME	QNTY	SIZE	REMARKS
SHRUBS					
A	*Spiraea douglassi	Pink Spirea	11	1 Gal.	
NATIVE RESTORATION/REVEGETATION					
	Restore Native Area = 208sf±	Salvage Native Species from onsite availability and purchase remainder.			
	*Arctostaphylos uva-ursi	Kinnikinnick	10	35%:Plugs @ 36" o.c.-Irreg. Spacing	
	*Festuca idahoensis	Idaho Fescue	21	20%:Plugs @ 18-24" o.c.-Irreg. Spacing	
	*Mahonia repens	Creeping Oregon Grape	27	45%:Plugs @ 24" o.c.-Irreg. Spacing	
	*Native Plant Material				

DETAIL LEGEND

SYM.	DESCRIPTION
1	PROPOSED DRY-SET STONE PAVING PER PLAN
2	OVERSIZE STONE SLAB STEP (4' WIDE MAX.).
3	1" GRAVEL LEVELING COURSE (NO FINES), MIN. NEEDED FOR LEVELING, COMPACTED TO 95% (TYP.)
4	EXISTING UNDISTURBED COMPACTED SUBGRADE
5	PUBLISHED AVERAGE HIGH WATER ELEVATION=3000.79.

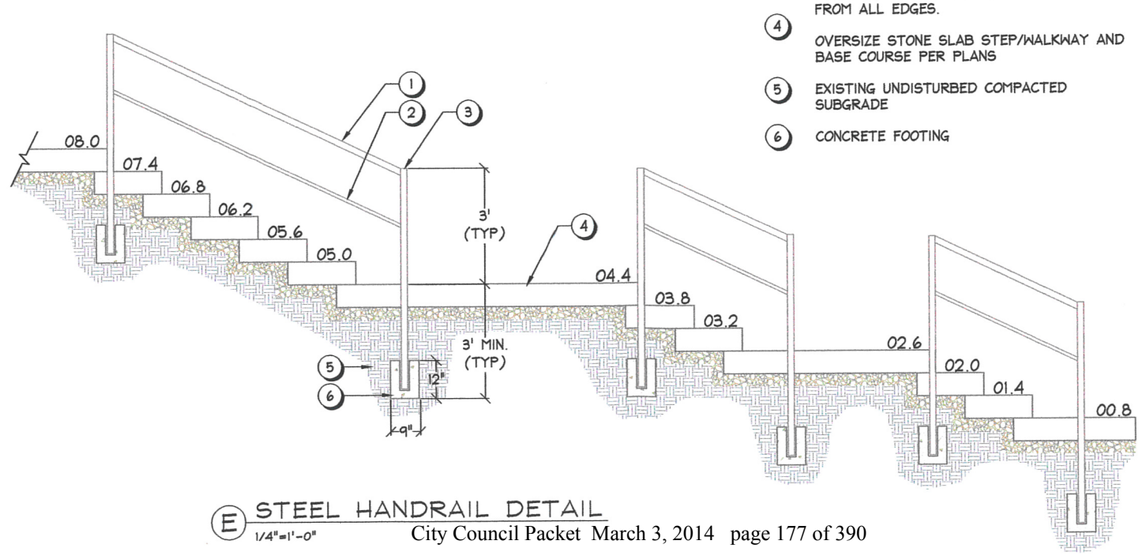


D DRY-SET STONE SLAB STEPS
1/4"=1'-0"

NOTE:
ALL TUBULAR STEEL SHALL BE POWDER COATED BY MANUFACTURER AND ASSEMBLED ONSITE. COLOR SHALL BE 'BRONZE'

DETAIL LEGEND

SYM.	DESCRIPTION
1	1.5" TUBULAR STEEL HANDRAIL
2	TUBULAR STEEL MID-RAIL
3	1.5" TUBULAR STEEL POST. CORE DRILL AND QUICK-SET INTO FOOTING. 3" MIN. CLEAR FROM ALL EDGES.
4	OVERSIZE STONE SLAB STEP/WALKWAY AND BASE COURSE PER PLANS
5	EXISTING UNDISTURBED COMPACTED SUBGRADE
6	CONCRETE FOOTING



E STEEL HANDRAIL DETAIL
1/4"=1'-0"

BRUCE BOODY
Landscape Architect Inc.
3011 Second Street
Box 1013
Whitefish, MT
59937
phone 406 862-4155
fax 406 862-9295
bruce@bruceboodycity.com

SURVEY BY:
FLATHEAD GEOMATICS
5098 US HWY 93 S
WHITEFISH, MT 59937
(406) 862-4945

Revisions:

ROBB PROPERTY
HOUSTON LAKESHORE TRACT
2072 HOUSTON DR.
WHITEFISH, MT 59937
S23, T31N, R22W

SCALE: N/A
DATE: 01-22-14
JOB #: 13-54

LAKESHORE APPLICATION PROJECT DRAWING

SHEET 10 OF 10

Z:\2013 Projects\13-54 Robb, Don & Bert\13-54 Drawings\13-54 Lakeshore\13-54 Lakeshore.dwg, Project Plan 11x17-20sc, 1/22/2014 10:06:15 AM

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

February 25, 2014

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

Re: Final Plat for Whitefish Lakefront Estates; WFP 14-01

Honorable Mayor and Council Members:

This office is in receipt of a final plat application from Marquardt & Marquardt Surveying, Inc., on behalf of Rob Pero for the Whitefish Lakefront Estates subdivision. This is a 2-lot subdivision located at the northwest corner of Woodland Place and Oregon Avenue. The property is zoned WRR-1 (Low-Density Resort Residential District). A waiver of preliminary plat approval was granted by staff on July 23, 2013, subject to 11 conditions.

Following is a list of the conditions of approval and a discussion of how they have been met.

COMPLIANCE WITH PRELIMINARY PLAT CONDITIONS OF APPROVAL:

Condition 1. The Subdivision shall comply with Chapter 12-4 of the Whitefish Subdivision Regulations.

- Condition met. The final plat conforms to the applicable city codes.

Condition 2. The Montana Department of Environmental Quality and Whitefish Public Works Department shall approve the water and sewer facilities.

- Condition met. See attached Montana DEQ approval (EQ#14-1158).

Condition 3. Lot 1 shall be addressed as 10 Woodland Place and Lot 2 shall be addressed as 22, 24, 26 Woodland Place. Please place these addresses on the face of the plat.

- Condition met. Addresses are shown the face of the plat.

Condition 4. The street to the south of the project shall be renamed Woodland Place on the face of the plat.

- Condition met.

Condition 5. A fee in lieu of installing sidewalks shall be paid prior to final plat. The fee shall be based on a 5-foot wide sidewalk for the Woodland Place frontage. Contact the Public Works Department for the most recent fee.

- Condition met. See copy of receipt dated 2-20-14.

Condition 6. Development of the lots is subject to the Water Quality Protection regulations and erosion control.

- Condition met. This is noted on the face of the plat.

Condition 7. If impervious surface of the lot exceeds 5,000 square feet, a stormwater plan, designed by an engineer, shall be required.

- Condition met. This is noted on the face of the plat.

Condition 8. A separate water & sewer service shall be provided to each lot in accordance with the City of Whitefish's policies and design standards.

- Condition met. This is noted on the face of the plat.

Condition 9. The lots shall only access of Woodland Place. No access to Oregon Avenue will be permitted. Driveway access shall comply with Section 8.3 of the City of Whitefish Engineering Standards, February 2009 of latest edition. Driveway limitations should appear on the plat.

- Condition met. This is noted on the face of the plat.

Condition 10. The following notes shall be placed on the face of the plat:

a. Access to these lots shall be limited to Woodland Place. No access to Oregon Avenue shall be permitted. The driveway access for Lot 2 shall be a minimum of 35-feet from the intersection. Driveway widths shall be limited to 33% of the lot width or a maximum of 22-feet in the public right-of-way.

b. House numbers shall be located in a clearly visible location

- Condition met. These are noted on the face of the plat.

Condition 11. The preliminary plat approval is valid for three years and shall expire on July 19, 2016.

- Condition met.

Please be advised that the Council should act on this application within 30-days following receipt of this recommendation.

Sincerely,

Wendy Compton-Ring, AICP
Senior Planner

Attachments: 2 reproducible Mylar of final plat
Final plat application (received 2-18-14)
Letter – applicant (2-18-14)
Treasurer's Certification (2-18-14)
Letter – DEQ, EQ#14-1158 (8-20-13)
Guarantee, First American Title Company, Guarantee 5010500-489860-CT (12-16-13)
Letter – Preliminary Plat Approval, City of Whitefish (7-23-14)

c/w/att: Necile Lorang, Whitefish City Clerk

c/wo/att: Rob Pero, 1290 Birch Point Drive Whitefish, MT 59937
Brandi Eaton, Marquardt & Marquardt Surveying, 201 3rd Ave W Kalispell, MT 59901

File #: WFP 14-01

Date: _____

Intake Staff: _____

Date Complete: _____

City of Whitefish
Planning & Building Department
PO Box 158
510 Railway Street
Whitefish, MT 59937
Phone: 406-863-2410 Fax: 406-863-2409

FINAL PLAT APPLICATION

FEE ATTACHED $ 2360.00
(See current fee schedule)

INSTRUCTIONS:

- ☐ Submit the application fee, a complete application, with appropriate attachments, to the Whitefish Planning & Building Department no less than **90 days** prior to expiration date of the preliminary plat.
- ☐ When all application materials are submitted to the Planning & Building Department, and the staff finds the application is complete, the staff will submit a report to the City Council. Incomplete submittals will not be accepted and will not be forwarded to the Council for approval. Changes to the approved preliminary plat may necessitate reconsideration by the Planning Board.
- ☐ The regularly scheduled meetings of the City Council are the first and third Mondays of each month at 7:10PM in the Council Chambers at 402 E 2nd Street.

All applicable items required by *Appendix C: Final Plat Contents* of the Whitefish Subdivision Regulations must be submitted with the application for final plat including the following. Check items attached or not applicable.

Not Applicable	Attached	(MUST CHECK ONE)
	X	Cover letter listing each condition of approval and individually state how each condition is specifically met. In cases where documentation is required, such as an engineer's certification, State Department of Health certification, etc., original letters shall be submitted. Blanket statements stating, for example, "all improvements are in place" are not acceptable.
	X	Montana DEQ Health Department Certification (*Original*)
	X	Title Report, not more than 90 days old
	X	Tax Certification (*Property taxes must be paid*)
X		Consent(s) to Plat (*Originals and notarized*)
X		Engineer's Certification (*Original*)
		Subdivision Improvements Agreement (*Attach collateral*)
X		Engineering Improvements (*sidewalks, walkways, street lights, street signs, solid waste facilities, utilities*)
X		Landscaping Improvements (*landscaping, street trees, parkland improvements – trails, park facilities,*)
X		Parkland Cash-in-Lieu (*Check attached payable to City of Whitefish*)
X		Maintenance Agreement (*as applicable: stormwater facility, private roads, parks, etc*)

02-18-14 A11:39 IN

X ___ Articles of Incorporation and Conditions, Covenants & Restrictions

X ___ Approach Permit (*when applicable)*

X **Plat:** signed mylars: 2, 24" x 36" paper copy: 2, 11" x 17" paper copy: 1 and .pdf The plat must be signed by all owners of record, the surveyor and the examining land surveyor.

Project /Subdivision Name: Whitefish Lakefront Estates

Date of Preliminary Plat Approval: July 23, 2013

OWNER(S) OF RECORD:

Name: The Robert W. Pero Trust and Robert W. Pero Phone: 406-253-6147

Mailing Address: 1290 Birch Point Drive

City, State, Zip: Whitefish, MT 59937

Email: rjpero@aboutmontana.net

APPLICANT (if different than above):

Name: ___ Phone: ___

Mailing Address: ___

City, State, Zip: ___

Email: ___

TECHNICAL/PROFESSIONAL:

Name: Marquardt Surveying Phone: 406-755-6285

Mailing Address: 201 3rd Ave W

City, State, Zip: Kalispell, MT 59901

Email: augusta@mmsurvey.net

Name: ___ Phone: ___

Mailing Address: ___

City, State, Zip: ___

Email: ___

PROJECT DESCRIPTION:

Type of Subdivision: Residential [X] Industrial [ ] Commercial [ ] PUD [ ] Other [ ]

Total Number of Lots in Subdivision 2 Land in Project (acres) 0.43ac.

Parkland (acres) NA Cash-in-Lieu $ NA Exempt [X]

NUMBER OF LOTS BY TYPE:

Single Family: 1 Townhouse: ____ Mobile Home Park: ____ Duplex: ____ Apartment: ____

Recreational Vehicle Park: ____ Commercial: ____ Industrial: ____ Planned Unit Development: ____

Condominium: ____ Multi-Family: 1 Other: ____

Legal Description of the Property:

Tract 1 per C.of S. No. 16461 in Govt Lot 6, Section 26, T31N R22W

I hereby certify that the information contained or accompanied in this application is true and correct to the best of my knowledge. The signing of this application signifies approval for the Whitefish staff to be present on the property for routine monitoring and inspection during the approval and development process.

Robert Pero — 2/18/14

Owner's Signature[1] — Date

ROBERT W PERO

Print Name

Applicant's Signature — Date

Print Name

Representative's Signature — Date

Print Name — Date

****NOTE: Please be advised that the County Clerk & Recorder and the City of Whitefish request that all subdivision final plat applications be accompanied with digital copies.**

**A digital copy of the final plat in a Drawing Interchange File (DXF) format or an AutoCAD file format, consisting of the following layers:

1. Exterior boundary of subdivision
2. Lot or park boundaries
3. Easements ✓
4. Roads or rights-of-way
5. A tie to either an existing subdivision corner or a corner of the public land survey system

[1] May be signed by the applicant or representative, authorization letter from owner must be attached. If there are multiple owners, a letter authorizing one owner to be the authorized representative for all must be included

Marquardt & Marquardt Surveying, Inc.

201 3rd AVENUE WEST
KALISPELL, MONTANA 59901
(406) 755-6285
Fax (406) 755-3055

February 18, 2014

City of Whitefish Planning & Building Department
PO Box 158
Whitefish, MT 59937

Re: **Whitefish Lakefront Estates**, Section 26, Township 31 North, Range 22 West, P.M., M., Flathead County, Montana

Enclosed is the Final Plat application for Whitefish Lakefront Estates. Preliminary plat approval was granted on July 23, 2013. The conditions of approval have been met as follows:

1. The Subdivision shall comply with Chapter 12-4 of the Whitefish Subdivision regulations.
   The subdivision complies with said regulations.

2. The Montana Department of Environmental Quality and Whitefish Public Works Department shall approve the water and sewer facilities.
   The approval is enclosed.

3. Lot 1 shall be addressed as 10 Woodland Place and Lot 2 shall be addressed as 22, 24, 26 Woodland Place. Please place these addresses on the face of the plat.
   The addresses are shown on the face of the plat.

4. The street to the south of the project shall be renamed Woodland Place on the face of the plat.
   The street to the south of the project is shown as Woodland Place on the face of the plat.

5. A fee in lieu of installing sidewalks shall be paid prior to final plat. The fee shall be based on a 5-foot sidewalk for the Murray Avenue frontage. Contact the Public Works Department for the most recent fee.
   The fee has been paid.

6. Development of the lots is subject to the Water Quality Protection Regulations and erosion control.
   This has been noted on the face of the plat.

7. If impervious surface of the lot exceeds 5,000 square feet, a stormwater plan, designed by an engineer, shall be required.
   This note has been placed on the final plat.

8. A separate water & sewer service shall be provided to each lot in accordance with the City of Whitefish's policies and design standards.
   Municipal water and sewer are currently located within Woodland Place. The Owner is responsible for connection from individual lots to municipal facilities. This note has been placed on the final plat.

9. The lots shall only access off Woodland Place. No access to Oregon Avenue will be permitted. Driveway access for Lot 2 shall be a minimum of 35 feet from the intersection and limited to 22 feet wide in the right-of-way and the front yard setback. Access driveway for Lot 1 shall be limited to 11 feet wide in the right of way and 22 feet wide in the front yard setback. Driveway limitations should appear on the plat.
   Access limitations note per Condition #10 shown on the face of the plat and 'City of Whitefish Engineering Standards, 8.3 Driveways' are listed on the face of the plat.

10. The following notes shall be placed on the face of the plat:
a. Access to these lots shall be limited to Woodland Place. No access to Oergon Avenue shall be permitted. The driveway access for Lot 2 shall be a minimum of 35-feet from the intersection and a maximum of 22-feet wide in the right-of-way. The driveway for Lot 1 shall be a maximum of 11-feet wide in the right-of-way and 22-feet in the front yard setback.
b. House Numbers shall be located in a clearly visible location.
   The notes are shown on the face of the plat.

11. The preliminary plat approval is valid for three years and shall expire on July 19, 2016.
   The final plat application is herewith submitted before the expiration date.

If you have any question please do not hesitate to call our office.

Sincerely,

Dawn Marquardt
Marquardt Surveying

Plat Room
Flathead County, Montana
800 S. Main St.
Kalispell, MT 59901
(406) 758-5510

This Form is for Subdivisions Only

Update 12/24/13 2/18/14

BY : Marquardt

FOR : Pero

DATE : 7/8/2013

DESCP : Whitefish Lakefront Estates (TR BC of Block B of Whitefish in 26-31-22)

PURPOSE : Subdivision

YEARS	ASSESSOR #
2009 thru 2012	0797150
2013	Same

I hereby certify that there are no outstanding taxes on the property assigned the assessor numbers listed above, for the years indicated for each assessor number.

FLATHEAD COUNTY TREASURER KALISPELL, MONTANA

Deputy Treasurer
(seal)

FEB 18 2014

Montana Department of
ENVIRONMENTAL QUALITY

Steve Bullock, Governor
Tracy Stone-Manning, Director

P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • Website: www.deq.mt.gov

August 20, 2013

Augusta Kickbush
Marquardt Surveying
201 3rd Avenue West
Kalispell MT 59901

RE: Whitefish Lakefront Estates
Municipal Facilities Exclusion
EQ#14-1158
City of Whitefish
Flathead County

Dear Augusta;

This is to certify that the information and fees received by the Department of Environmental Quality relating to this subdivision are in compliance with 76-4-127, MCA and ARM 17.36.602. Under 76-4-125(2)(d), MCA, this subdivision is not subject to review, and the plat can be filed with the county clerk and recorder.

Plans and specifications must be submitted when extensions of municipal facilities for the supply of water or disposal of sewage are proposed {76-4-111 (3), MCA}. Construction of water or sewer extensions prior to DEQ, Public Water Supply Section's approval is prohibited, and is subject to penalty as prescribed in Title 75, Chapter 6 and Title 76, Chapter 4.

Sincerely,

Janet Skaarland

Janet Skaarland
Compliance Specialist
Subdivision Section
(406) 444-1801 – email jskaarland@mt.gov

cc: City Engineer
County Sanitarian
file

GUARANTEE

Issued by

First American Title Company
704 South Main/P.O. Box 1310, Kalispell, MT 59901
Title Officer: Deborah Keller
Phone: (406)752-5388
FAX: (406)752-9617

First American Title **Guarantee**	**Guarantee Face Page** ISSUED BY **First American Title Insurance Company** GUARANTEE NUMBER **5010500-489860-CT**

First American Title Insurance Company

Dennis J. Gilmore
President

Timothy Kemp
Secretary

SCHEDULE OF EXCLUSIONS FROM COVERAGE OF THIS GUARANTEE

1. Except to the extent that specific assurances are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
   (a) Defects, liens, encumbrances, adverse claims or other matters against the title, whether or not shown by the public records.
   (b) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or, (2) Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the public records.
   (c) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the public records.
2. Notwithstanding any specific assurances which are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
   (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the land expressly described in the description set forth in Schedule (A), (C) or in Part 2 of this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways to which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any structure or improvements; or any rights or easements therein, unless such property, rights or easements are expressly and specifically set forth in said description.
   (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the public records; (1) which are created, suffered, assumed or agreed to by one or more of the Assureds; (2) which result in no loss to the Assured; or (3) which do not result in the invalidity or potential invalidity of any judicial or non-judicial proceeding which is within the scope and purpose of the assurances provided.
   (c) The identity of any party shown or referred to in Schedule A.
   (d) The validity, legal effect or priority of any matter shown or referred to in this Guarantee

GUARANTEE CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in the Guarantee mean:
   (a) the "Assured": the party or parties named as the Assured in this Guarantee, or on a supplemental writing executed by the Company.
   (b) "land": the land described or referred to in Schedule (A)(C) or in Part 2, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A)(C) or in Part 2, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
   (c) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
   (d) "public records": records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
   (e) "date": the effective date.

2. NOTICE OF CLAIM TO BE GIVEN BY ASSURED CLAIMANT.

An Assured shall notify the Company promptly in writing in case knowledge shall come to an Assured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as stated herein, and which might cause loss or damage for which the Company may be liable by virtue of this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any Assured unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice

3. NO DUTY TO DEFEND OR PROSECUTE.

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

4. COMPANY'S OPTION TO DEFEND OR PROSECUTE ACTIONS; DUTY OF ASSURED CLAIMANT TO COOPERATE.

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:
   (a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in (b), or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured, or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.
   (b) If the Company elects to exercise its options as stated in Paragraph 4(a) the Company shall have the right to select counsel of its choice (subject to the right of such Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.
   (c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of

this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

(d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, an Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, an Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 2 of these Conditions and Stipulations have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within ninety (90) days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to such Assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS: TERMINATION OF LIABILITY.

In case of a claim under this Guarantee, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Liability or to Purchase the Indebtedness.

The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to purchase the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4, and the Guarantee shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.

To pay or otherwise settle with other parties for or in the name of an Assured claimant any claim assured against under this Guarantee, together with any costs, attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of the option provided for in Paragraph (b) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosection of any litigation for which the Company has exercised its options under Paragraph 4.

7. DETERMINATION AND EXTENT OF LIABILITY.

This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this Guarantee and only to the extent herein described, and subject to the

Exclusions From Coverage of This Guarantee.
The liability of the Company under this Guarantee to the Assured shall not exceed the least of:

(a) the amount of liability stated in Schedule A or in Part 2;
(b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 6 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage assured against by this Guarantee occurs, together with interest thereon; or
(c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to any defect, lien or encumbrance assured against by this Guarantee.

8. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.
(b) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as stated herein.
(c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

9. REDUCTION OF LIABILITY OR TERMINATION OF LIABILITY.

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the amount of liability pro tanto.

10. PAYMENT OF LOSS.

(a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.
(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.

11. SUBROGATION UPON PAYMENT OR SETTLEMENT.

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant.
The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.
If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

12. ARBITRATION.

Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is $1,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of $1,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. The Rules in effect at Date of Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permits a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.
The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.
A copy of the Rules may be obtained from the Company upon request.

13. LIABILITY LIMITED TO THIS GUARANTEE; GUARANTEE ENTIRE CONTRACT.

(a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.
(b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.
(c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

14. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at **First American Title Insurance Company, Attn: Claims National Intake Center, 1 First American Way, Santa Ana, California 92707. Phone: 888-632-1642.**

First American Title **Guarantee**	Subdivision Guarantee ISSUED BY **First American Title Insurance Company** GUARANTEE NUMBER **5010500-489860-CT**

Subdivision or Proposed Subdivision: Whitefish Lakefront Estates

Order No.: 489860-CT

Reference No.: Fee: $150.00

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY, AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE, FIRST AMERICAN TITLE INSURANCE COMPANY, A CORPORATION HEREIN CALLED THE COMPANY GUARANTEES:

Marquardt & Marquardt Surveying

FOR THE PURPOSES OF AIDING ITS COMPLIANCE WITH FLATHEAD COUNTY SUBDIVISION REGULATIONS,

in a sum not exceeding $5,000.00.

THAT according to those public records which, under the recording laws of the State of Montana, impart constructive notice of matters affecting the title to the lands described on the attached legal description:

TRACT 1 AS SHOWN ON CERTIFICATE OF SURVEY NO. 16461, BEING A PORTION OF BLOCK B OF WHITEFISH,MONTANA, IN GOVERNMENT LOT SIX (6) OF SECTION TWENTY-SIX (26), TOWNSHIP THIRTY-ONE (31) NORTH, RANGE TWENTY-TWO (22) WEST, PRINCIPAL MERIDIAN, MONTANA, FLATHEAD COUNTY, MONTANA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WEST LINE OF OREGON AVENUE WITH THE NORTH LINE OF WOODLAND PLACE; THENCE ALONG THE WEST LINE OF OREGON AVENUE NORTH 00°02'07" EAST 90.32 FEET; THENCE
SOUTH 89°58'52" WEST 50.06 FEET; THENCE
NORTH 00°02'19" WEST 121 FEET, MORE OR LESS TO THE LOW WATER MARK OF WHITEFISH LAKE; THENCE
SOUTHWESTERLY ALONG THE LOW WATER MARK 100 FEET, MORE OR LESS, TOT HE EAST LINE OF LOT 1, TOWERS ADDITION TO WHITEFISH; THENCE ALONG THE EAST LINE OF SAID LOT 1
SOUTH 00°01'29" WEST 152 FEET, MORE OR LESS, TO THE NORTH LINE OF WOODLAND PLACE; THENCE ALONG THE NORTH LINE OF WOODLAND PLACE
EAST 130.03 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT OF LAND IS TO BE KNOWN AND DESIGNATED AS WHITEFISH LAKEFRONT ESTATES.

(A) Parties having record title interest in said lands whose signatures are necessary under the requirements of Flathead County Subdivision Regulations on the certificates consenting to the recordation of Plats and offering for dedication any streets, roads, avenues, and other easements offered for dedication by said Plat are:

The Robert W. Pero Trust and Robert W. Pero

(B) Parties holding liens or encumbrances on the title to said lands are:

(C) Easements, claims of easements and restriction agreements of record are:

1. County road rights-of-way not recorded and indexed as a conveyance of record in the office of the Clerk and Recorder pursuant to Title 70, Chapter 21, M.C.A., including, but not limited to any right of the Public and the County of Flathead to use and occupy those certain roads and trails as depicted on County Surveyor's maps on file in the office of the County Surveyor of Flathead County.

2. 2013 taxes and special assessments are a lien; amounts are determined and payable. The first one-half becomes delinquent after November 30th of the current year, the second one-half becomes delinquent after May 31st of the following year.

   General taxes as set forth below. Any amounts not paid when due will accrue penalties and interest in addition to the amount stated herein:

Year	1st Half	2nd Half	Parcel Number
2013	$5,917.19 (DELINQUENT)	$5,917.17 (NOT PAID)	74-0797150

3. Any claim arising from the difference in the mean low water line of the Whitefish Lake and the meander line as shown by the Original Government Survey.

4. Right, title and interest of the State of Montana within the natural bed of the Whitefish Lake below the ordinary low water line, and also excepting any artificial accretions waterward of said ordinary high water line.

5. Public right and easements for commerce, recreation, navigation and fishery.

6. All matters, covenants, conditions, restrictions, easements and any rights, interest or claims which may exist by reason thereof, disclosed by Certificate of Survey(s) No. 16461 and 19553, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restriction violate 42 USC 3604 (c).

Date of Guarantee: December 16, 2013 at 7:30 A.M.

First American Title Company

By:
Authorized Countersignature

First American

Privacy Information

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Information Obtained Through Our Web Site

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet. In general, you can visit First American or its affiliates Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site.

There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

Business Relationships

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

Cookies

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive.

FirstAm.com uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

Fair Information Values

Fairness We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.

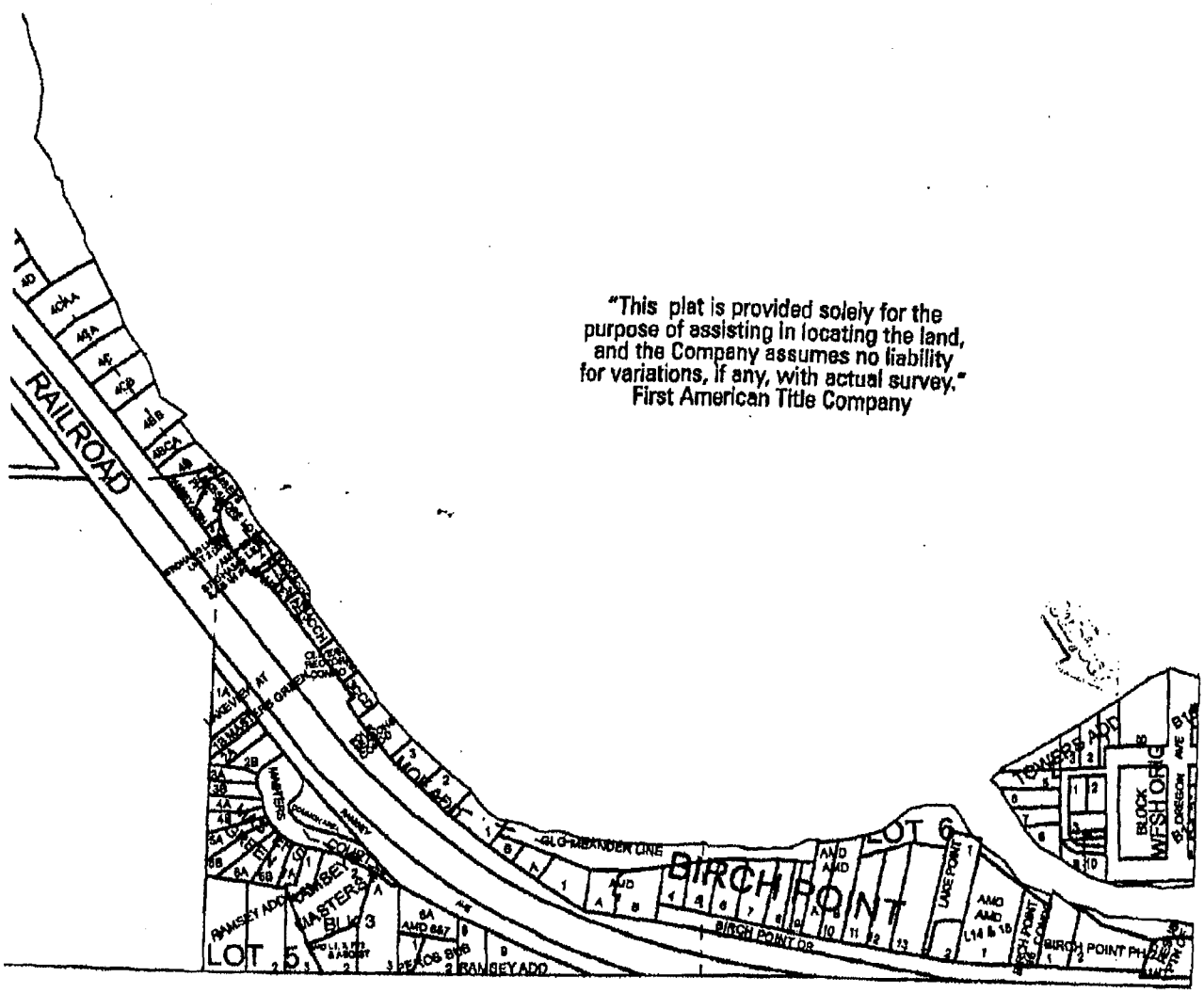
Public Record We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.

Use We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.

Accuracy We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.

Education We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.

Security We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.


"This plat is provided solely for the purpose of assisting in locating the land, and the Company assumes no liability for variations, if any, with actual survey."
First American Title Company
RAILROAD
BIRCH POINT
LOT 6
LOT 5
BIRCH POINT DR
BIRCH POINT PH
RAMSEY ADD
MASTERS
BLOCK
WEISHOLD
TOWNSEND ADD

BK B (Tree) D 77150

Owners: Jacqueline Mc Knight
Mary Florla Morgan

Date: August 9, 2004

Job# FLM-104

F & H Land Surveying, Inc.
144 Second Street East
P.O. Box 194
Whitefish, Mt. 59937
406-862-2596

CERTIFICATE OF SURVEY

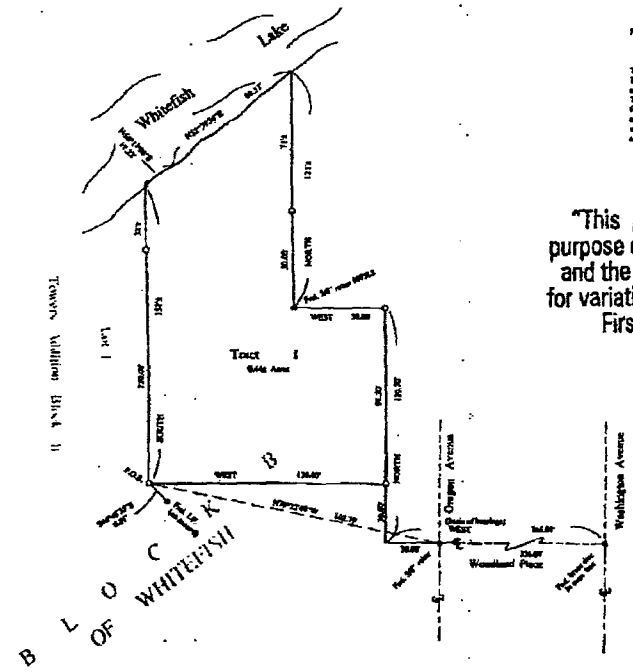
GOV'T. LOT 6 SECTION 26, T.31 N., R.22 W., P.M.,M.

FLATHEAD COUNTY, MONTANA

LEGEND:

PURPOSE OF SURVEY: RETRACEMENT

DESCRIPTION



"This plat is provided solely for the purpose of assisting in locating the land, and the Company assumes no liability for variations, if any, with actual survey."
First American Title Company

CERTIFICATE OF SURVEYOR

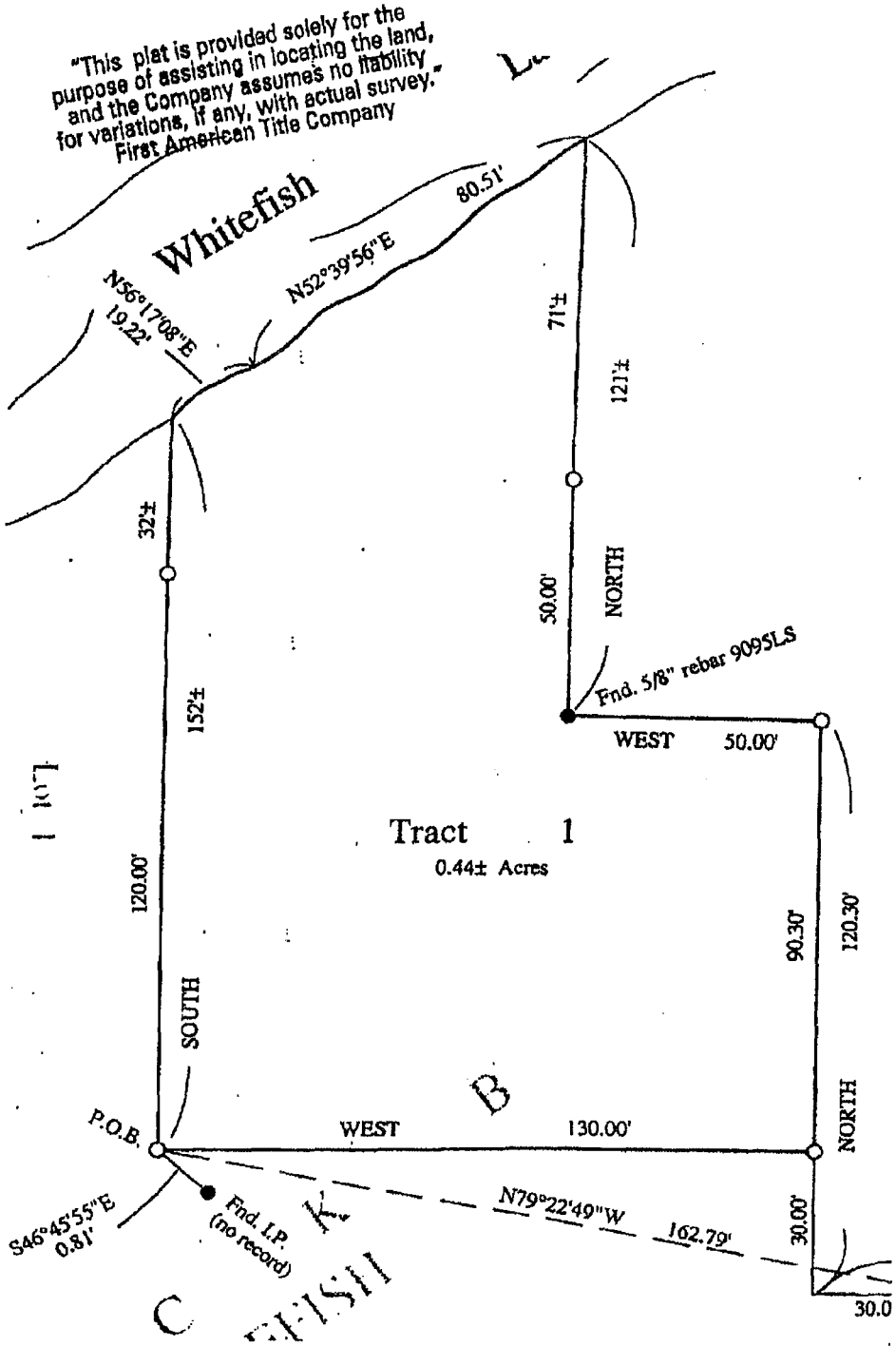
STATE OF MONTANA

County of Flathead

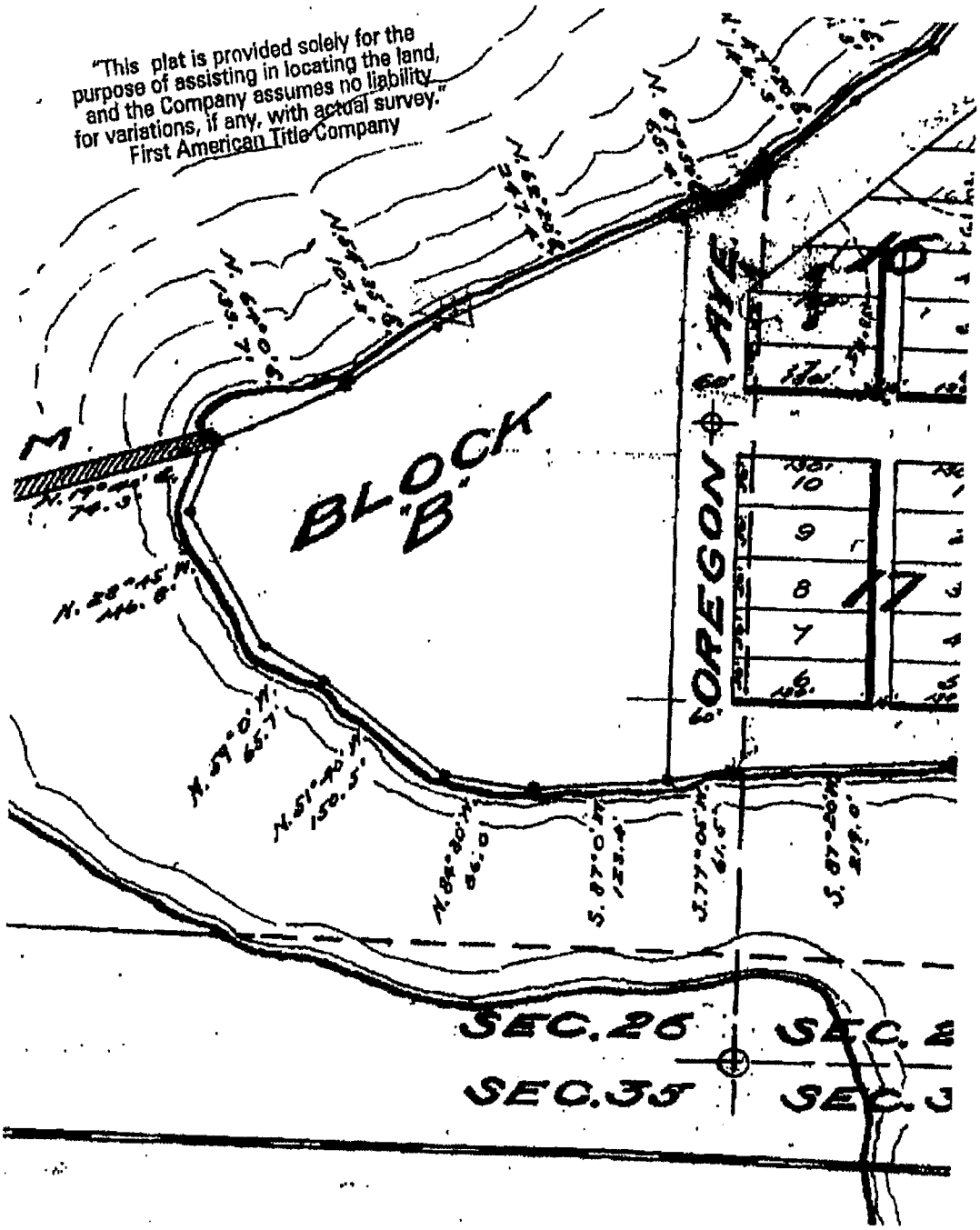
$52

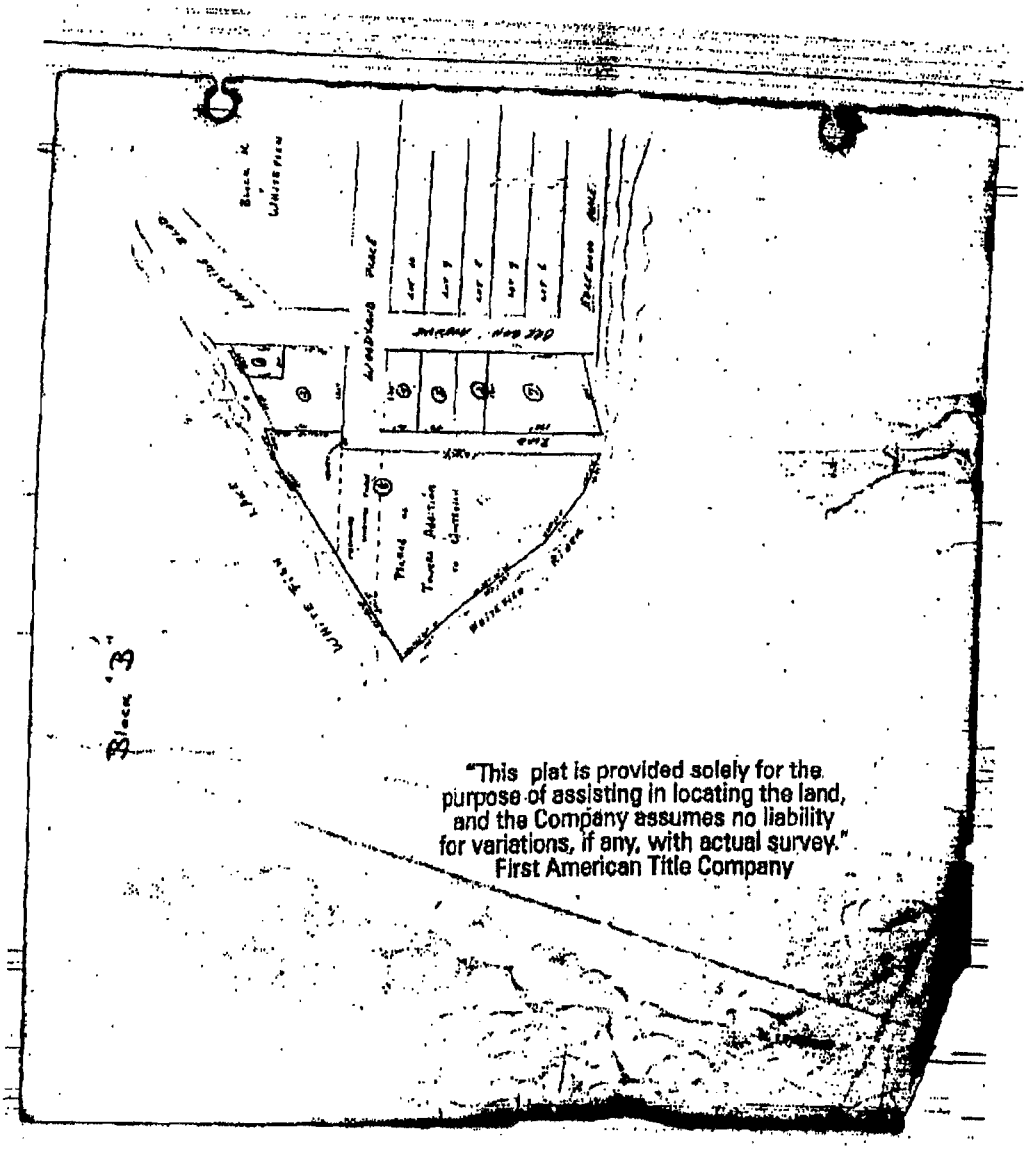
CERTIFICATE OF SURVEY NO. 16961

MCKNIGHT/MORGAN


"This plat is provided solely for the purpose of assisting in locating the land, and the Company assumes no liability for variations, if any, with actual survey."
First American Title Company
Whitefish
80.51'
N52°39'56"E
N56°17'08"E
19.22'
71'±
121'±
32'±
50.00'
NORTH
Fnd. 5/8" rebar 9095LS
152'±
WEST
50.00'
Tract 1
0.44± Acres
120.00'
90.30'
120.30'
SOUTH
NORTH
P.O.B.
WEST
130.00'
S46°45'55"E
0.81'
Fnd. I.P.
(no record)
N79°22'49"W
162.79'
30.00'
30.0

COS 16461


"This plat is provided solely for the purpose of assisting in locating the land, and the Company assumes no liability for variations, if any, with actual survey."
First American Title Company
BLOCK "B"
OREGON AVE.
16
17
10
9
8
7
SEC. 26
SEC. 35


25
Block "B"
"This plat is provided solely for the purpose of assisting in locating the land, and the Company assumes no liability for variations, if any, with actual survey."
First American Title Company

201300009433
Page: 1 of 2
Fees: $14.00
4/18/2013 3:01 PM
Paula Robinson, Flathead County MT by JL

AND WHEN RECORDED MAIL TO:
Robert W. Pero
1290 Birch Point Dr.
Whitefish, MT 59937

Filed for Record at Request of:
First American Title Company

Space Above This Line for Recorder's Use Only

Order No.: 460311-WT
Parcel No.: 0797150

WARRANTY DEED

FOR VALUE RECEIVED,

John Hill Morgan and Mary Flavia Morgan as joint tenants

hereinafter called Grantor(s), do(es) hereby grant, bargain, sell and convey unto

The Robert W. Pero Trust and Robert W. Pero

whose address is: **1290 Birch Point Drive, Whitefish, MT 59937**

Hereinafter called the Grantee, the following described premises situated in **Flathead** County, **Montana**, to-wit:

THAT PORTION OF BLOCK B OF WHITEFISH, DESCRIBED AS FOLLOWS:

THAT PORTION OF GOVERNMENT LOT SIX (6) OF SECTION TWENTY-SIX (26), TOWNSHIP THIRTY-ONE (31) NORTH, RANGE TWENTY-TWO (22) WEST, PRINCIPAL MERIDIAN, MONTANA, FLATHEAD COUNTY, MONTANA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF WOODLAND PLACE AND OREGON AVENUE IN WHITEFISH, MONTANA; THENCE
NORTH 79°22'49" WEST 162.79 FEET TO THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED;THENCE
EAST 130.00 FEET; THENCE
NORTH 90.30 FEET; THENCE
WEST 50.00 FEET; THENCE
NORTH 121 FEET, MORE OR LESS, TO THE SHORE OF WHITEFISH LAKE; THENCE
SOUTHWESTERLY AND ALONG THE SHORE OF WHITEFISH LAKE 100 FEET, MORE OR LESS, TO A POINT WHICH BEARS NORTH FROM THE POINT OF BEGINNING; THENCE
SOUTH 152 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

Approved by 4/18/2013 0797150

RETRACEMENT CERTIFICATE OF SURVEY NO. 16461.

SUBJECT TO covenants, conditions, restrictions, provisions, easements and encumbrances apparent or of record.

TO HAVE AND TO HOLD the said premises, with its appurtenances unto the said Grantees and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that Grantor will warrant and defend the same from all lawful claims whatsoever.

Dated: April 16, 2013

John Hill Morgan

Mary Flavia Morgan

STATE OF Montana)
ss.
COUNTY OF Lewis & Clark)

This instrument was acknowledged before me on April 16, 2013, by **John Hill Morgan and Mary Flavia Morgan.**

STEVEN W. NETSCHERT
NOTARY PUBLIC for the
State of Montana
Residing at Helena, Montana
My Commission Expires
October 10, 2013

STEVE W. NETSCHERT
Notary Public for the State of Montana
Residing at: Helena, MT
My Commission Expires: 10-10-13

CITY OF WHITEFISH
418 EAST SECOND ST.
P.O. BOX 158
WHITEFISH, MT 59937

RECEIPT

DATE 2/20/14 **No.** 269631

RECEIVED FROM Rob Pero $3000.00

three thousand DOLLARS

○ FOR RENT
○ FOR In lieu of lot lakefront Estates Sidewalks

ACCOUNT		
PAYMENT	#5837	
BAL. DUE		

○ CASH
⊗ CHECK
○ MONEY ORDER

FROM _____ TO _____

BY M. Hurley

adams 1182

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

July 23, 2013

The Robert W Pero Trust
Robert W Pero
1290 Birch Point Dr
Whitefish, MT 59937

RE: Tract 1 of COS 16461 Gov't Lot 6, S26 T31N R22W – Waiver of Preliminary Plat; WPP 13-02

Dear Mr. Pero:

This is in response to your application for a preliminary plat waiver for a residential subdivision at the above described property owned by The Robert W Pero Trust and Robert W Pero. The request would create two lots. Lot 1 is proposed to be 8,489 square feet and Lot 2 is proposed to be 10,509 square feet and the lots will front on Woodland Place. The properties are zoned WRR-1 (Low Density Resort Residential District). There are no minimum lot size or lot width requirements in this zoning district (§11-2N-4).

Our office finds that the proposed subdivision substantially meets the preliminary plat waiver criteria outlined in §12-3-7 of the Whitefish Subdivision Regulations which includes the following:

- The plat contains three (3) or fewer lots;
- There is no public dedication of streets or other public infrastructure;
- All lots have legal and physical access conforming to these Regulations;
- Each lot has a suitable building site and there are no environmental hazards present;
- Municipal sewer, water and other utilities are adequate and in place;
- The subdivision complies with these Regulations and current zoning regulations; and

- No significant effects are anticipated on agriculture and agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat and the public health and safety.

Due to the relatively minor impacts that this subdivision poses, this office grants preliminary plat waiver approval subject to the following conditions:

1. The Subdivision shall comply with Chapter 12-4 of the Whitefish Subdivision Regulations.

2. The Montana Department of Environmental Quality and Whitefish Public Works Department shall approve the water and sewer facilities.

3. Lot 1 shall be addressed as 10 Woodland Place and Lot 2 shall be addressed as 22, 24, 26 Woodland Place. Please place these addresses on the face of the plat.

4. The street to the south of the project shall be renamed Woodland Place on the face of the plat.

5. A fee in lieu of installing sidewalks shall be paid prior to final plat. The fee shall be based on a 5-foot wide sidewalk for the Woodland Place frontage. Contact the Public Works Department for the most recent fee.

6. Development of the lots is subject to the Water Quality Protection regulations and erosion control.

7. If impervious surface of the lot exceeds 5,000 square feet, a stormwater plan, designed by an engineer, shall be required.

8. A separate water & sewer service shall be provided to each lot in accordance with the City of Whitefish's policies and design standards.

9. The lots shall only access of Woodland Place. No access to Oregon Avenue will be permitted. Driveway access for Lot 2 shall be a minimum of 35 feet from the intersection and limited to 22 feet wide in the right-of-way and the front yard setback. Access driveway for Lot 1 shall be limited to 11 feet wide in the right-of-way and 22 feet wide in the front yard setback. Driveway limitations should appear on the plat.

10. The following notes shall be placed on the face of the plat:

    a. Access to these lots shall be limited to Woodland Place. No access to Oregon Avenue shall be permitted. The driveway access for Lot 2 shall be a minimum of 35-feet from the intersection and a maximum of 22-feet wide in the right-of-way.

The driveway for Lot 1 shall be a maximum of 11-feet wide in the right-of-way and 22-feet in the front yard setback.

b. House numbers shall be located in a clearly visible location

11. The preliminary plat approval is valid for three years and shall expire on July 19, 2016.

Please note that, for final plat approval, all requirements must be met per §12-3-11 of the Whitefish Subdivision Regulations.

Sincerely,

Wendy Compton-Ring, AICP
Senior Planner

C: Public Works, City of Whitefish
Fire Department, City of Whitefish
Augusta Kickbusch, Marquardt & Marquardt Surveying Inc., 201 3rd Ave W Kalispell, MT 59901

OWNERS/
FOR: THE ROBERT W. PERO TRUST & ROBERT W. PERO

PURPOSE: SUBDIVISION

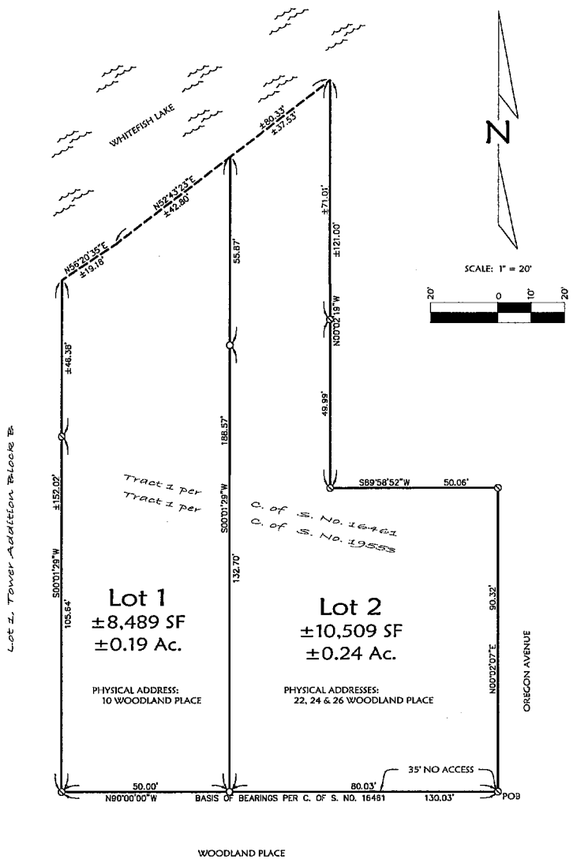
DATE: JULY 30, 2013

Subdivision Plat of

WHITEFISH LAKEFRONT ESTATES

Gov't Lot 6, Section 26, T31N R22W, P.M., M.

Flathead County, Montana



LEGEND

⊗ FOUND 5/8" REBAR WITH PLASTIC CAP MARKED "SULLIVAN 9095S"

○ SET 5/8" BY 24" REBAR WITH PLASTIC CAP MARKED "MARQUARDT 7328S"

Notes:

Access to these lots shall be limited to Woodland Place. No access to Oregon Avenue shall be permitted. The driveway access for Lot 2 shall be a minimum of 35-feet from the intersection. Driveway widths shall be limited to 33% of the lot width or a maximum of 22-feet in the public right-of-way.

House numbers shall be located in a clearly visible location.

Development of the lots is subject to the Water Quality Protection Regulations and erosion control.

If impervious surface of the lot exceeds 5,000 square feet, a stormwater plan, designed by an engineer, shall be required.

Municipal water and sewer are currently located adjacent to the subject lots, lying within Woodland Place. The Owner is responsible for connection from individual lots to municipal facilities.

Driveway Standards & Limitations per 8-3 Per Title 11 - Zoning Regulations, Chapter 6 - Off Street Parking and Loading, Section 11-6-3-1(D)(2):
For newly constructed one- and two-family residential uses, the first eighty feet (80') of any driveway must be a paved hard surface.

City of Whitefish Engineering Standards, 8.3 Driveways:
*Paved hard surface driveways are required except as provided for in the zoning regulations. Driveways are limited to a maximum width of 22-feet except as provided below.
*Primary lots with less than 75 feet of road (street) frontage shall have only one access (driveway) not to exceed 22 feet in width within the right of way. Sublots with less than 40 feet frontage shall be limited to one driveway per lot not to exceed 11 feet in width. (Shared driveways for sublots are preferred with widths not exceeding 22 feet.)
*Driveways for adjoining lots in cul-de-sacs shall be shared when the lots have less than 50 feet of frontage. Shared approaches when required shall be designated on the subdivision plat. Driveways shall be a minimum of 35 feet from the edge of pavement of any local street intersection.
*Driveway limitations shall appear on the plat.
*In no case shall residential driveway widths exceed 33% of the lot width within any public right-of-way.
*Permits from the Public Works Department are required for all driveway construction (refer to standard approach detail SD15).

CERTIFICATE OF DEDICATION
I, ROBERT W. PERO, as an individual and as Trustee of ROBERT W. PERO TRUST, the undersigned property owners, do hereby certify that I have caused to be surveyed, subdivided and platted into lots as shown by the plat hereto annexed, the following described land in the City of Whitefish County, to-wit:

Tract 1 as shown on Certificate of Survey No. 16461 being a portion of Block B, Whitefish, Montana, in Government Lot 6 in Section 26, Township 31 North, Range 22 West, P.M., M., Flathead County, Montana, described as follows:
Beginning at the intersection of the West line of Oregon Avenue with the North line of Woodland Place;
Thence along the West line of Oregon Avenue, North 00°02'07" East 90.32 feet;
Thence South 89°58'52" West 50.06 feet;
Thence North 00°02'19" West 121 feet, more or less, to the low water mark of Whitefish Lake;
Thence Southwesterly along the low water mark 100 feet, more or less, to the East line of Lot 1, Towers Addition to Whitefish;
Thence along the East line of said Lot 1, South 00°01'29" West 152 feet, more or less, to the North line of Woodland Place;
Thence along the North line of Woodland Place, East 130.03 feet to the Point of Beginning, containing 0.43 acres, more or less, of land all as shown hereon.
Subject to and together with easements of record.

The above described tract of land is to be known and designated as WHITEFISH LAKEFRONT ESTATES.

Dated this _____ day of _____, 201__

ROBERT W. PERO TRUST
ROBERT W. PERO

_____
ROBERT W. PERO, as an Idividual and as TRUSTEE of ROBERT W. PERO TRUST

STATE OF _____)
: ss.
County of _____)

This Instrument was signed and acknowledged before me on _____, 20____,
by ROBERT W. PERO, as an Idividual and as TRUSTEE of the ROBERT W. PERO TRUST.

_____
Printed Name: _____
Notary Public for the State of _____
Residing at _____
My Commission Expires _____

CERTIFICATE OF FINAL PLAT APPROVAL-CITY:
The City Council of the City of Whitefish, Montana, does hereby certify that it has examined this subdivision plat and, having found the same to conform to law, approves it, and hereby accepts the dedication to public use of any and all lands shown on this plat as being dedicated to such use, this ___ day of _____, 20____ at _____ o'clock. Parkland Dedication is exempt per Section 76-3-621(3)(d), MCA.

_____ _____
JOHN MUHLFELD, Mayor — NECILE LORANG, City Clerk
City of Whitefish, Montana — City of Whitefish, Montana

CERTIFICATE OF CITY ATTORNEY:
I, MARY VAN BUSKIRK, City Attorney for the City of Whitefish, Montana, do hereby certify that I have examined the Certificate of Title, issued by a licensed title company, attached hereto, of land described in the Certificate of Dedication of the annexed plat of WHITEFISH LAKEFRONT ESTATES, of Whitefish, Montana, in the city of Whitefish, Montana and find that the owners in fee simple of record have consented to platting of said subdivision.
Dated this __ day of _____, 20____.

_____
MARY VAN BUSKIRK, City Attorney
City of Whitefish, Montana

CERTIFICATE OF PLANNING DIRECTOR:
I, DAVID TAYLOR, for the City of Whitefish, Montana do hereby certify that the accompanying Subdivision Plat has been duly reviewed, and has been found to conform to the requirements of the Whitefish Zoning Regulations and the Whitefish Subdivision Regulations.

DATED this ___ day of _____, ____.

_____
Planning Director
City of Whitefish, Montana

Approved: _____, 201__

_____
Examining Land Surveyor
Registration No. 5428S

CERTIFICATE OF SURVEYOR

_____ _____
DAWN MARQUARDT — Date
Registration No. 7328S

STATE OF MONTANA
County of Flathead

Filed on the ____ day of _____, 201__, A.D., at _____o'clock __m.

_____
County Clerk and Recorder

By: _____
Deputy

Instrument Record No. _____

Marquardt Surveying
201 3rd Ave. West (406) 755-6285
Kalispell, MT 59901 info@mmsurvey.net

NOTE:
NO SEARCH HAS BEEN MADE FOR EASEMENTS AFFECTING THIS PROPERTY AND THIS SURVEY DOES NOT PURPORT TO SHOW ALL APPURTENANT EASEMENTS.

	Field Crew: BP CF
Date: July 29, 2013	Revision Date: n/a
Project Name: Pero City Beach	Project Number: 13-040
Filename: Final	Drawn By: A

PERO

(This page left blank intentionally to separate printed sections)

ORDINANCE NO. 14-___

An Ordinance of the City Council of the City of Whitefish, Montana, amending Zoning Regulations in Whitefish City Code Section 11-3-23 to streamline review standards and length of permits for mobile food vendors not associated with a community event in the Limited Business District (WB-1), Secondary Business District (WB-2) and General Business District (WB-3) Zoning Designations.

WHEREAS, the City of Whitefish initiated an effort to streamline review standards and length of permits for mobile food vendors not associated with a community event in the Limited Business District (WB-1), Secondary Business District (WB-2) and General Business District (WB-3) Zoning Designations; and

WHEREAS, in response to the proposal to amend Title 11, Chapter 3, Section 23 in the Whitefish City Code, the Whitefish Planning and Building Department prepared Staff Report WZTA-14-01, dated February 20, 2014; and

WHEREAS, at a lawfully noticed public hearing on February 20, 2014, the Whitefish City-County Planning Board received an oral report from Planning staff, reviewed Staff Report WZTA-14-01, invited public comment, and thereafter voted to recommend approval of the proposed text amendments; and

WHEREAS, at a lawfully noticed public hearing on March 3, 2014, the Whitefish City Council received an oral report from Planning staff, reviewed Staff Report WZTA-14-01, invited public input, and thereafter voted to recommend approval of the proposed text amendment; 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: Staff Report WZTA-14-01 is hereby adopted as Findings of Fact.

Section 3: Amendments to Whitefish City Code Section 11-3-23, VENDORS, as provided in the attached Exhibit "A", with insertions shown underlined and deletions shown with strikethrough, are hereby adopted.

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 will affect only that part held invalid, and the remaining provisions thereof will continue in full force and effect.

Section 5: 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 6: 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"

Whitefish City Code Title 11, Chapter 3, Section 23
ZONING REGULATIONS - SPECIAL PROVISIONS - VENDORS

A. Purpose: Food vendors are permitted to operate on private property or on public property if city policy allows such, outside of community wide events or private catering contracts upon issuance of a vendor permit. Vendor operations are temporary in nature and ~~not intended to operate long term, therefore there is a limit on allowed renewals within a given year~~provide a unique service to the community by providing affordable food to go and by helping incubate small businesses. Businesses with permanent locations are an integral part of the local economy. ~~and year round vendors may compete unfairly with established businesses.~~ To limit competition for brick and mortar businesses, the hours of operation and number of food vendors allowed in each zoning district is restricted. Vendor locations are restricted to those zoning designations where listed as a permitted use as specified within chapter 2 of this title.

B. Vendor Standards: Vendors operating outside of a community wide or special event shall be limited to food and beverage sales only with the exception of seasonal uses such as produce stands, fireworks stands and Christmas tree lots administered under temporary uses. Conditions of approval for vendor operations shall include:

1. Payment of a permit fee as established by the city council.

2. No seating or other customer service.

3. Proof that all setbacks will be met and that the vendor's structure and activity will not affect the required parking of the primary use of the property.

4. Signs advertising the activities of vendors shall be attached to the surface of the cart or sales facility. Such signs shall be unlighted. Maximum allowable signage shall be twenty (20) square feet.~~; provided, however, the area of signage for the vendor is subject to the provisions of section 11-5-6 of this title establishing the maximum sign area allowance for the property.~~ Sidewalk or sandwich board signs and banners are not permitted.

5. All vendors must have their method of providing sewer and water service approved by the Flathead city-county health department, where appropriate, and the Whitefish building official and the Whitefish zoning administrator.

6. No temporary or permanent water, sanitary sewer or storm drainage connections are permitted from vendor operations/vehicles to public or private utility systems.

7. All vendors must have their method of providing electricity from a generator or an electrical outlet via a portable cord that is in conformance with the electrical code as adopted by the city of Whitefish.

    a. Electrical lines are not allowed overhead or lying on a sidewalk.

    b. The outlet location must be placed outside the walkways which are accessible to public and private use.

    c. Length of electrical hookup must be within fifteen feet (15') of the stand.

    d. No extension cords will be allowed.

    e. Hookup must be permanently wired to the retail stand and meet national electrical code requirements as to type, size and grounding, terminating in an approved outside weatherproof type receptacle.

    f. Each vendor stand/location shall require an electrical permit unless previously approved, and will require inspection prior to the operation of the stand.

8. All vendors engaged in the sale of food must have a valid Flathead city-county food service permit and shall comply with all applicable laws, rules and regulations regarding food handling and preparation. All vehicles used for the sale of food by mobile vendors shall comply with all the laws, rules and regulations respecting such vehicles, and the appearance of such shall be approved by the zoning administrator prior to issuance of a permit.

9. A drive-through is not permitted in conjunction with a vendor.

10. Vendors shall not operate in public rights of way, public parking spaces, driveways or fire lanes or within fifteen feet (15') of a fire hydrant, fire escape, bus stop, loading zone, handicapped parking space or access ramp unless otherwise authorized by the city manager.

11. All facilities and equipment used by vendors shall be portable. This requirement shall be deemed met if setup time does not exceed thirty (30) minutes.

12. Vendors shall not operate more than six (6) consecutive hours per day. An additional hour is allowed for setup and take down for a maximum time

allowed on any property of seven (7) hours. In no case shall a vendor stand or equipment be on a property beyond three o'clock (3:00) A.M.

13. A five (5) pound ABC fire extinguisher is required if a heating or cooking appliance is used by the vendor.

14. Proof of an insurance policy, issued by an insurance company licensed to do business in the state: a) for public liability insurance in an amount of not less than five hundred thousand dollars ($500,000.00) for injuries, including those resulting in death, resulting from any one occurrence, and on account of any one accident; and b) property damage insurance in an amount of not less than twenty five thousand dollars ($25,000.00) for damages on account of any one accident or occurrence.

15. Proof of permission for employees to use restroom facilities nearby.

C. Prohibited Conduct: No vendor shall:

1. Leave any stand unattended;

2. Store, park or leave any stand overnight;

3. Sell food or beverages for immediate consumption unless he or she has available for public use a public litter receptacle which is available for patrons' use;

4. Leave any location without first picking, removing and disposing of all trash or refuse remaining from sales made by the vendor.

D. Vendor Permit Process:

1. Upon receipt of a completed application that meets all requirements of this section and any associated fees, the zoning administrator may grant ~~a trial thirty (30) day~~an one-year permit for operations. Upon receipt of a Flathead County certified property owner list from the applicant, the zoning administrator shall notify all property owners within one hundred fifty feet (150') of the pending ~~trial~~ permit. A public notice of the ~~trial~~ vendor permit shall be placed in a newspaper of general circulation no less than fourteen (14) days before the ~~start of the thirty (30) day trial period~~effective date of the permit. If the applicant complies with all standards associated with the approved permit, state law and city ordinances, has not generated any adverse traffic or safety problems, maintained the structure in good repair, and kept the premises clean and orderly, ~~after thirty (30) days~~ the zoning administrator may administratively renew the ~~trial~~ permit ~~into a fully approved vendor permit by allowing the permit to remain in effect for an additional ninety (90) days. One additional ninety (90) day permit renewal may be approved without the trial period, provided that the beginning date of the~~

~~second ninety (90) day period was identified in the vendor's application. The second period does not need to be consecutive to the first. In no case shall a vendor be allowed to operate more than seven (7) months within a twelve (12) month period commencing at the issuance of the trial permit.~~without notification at the request of the applicant. If there is a valid complaint ~~during the trial period or any point thereafter~~ that the vendor does not meet one or more of the standards outlined in this section, the zoning administrator may, at his own discretion or at the direction of the city council, cancel the permit and/or deny any renewals. A vendor may appeal that decision in writing, and in such cases a hearing before the city council shall be scheduled on the renewal. The decision of the city council shall be final.

2. All vendor permits shall be approved in writing through the granting of a vendor permit by the zoning administrator on a case by case basis. At his discretion, conditions, in addition to those included in this section, may be imposed on the use in order to promote neighborhood compatibility or to mitigate health and safety issues.

3. A list of items to be sold by the vendor must be submitted for review prior to issuance of a permit. Only those items listed on the permit shall be authorized to be sold. In approving the list of items authorized for sale the zoning administrator shall be guided by city council policy, and by the impact on safety and the cleanliness of the area.

4. Food vendor permits are limited to ten (10) total, no more than five (5) in any one zoning district. The zoning administrator shall determine the allowable number of street vendors and shall exercise this discretion based upon the needs of the public, diversity of products offered for sale, the smooth flow of pedestrian and vehicular traffic and other similar considerations. If the zoning administrator determines there are significantly more applicants than available permits in a specific area, he/she shall have the authority to create a lottery system designed to fairly distribute the available vending licenses. Vendor operations shall be limited to one per lot unless otherwise approved through the conditional use permit process outlined in section 11-7-8 of this title.

Planning & Building Department
PO Box 158, Whitefish, MT 59937
(406) 863-2410 Fax (406) 863-2409

March 3, 2014

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

RE: Temporary Uses and Vendors: WZTA 14-01

Honorable Mayor and Council:

Summary of Requested Action: This is a request by the City of Whitefish to streamline review standards and length of permits for mobile food vendors not associated with a community event in the WB-1, WB-2 & WB-3 zoning designations.

Planning Board Recommendation: The Whitefish City-County Planning Board held a public hearing on February 20, 2014. Following this hearing, the Planning Board unanimously recommend approval of the above referenced text amendments, and adopted the findings of fact contained within the staff report. (Anderson absent).

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

Public Hearing: At the public hearing, there was one public comment received regarding the proposed text amendments. Comments were received from Michael Tighe, who owns a previously approved mobile vending operation. Mr. Tighe was in support of the changes, The draft minutes of the Planning Board hearing are included as part of the packet.

This item has been placed on the agenda for your regularly scheduled meeting on March 3, 2014. Should Council have questions or need further information on this matter, please contact the Whitefish City-County Planning Board or the Planning Department.

Respectfully,

David Taylor, AICP
Director

Att: Exhibit A: Recommended Text Amendments from Planning Board Hearing
Draft Minutes of 2/20/14 Planning Board Meeting

Exhibits from 2/20/14 Staff Packet

1. Staff Report

WZTA-14-01
Whitefish City-County Planning Board Final Draft
Recommend Text Amendments
February 21, 2014

RECOMMENDED AMENDEMENTS TO TITLE 11

11-3-23: VENDORS:

A. Purpose: Food vendors are permitted to operate on private property or on public property if City policy allows such, outside of community-wide events or private catering contracts upon issuance of a vendor permit. Vendor operations are temporary in nature and provide a unique service to the community by providing affordable food to go and by helping incubate small businesses. ~~and not intended to operate long term, therefore there is a limit on allowed renewals within a given year~~. Businesses with permanent locations are an integral part of the local economy. To limit competition for brick and mortar businesses, the hours of operation and number of food vendors allowed in each zoning district is restricted. ~~and year around vendors may compete unfairly with established businesses.~~ Vendor locations are restricted to those zoning designations where listed as a permitted use as specified within chapter 2 of this title.

B. Vendor Standards: Vendors operating outside of a communitywide or special event shall be limited to food and beverage sales only with the exception of seasonal uses such as produce stands, fireworks stands and Christmas tree lots administered under Temporary Uses. Conditions of approval for vendor operations shall include:

1. Payment of a permit fee as established by the city council.

2. No seating or other customer service.

3. Proof that all setbacks will be met and that the vendor's structure and activity will not affect the required parking of the primary use of the property.

4. Signs advertising the activities of vendors shall be attached to the surface of the cart or sales facility. Such signs shall be unlighted. Maximum allowable signage shall be twenty (20) square feet~~;. provided, however, the area of signage for the vendor is subject to the provisions of section 11-5-6 of this title establishing the maximum sign area allowance for the property.~~ Sidewalk or sandwich board signs and banners are not permitted.

5. All vendors must have their method of providing sewer and water service approved by the Flathead city-county health department, where

appropriate, and the Whitefish building official and the Whitefish zoning administrator.

6. No temporary or permanent water, sanitary sewer or storm drainage connections are permitted from vendor operations/vehicles to public or private utility systems.

7. All vendors must have their method of providing electricity from a generator or an electrical outlet via a portable cord that is in conformance with the electrical code as adopted by the city of Whitefish.

    a. Electrical lines are not allowed overhead or lying on a sidewalk.

    b. The outlet location must be placed outside the walkways which are accessible to public and private use.

    c. Length of electrical hookup must be within fifteen feet (15') of the stand.

    d. No extension cords will be allowed.

    e. Hookup must be permanently wired to the retail stand and meet national electrical code requirements as to type, size and grounding, terminating in an approved outside weatherproof type receptacle.

    f. Each vendor stand/location shall require an electrical permit unless previously approved, and will require inspection prior to the operation of the stand.

8. All vendors engaged in the sale of food must have a valid Flathead city-county food service permit and shall comply with all applicable laws, rules and regulations regarding food handling and preparation. All vehicles used for the sale of food by mobile vendors shall comply with all the laws, rules and regulations respecting such vehicles, and the appearance of such shall be approved by the zoning administrator prior to issuance of a permit.

9. A drive-through is not permitted in conjunction with a vendor.

10. Vendors shall not operate in public rights of way, public parking spaces, driveways or fire lanes or within fifteen feet (15') of a fire hydrant, fire escape, bus stop, loading zone, handicapped parking space or access ramp unless otherwise authorized by the city manager.

11. All facilities and equipment used by vendors shall be portable. This requirement shall be deemed met if setup time does not exceed thirty (30) minutes.

12. Vendors shall not operate more than six (6) consecutive hours per day. An additional hour is allowed for setup and take down for a maximum time allowed on any property of seven (7) hours. In no case shall a vendor stand or equipment be on a property beyond three o'clock (3:00) A.M.

13. A five (5) pound ABC fire extinguisher is required if a heating or cooking appliance is used by the vendor.

14. Proof of an insurance policy, issued by an insurance company licensed to do business in the state: a) for public liability insurance in an amount of not less than five hundred thousand dollars ($500,000.00) for injuries, including those resulting in death, resulting from any one occurrence, and on account of any one accident; and b) property damage insurance in an amount of not less than twenty five thousand dollars ($25,000.00) for damages on account of any one accident or occurrence.

15. Proof of permission for employees to use restroom facilities nearby.

C. Prohibited Conduct: No vendor shall:

1. Leave any stand unattended;

2. Store, park or leave any stand overnight;

3. Sell food or beverages for immediate consumption unless he or she has available for public use a public litter receptacle which is available for patrons' use;

4. Leave any location without first picking, removing and disposing of all trash or refuse remaining from sales made by the vendor;

D. Vendor Permit Process:

1. Upon receipt of a completed application that meets all requirements of this section and any associated fees, the zoning administrator may grant a ~~trial 30-day~~ one-year permit for operations. Upon receipt of a Flathead County certified property owner list from the applicant, the zoning administrator shall notify all property owners within one hundred fifty feet (150') of the pending ~~trial~~ permit. A public notice of the ~~trial~~ vendor permit shall be placed in a newspaper of general circulation no less than 14 (fourteen) days before the effective date of the permit. ~~start of the 30-day trial period~~. If the applicant complies with all standards associated with the approved permit, state law and city ordinances, has not generated any adverse traffic or safety problems, maintained the structure in good repair, and kept the premises clean and orderly, ~~after 30 days~~ the zoning administrator may administratively renew the ~~trial~~ permit without notification at the request of the applicant. ~~into a fully approved vendor permit. by allowing the permit to remain in effect for an additional 90 days. One additional 90 day permit renewal may be approved without the trial~~

~~period, provided that the beginning date of the second 90-day period was identified in the vendor's application. The second period does not need to be consecutive to the first. In no case shall a vendor be allowed to operate more than seven months within a twelve (12) month period commencing at the issuance of the trial permit.~~ If there is a valid complaint ~~during the trial period or any point thereafter~~ that the vendor does not meet one or more of the standards outlined in this ordinance, the zoning administrator may, at his own discretion or at the direction of the city council, cancel the permit and/or deny any renewals. A vendor may appeal that decision in writing, and in such cases a hearing before the city council shall be scheduled on the renewal. The decision of the city council shall be final.

2. All vendor permits shall be approved in writing through the granting of a vendor permit by the zoning administrator on a case by case basis. At his discretion, conditions, in addition to those included in this section, may be imposed on the use in order to promote neighborhood compatibility or to mitigate health and safety issues.

3. A list of items to be sold by the vendor must be submitted for review prior to issuance of a permit. Only those items listed on the permit shall be authorized to be sold. In approving the list of items authorized for sale the zoning administrator shall be guided by city council policy, and by the impact on safety and the cleanliness of the area.

4. Food vendor permits are limited to ten (10) total, no more than five (5) in any one zoning district. The zoning administrator shall determine the allowable number of street vendors and shall exercise this discretion based upon the needs of the public, diversity of products offered for sale, the smooth flow of pedestrian and vehicular traffic and other similar considerations. If the Zoning Administrator determines there are significantly more applicants than available permits in a specific area, he/she shall have the authority to create a lottery system designed to fairly distribute the available vending licenses. Vendor operations shall be limited to one per lot unless otherwise approved through the Conditional Use Permit process outlined in section 11-7-8.

the personal services or professional services. In addition, there are a number of other existing uses within the WB-2 district that also provide similar services to businesses so it made some sense to create a 'business service' use in this district to capture these various uses.

Staff proposed a definition for 'Business Services', an amendment to both Personal and Professional Services, and identifying Business Services as a permitted use in the WB-2.

Director Taylor said this solves the problem of business services that the city has been considering professional offices.

PUBLIC HEARING

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

PUBLIC HEARING

Bill Halama, 235 Good Medicine Drive, said he owns the shopping center that the UPS store moved into recently. He said this is not a use that would fit downtown. He said this business is a perfectly compatible use in this area. He said the UPS store has been in business for a long time in this zone. He said this text amendment just cleans up the language.

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

MOTION

Phillips moved and Ellis seconded Whitefish to adopt staff report WZTA 14-03 as findings of fact and recommend that the City Council approve a request by the City of Whitefish for a Zoning Text Amendment to Section 11-2-K-2, WB-2 Secondary Business District, Permitted Uses, to add Business Services, and to 11-9-2, Definitions, to add a definition of Business Services.

VOTE

The motion passed unanimously. (Scheduled for City Council on March 3, 2014.)

CITY OF WHITEFISH ZONING TEXT AMENDMENT REQUEST

A request by the City of Whitefish for a Zoning Text Amendment to Section 11-3-23, Vendors, to streamline the permitting process, allowing for a one-year permit for food vendors rather a 30-day and two 90-day permits.

Ellis asked if the vendors had to be on private property and Director Taylor said they do, but there is limited private property downtown. He said it is a nice business incubator for some small businesses. There is nowhere to get food after 10 p.m. so the vendors do meet a need. Gunderson asked and Director Taylor said the vendors pay the Resort Tax. Finance Director Corey Swisher said the vendors must follow the same reporting requirements as any other business. Phillips said the vendors would really like this change.

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STAFF REPORT WZTA 14-01

Planning and Building Director Taylor reported that this proposed change amends the current code so that the permitting process for Mobile Food Vendors is streamlined. It was adopted about 5 years ago. Currently, vendors are approved administratively with a thirty day trial permit, then a 90-day permit, then another 90-day permit in a calendar year, for a total of seven months. He said he wasn't sure why it was set up that way except that perhaps they wanted to keep down the competition with existing businesses. That puts the burden on staff to track the expiration dates three times in a year, which is difficult to administer. Staff is proposing to amend the code so that vending permits are good for one year, renewable if no issues have arisen. Also, anytime during that year a permit can be revoked by the zoning administrator or City Council if the vendor does not follow all the conditions of approval, so a 30-day trial permit is not necessary. The intent section will also be amended slightly to facilitate this change of policy.

Taylor mentioned that a food vendor can come in with a new application under a different LLC with a new business license after the previous one expires, enabling them to legally get around the seven month a year limitation anyway. It seems much simpler to just allow them to operate year to year rather than constantly trying to figure out when their 30 or 90-day permits expire.

There are currently two approved vendors operating in the WB-3 zone downtown, and both have been operating for several years.

Taylor provided a quick summary of the proposed changes:

11-3-23-A, Purpose

The Purpose section will need to be slightly amended to remove the part that references the seven month limitation that is being removed. Limitations on hours of operation and the total number of vendors are adequate to encourage vendors to eventually seek a permanent location without discouraging the service they provide to the public: late night quick food to go.

11-3-23-B-4, Vendor Standards

The cart sign section is proposed to be amended to remove reference to permanent building signage. Signs on a temporary vending cart should not make a difference to overall sign area allowed on a property, and we've never enforced that. Each cart is allowed a small affixed sign, and each cart must be removed off-site each night.

11-3-23-D-1, Vendor Permit Process

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These proposed changes remove the 30-day trial period and change the two 90-day periods to a one-year approval with a streamlined renewal process. Anytime during the one-year approval a permit may be revoked by the zoning administrator or the city council if a vendor does not meet the standards and requirements of the code.

PUBLIC HEARING

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

Michael Tighe operates as a vendor outside the VFW. He said he operates seven months out of the year and chooses the dates very carefully every year. He would like to operate year around with his business. He urged them to approve it.

PUBLIC HEARING

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

BOARD DISCUSSION

Workman asked and Director Taylor said they aren't allowed to use sandwich board signs because it creates more clutter on the sidewalks. Workman said he is all about free enterprise. He said there are wider sidewalks now and he thinks they can give more opportunities to free enterprise. He didn't think the sandwich boards were a problem.

Phillips asked and Michael Tighe said the sandwich board might help by catching the eye of folks. Smith said she likes it when things are simplified. She doesn't want to touch the sign issue. Workman asked if there is a limit on signboards and Director Taylor said each downtown business gets one sandwich board. If a cart is out there, they are already visible out on the street and there needs to be 4-5 feet of access to meet ADA standards on the sidewalks and that is a continual battle. Workman said if the vendors are paying the license fees and Resort Tax Fees they should have the same rights as everyone else on the street. Director Taylor said they would be doubling the amount of space for sandwich boards if both the main business and the vendor had sandwich board signs. Stein said if the primary business is not using a sandwich board, then shouldn't the temporary business be able to have one and Director Taylor said the Council initially decided they didn't want to have them. Stein said he thought the problem was policing the boards. Director Taylor said that is true because the only City employees out there late at night are the Police and they're not concerned about the signs. Phillips said he doesn't think the sandwich boards are important or necessary, especially at night.

MOTION

Phillips moved and Ellis seconded to adopt staff report WZTA 14-01 as findings of fact and recommend that the City Council approve a request by the City of Whitefish for a Zoning Text Amendment to Section 11-3-23, Vendors, to streamline the permitting process, allowing for a one-year permit for food vendors rather a 30-day and

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two 90-day permits.

BOARD DISCUSSION

Gunderson said he has no problem with sandwich boards, except for the ADA standards on the sidewalks. He said folks who have carts didn't need a sandwich board to draw someone into their business. He noted that sometimes mobile vendors own a brick and mortar building as well. There is nothing that prevents a brick and mortar building from having a mobile vending business.

VOTE

The motion passed unanimously. (Scheduled for City Council on March 3, 2013.)

NEW BUSINESS

Work session on Growth Policy Future Land Use Map Review

Director Taylor said that when the Growth Policy was adopted in 2007 it required a review every two years. He said they haven't spent much time looking at the future land use map and the specifics of what each district means. Tonight they will focus on the future land map. He said at the March meeting they will talk about the in-fill policy and in April they will bring back the full review.

Ellis asked if they had any authority to redefine these boundaries. Director Taylor said they aren't really looking to rewrite the Growth Policy; they are just looking to see how it is performing and to look for problems that are inconsistent with the existing zoning.

He said there are inconsistencies where future land uses are suburban residential and not general commercial, but the zoning is WB-2 commercial out on Highway 93 near Highway 40. It raises a red flag. He also has concerns about a section of WB-2 on Highway 93 from about 6th Street to the river. A lot of those lots are really small, which is very inconsistent with the rest of the WB-2 and the intent of that zone for large businesses. It is a neighborhood they need to look at and perhaps consider a neighborhood commercial zone, although he said the WB-1 zone doesn't allow hotels and motels and there are two in that zone.

One of the items on the Growth Policy implementation plan calls for a future land use study for the corridor on Highway 93 South. That study could be used to address both of those issues in the future, although that study is being held up by the Donut dispute. Stein said everything from 3rd to 6th is residential on Spokane Avenue, but there are more CUPs than residential uses. Workman asked if the future land use map is a recommendation for a zone change. He said they have had commercial uses there for a long time. Director Taylor said that the future land use map is a recommendation for future zoning, but the area is already zoned commercial and it is difficult to downzone something.

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PROPOSED CODE AMENDMENTS
TEMPORARY VENDORS 11-3-23
STAFF REPORT #WZTA-14-01
FEBRUARY 20, 2014

This is a report to the Whitefish City-County Planning Board and the Whitefish City Council regarding a code amendment to streamline review standards and length of permits for mobile food vendors not associated with a community event in the WB-1, WB-2 & WB-3 zoning designations. The Planning Board hearing is scheduled for February 20, 2014 and a subsequent hearing is scheduled before the City Council on March 3, 2014. Draft regulations are below for review and recommendation.

BACKGROUND INFORMATION

This proposed change amends the current code so that the permitting process for Mobile Food Vendors is streamlined. Currently, vendors are approved administratively with a thirty day trial permit, then a 90-day permit, then another 90-day permit in a calendar year, for a total of seven months. That puts the burden on staff to track the expiration dates three times in a year, which is difficult to administer. Staff is proposing to amend the code so that vending permits are good for one year, renewable if no issues have arisen. Also, anytime during that year a permit can be revoked by the zoning administrator or city council if the vendor does not follow all the conditions of approval, so a 30-day trial permit is not necessary. The intent section will also be amended slightly to facilitate this change of policy.

Streamlining the regulation so that food vendor permits are renewed annually makes things much easier to administer for planning staff. Having to check on permits and fees paid after 30-days, then again in 90-days, then another 90 days is a pain for the business and for the city. Limiting a certain type of business to seven months a year could also bring up accusations of unfair business regulations. Also, a food vendor can come in with a new application under a different LLC with a new business license after the previous one expires, enabling them to legally get around the seven month a year limitation anyway. It seems much simpler to just allow them to operate year to year rather than constantly trying to figure out when their 30 or 90-day permits expire.

Late night food vendors have been part of the fabric of downtown Whitefish for many years, catering to the residents and visitors alike who enjoy the legendary nightlife hub of nine bars and a brewery in our two block Central Avenue strip. A late night bratwurst or sandwich fills a need to hungry party people before they find their way home when the bars close down. Mobile vendors provide

cheap food to go, which is a different product and experience than traditional sit-down brick and mortar restaurant businesses. With the exception of Casey's Bar, which offers a limited late-night menu, there are few options for available food downtown after 10 pm. Currently under code section 11-3-23, up to ten total mobile food vendors (five in any one zone) are allowed on private property with the property owner's permission in the WB-1, WB-2, and WB-3 zones for a maximum of six consecutive hours per day, and carts must be removed off the site by 3 a.m.

The regulations still favor brick and mortar businesses by limiting the total number of hours per day a vendor can operate and limiting the total number of food vendors in the city to five per district, or ten total. Vending also helps incubate small business, as evidenced by Amazing Crepes downtown, which started as a mobile vendor.

There are currently two approved vendors operating in the WB-3 zone downtown, and both have been operating for several years. Since there is limited vacant commercial property on Central Avenue, it is generally difficult for additional downtown food vendors to find places to operate, which limits their numbers. We have also had approved daytime food vendors in other zoning districts besides the WB-3, including several in the WB-2. The code requires vendors to keep a clean site, have trash facilities available, pay resort tax, and meet county health department regulations. They also provide some 'eyes on the street' to help discourage fights and other late night crime.

Vendor regulations in 11-3-23 do not apply to special events and farmer's markets. Mobile vending of items other than food is prohibited by the regulations.

It should be noted that the planning fee schedule will need to be amended by a future resolution once this change is approved.

<u>Overview of Proposed Changes</u>

Here is a quick summary of the proposed changes:

11-3-23-A, Purpose

The Purpose section will need to be slightly amended to remove the part that references the seven month limitation that is being removed. Limitations on hours of operation and the total number of vendors are adequate to encourage vendors to eventually seek a permanent location without discouraging the service they provide to the public: late night quick food to go.

11-3-23-B-4, Vendor Standards

The cart sign section is proposed to be amended to remove reference to permanent building signage. Signs on a temporary vending cart should not make a difference to overall sign area allowed on a property, and we've never enforced that. Each cart is allowed a small affixed sign, and each cart must be removed off-site each night.

11-3-23-D-1, Vendor Permit Process

These proposed changes remove the 30-day trial period and change the two 90-day periods to a one-year approval with a streamlined renewal process. Anytime during the one-year approval a permit may be revoked by the zoning administrator or the city council if a vendor does not meet the standards and requirements of the code.

Recommended Code Amendments

RECOMMENDED AMENDEMENTS TO TITLE 11

11-3-23: VENDORS:

A. Purpose: Food vendors are permitted to operate on private property or on public property if City policy allows such, outside of community-wide events or private catering contracts upon issuance of a vendor permit. Vendor operations are temporary in nature and provide a unique service to the community by providing affordable food to go and by helping incubate small businesses. ~~and not intended to operate long term, therefore there is a limit on allowed renewals within a given year~~. Businesses with permanent locations are an integral part of the local economy. To limit competition for brick and mortar businesses, the hours of operation and number of food vendors allowed in each zoning district is restricted. ~~and year around vendors may compete unfairly with established businesses.~~ Vendor locations are restricted to those zoning designations where listed as a permitted use as specified within chapter 2 of this title.

B. Vendor Standards: Vendors operating outside of a communitywide or special event shall be limited to food and beverage sales only with the exception of seasonal uses such as produce stands, fireworks stands and Christmas tree lots administered under Temporary Uses. Conditions of approval for vendor operations shall include:

1. Payment of a permit fee as established by the city council.

2. No seating or other customer service.

3. Proof that all setbacks will be met and that the vendor's structure and activity will not affect the required parking of the primary use of the property.

4. Signs advertising the activities of vendors shall be attached to the surface of the cart or sales facility. Such signs shall be unlighted. Maximum allowable signage shall be twenty (20) square feet~~;, provided, however, the area of signage for the vendor is subject to the provisions of section 11-5-6 of this title establishing the maximum sign area allowance for the property.~~ Sidewalk or sandwich board signs and banners are not permitted.

5. All vendors must have their method of providing sewer and water service approved by the Flathead city-county health department, where appropriate, and the Whitefish building official and the Whitefish zoning administrator.

6. No temporary or permanent water, sanitary sewer or storm drainage connections are permitted from vendor operations/vehicles to public or private utility systems.

7. All vendors must have their method of providing electricity from a generator or an electrical outlet via a portable cord that is in conformance with the electrical code as adopted by the city of Whitefish.

   a. Electrical lines are not allowed overhead or lying on a sidewalk.

   b. The outlet location must be placed outside the walkways which are accessible to public and private use.

   c. Length of electrical hookup must be within fifteen feet (15') of the stand.

   d. No extension cords will be allowed.

   e. Hookup must be permanently wired to the retail stand and meet national electrical code requirements as to type, size and grounding, terminating in an approved outside weatherproof type receptacle.

   f. Each vendor stand/location shall require an electrical permit unless previously approved, and will require inspection prior to the operation of the stand.

8. All vendors engaged in the sale of food must have a valid Flathead city-county food service permit and shall comply with all applicable laws, rules and regulations regarding food handling and preparation. All vehicles used for the sale of food by mobile vendors shall comply with all the laws, rules and regulations respecting such vehicles, and the appearance of

such shall be approved by the zoning administrator prior to issuance of a permit.

9. A drive-through is not permitted in conjunction with a vendor.

10. Vendors shall not operate in public rights of way, public parking spaces, driveways or fire lanes or within fifteen feet (15') of a fire hydrant, fire escape, bus stop, loading zone, handicapped parking space or access ramp unless otherwise authorized by the city manager.

11. All facilities and equipment used by vendors shall be portable. This requirement shall be deemed met if setup time does not exceed thirty (30) minutes.

12. Vendors shall not operate more than six (6) consecutive hours per day. An additional hour is allowed for setup and take down for a maximum time allowed on any property of seven (7) hours. In no case shall a vendor stand or equipment be on a property beyond three o'clock (3:00) A.M.

13. A five (5) pound ABC fire extinguisher is required if a heating or cooking appliance is used by the vendor.

14. Proof of an insurance policy, issued by an insurance company licensed to do business in the state: a) for public liability insurance in an amount of not less than five hundred thousand dollars ($500,000.00) for injuries, including those resulting in death, resulting from any one occurrence, and on account of any one accident; and b) property damage insurance in an amount of not less than twenty five thousand dollars ($25,000.00) for damages on account of any one accident or occurrence.

15. Proof of permission for employees to use restroom facilities nearby.

C. Prohibited Conduct: No vendor shall:

1. Leave any stand unattended;

2. Store, park or leave any stand overnight;

3. Sell food or beverages for immediate consumption unless he or she has available for public use a public litter receptacle which is available for patrons' use;

4. Leave any location without first picking, removing and disposing of all trash or refuse remaining from sales made by the vendor;

D. Vendor Permit Process:

1. Upon receipt of a completed application that meets all requirements of this section and any associated fees, the zoning administrator may grant a ~~trial 30-day~~ one-year permit for operations. Upon receipt of a Flathead County certified property owner list from the applicant, the zoning administrator shall notify all property owners within one hundred fifty feet (150') of the pending ~~trial~~ permit. A public notice of the ~~trial~~ vendor permit shall be placed in a newspaper of general circulation no less than 14 (fourteen) days before the effective date of the permit. ~~start of the 30-day trial period~~. If the applicant complies with all standards associated with the approved permit, state law and city ordinances, has not generated any adverse traffic or safety problems, maintained the structure in good repair, and kept the premises clean and orderly, ~~after 30 days~~ the zoning administrator may administratively renew the ~~trial~~ permit without notification at the request of the applicant. ~~into a fully approved vendor permit. by allowing the permit to remain in effect for an additional 90 days. One additional 90 day permit renewal may be approved without the trial period, provided that the beginning date of the second 90-day period was identified in the vendor's application. The second period does not need to be consecutive to the first. In no case shall a vendor be allowed to operate more than seven months within a twelve (12) month period commencing at the issuance of the trial permit.~~ If there is a valid complaint ~~during the trial period or any point thereafter~~ that the vendor does not meet one or more of the standards outlined in this ordinance, the zoning administrator may, at his own discretion or at the direction of the city council, cancel the permit and/or deny any renewals. A vendor may appeal that decision in writing, and in such cases a hearing before the city council shall be scheduled on the renewal. The decision of the city council shall be final.

2. All vendor permits shall be approved in writing through the granting of a vendor permit by the zoning administrator on a case by case basis. At his discretion, conditions, in addition to those included in this section, may be imposed on the use in order to promote neighborhood compatibility or to mitigate health and safety issues.

3. A list of items to be sold by the vendor must be submitted for review prior to issuance of a permit. Only those items listed on the permit shall be authorized to be sold. In approving the list of items authorized for sale the zoning administrator shall be guided by city council policy, and by the impact on safety and the cleanliness of the area.

4. Food vendor permits are limited to ten (10) total, no more than five (5) in any one zoning district. The zoning administrator shall determine the allowable number of street vendors and shall exercise this discretion based upon the needs of the public, diversity of products offered for sale, the smooth flow of pedestrian and vehicular traffic and other similar

considerations. If the Zoning Administrator determines there are significantly more applicants than available permits in a specific area, he/she shall have the authority to create a lottery system designed to fairly distribute the available vending licenses. Vendor operations shall be limited to one per lot unless otherwise approved through the Conditional Use Permit process outlined in section 11-7-8.

REVIEW OF ZONING TEXT AMENDMENT REQUIREMENTS

The following considerations from Section 11-7-10(E) are required to be addressed in order 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 11-7-10E.	Staff Analysis/Comments
Conformity to the Growth Policy	The 2007 Whitefish City-County Growth Policy has several sections pertinent to this particular zoning text amendment including numerous references to the Downtown Master Plan, economic policies and goals to promote the downtown core area and provide a base economy supporting the high percentage of retail and food-industry workers in Whitefish. The existing vendor ordinance prohibits vendors from having tables for customers.
Project Designed to Lessen Congestion in the Streets	The changes requested do not address congestion, but the existing code limits the uses to specific use locations and limits both the number of vendors and the hours of operation.
Historical and established use patterns and recent change in use trends weighed equally, not one to the exclusion of the other.	Few existing retail and food-industry businesses in the area are open late at night, and even fewer offer food to go. Food vendors have operated downtown for many years and provide a different product type than sit-down restaurants.
Security from Fire, Panic, and Disasters	The proposed changes don't affect this, but the existing requirements have fire safety items in order to function as a vendor. This should indemnify the city should any vendors or concessionaires have an emergency related to use.
Promote Health and General Welfare	Providing a mechanism for downtown bar patrons to get late night food helps people sober up and generally betters the health of our city. Also, vendors provide 'eyes and ears' on the street to discourage crime and fights.
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	This criterion is not applicable to this code amendment. (Staff note: Same comment as above.)

CONSIDERATIONS FROM SECTION 11-7-10E.	Staff Analysis/Comments
Facilitate Adequate Provisions for Transportation, Water, Sewerage, Schools, Parks and Other Public Requirements	This criterion is not applicable to this code amendment.
Reasonable Consideration to the Character of the District	The proposed standards included are intended to protect the character of the business districts with limited allowance for temporary uses.
Reasonable Consideration to the Peculiar Suitability of the Property for Particular Uses	This criterion is not applicable to this code amendment. It pertains more to site development than community wide zoning regulations.
Conserve the Value of Buildings	With limitations on temporary uses, building values should be maintained since limitations on vendors encourage them to eventually locate inside permanent locations.
Encourage the Most Appropriate Use of the Land throughout the Municipality	Vendors are only allowed to operate in commercial zoning districts, which encourages appropriate land uses in the city.

FINDINGS TO APPROVE RECOMMENDED AMENDMENTS:

1. We find the considerations in Section 11-7-10(E) are either met, can be mitigated or are not applicable.

2. Whereas the city currently has ordinances and codes in effect for vendors the revisions proposed significantly improve the ordinance making it simpler and easier for staff to administer.

3. Whereas the city has a significant number of retail and food-industry operations and finds there is a need for regulating and controlling the placement of temporary vendors who may compete with the existing businesses.

4. Whereas temporary food vendors add to the festive atmosphere of a resort town with an active night club scene, and provide an alternative source of food when most restaurants are closed.

4. Whereas there are associated negative impacts to existing commerce or public safety which can be mitigated through strict development standards.

5. We find it is in the best interest of the City of Whitefish to amend temporary vendor regulations in the zoning regulation standards.

OVERALL RECOMMENDATION

Staff recommends that the Whitefish City-County Planning Board review the recommendations set forth in this staff report to improve and amend Section 11-3-23, Vendors, subject to the above findings, and transmit same to the Whitefish City Council with a recommendation for **approval**.

Staff: David Taylor, AICP, Director

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ORDINANCE NO. 14-____

An Ordinance of the City Council of the City of Whitefish, Montana, amending Zoning Regulations in Whitefish City Code Section 11-3-14 regarding issuance of a Conditional Use Permit (CUP) for multiple uses on the same lot.

WHEREAS, the City of Whitefish initiated an effort to clarify the Zoning Regulations regarding the criteria used to issue a conditional use permit for multiple uses on the same lot in Section 11-3-14, Special Provisions: Lots; and

WHEREAS, in response to the proposal to amend Title 11, Chapter 3, Section 14, in the Whitefish City Code, the Whitefish Planning and Building Department prepared Staff Report WZTA-14-02, dated February 20, 2014; and

WHEREAS, at a lawfully noticed public hearing on February 20, 2014, the Whitefish City-County Planning Board received an oral report from Planning staff, reviewed Staff Report WZTA-14-02, invited public comment, and thereafter voted to recommend approval of the proposed text amendments as amended; and

WHEREAS, at a lawfully noticed public hearing on March 3, 2014, the Whitefish City Council received an oral report from Planning staff, reviewed Staff Report WZTA-14-02, invited public input, and thereafter voted to recommend approval of the proposed text amendment; 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: Staff Report WZTA-14-02 is hereby adopted as Findings of Fact.

Section 3: Amendments to Whitefish City Code Section 11-3-14(B)(6), Special Provisions: Lots: Multiple Uses on Same Lot; Conditional Use Criteria, as provided below, with insertions shown underlined and deletions shown with strikethrough, are hereby adopted.

> A conditional use permit shall not be granted in cases where the proposed uses are ~~unrelated and~~ incompatible or the conditional use permit process is being used as an alternative to subdivision.

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 _____, 2014.

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

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

February 25, 2014

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

Re: Zoning Text Amendment – Multiple Uses on Same Lot: WZTA 14-02

Honorable Mayor and Council:

Summary of Requested Action: This application is a request by the city of Whitefish to amend criteria #6 within Section 11-3-14(B) for issuance of a Conditional Use Permit (CUP) for multiple uses on the same lot.

Planning Board Recommendation: The Whitefish City-County Planning Board held a public hearing on February 20, 2014. Following this hearing, the Planning Board recommended approval of the proposed amendment with the exception of retaining 'shall not be granted' instead of 'may be denied' as recommended by staff and adopted the supporting findings of fact in the staff report. The motion carried 5-1 (Workman voted in opposition; Anderson was absent)

Public Hearing: At the public hearing, no member of the public wished to speak on the proposed amended draft ordinance. The draft minutes of the Planning Board hearing are included.

City Staff Recommendation: Staff continues to recommend approval of the text amendment as originally proposed in the attached staff report.

Based on the discussion which occurred at the Planning Board meeting, staff has decided to explain in more detail the reasoning behind the proposed language amendment. The Whitefish Zoning Regulations state that only one principal use is allowed per lot of record. However, per Section 11-2-3(B)(12) multiple principal uses may be allowed on a single lot of record upon the issuance of a conditional use permit. When an application of this type is submitted, it is reviewed under the criteria required for consideration of a Conditional Use Permit in Section 11-7-8(J), as well as supplemental criteria specific to this type of application in Section 11-3-14(B). The supplemental criteria includes:

> *1. Total signage shall be limited to that permitted based on building frontage. A master sign plan shall be submitted showing the size, location, materials and design of any proposed signage with the application for conditional use permit.*

2. Parking shall be provided according to the sum of the uses on the property. A generalized parking, drainage and landscaping plan shall be submitted with the application for conditional use permit to show that the necessary parking, drainage and landscaping can be accommodated on the property.

3. When the use requires the construction of multiple buildings, the site layout and building design shall ensure that lots or sublots meeting the requirements of subsection C of this section and the city subdivision regulations can be created. All reservations that would be necessary for future roads and utilities in the event of subdivision shall be identified in the application. Development of these areas is not permitted.

4. All buildings or groups of buildings shall be so arranged as to permit emergency vehicle access by some practical means to all sides of each building.

5. Uses which are generally compatible with one another shall be integrated by design to the degree of their compatibility and separated to the degree of their incompatibility.

6. A conditional use permit shall not be granted in cases where the proposed uses are unrelated and the conditional use permit process is being used as an alternative to subdivision. (Ord. 97-2, 10-20-1997; amd. Ord. 05-25, 11-21-2005)

The amendment proposed by staff is to Criteria #6 list above. Staff is proposing to modify the language slightly in order to close a potential loophole in the regulations. This loophole was discovered by a potential applicant who contacted the Planning Office regarding an application for a Conditional Use Permit for multiple uses on the same lot. The applicant argued that since the two uses were related, the second part of the criteria did not apply even if it was clear that the application was an evasion of subdivision. Staff is proposing to amend the criteria the criteria in three ways: change *'shall not be granted'* to *'may be denied'*, change *'unrelated'* to *'incompatible'*, and finally change *'and'* to *'or'*.

The change from *'and'* to *'or'* will allow a CUP application to be denied if either the uses are unrelated/incompatible OR if the process is being used as an evasion of subdivision review. The change from *'unrelated'* to *'incompatible'* allows staff the ability to determine based on the standard review criteria if uses are compatible with each other. Determining if uses are unrelated to each other can be difficult in many situations, and is usually based more on a personal determination rather than a site specific determination. However, staff are more easily able to determine if uses are incompatible based on traffic potentials, parking, hours of operation, noise, and other immediate neighborhood impacts.

The final change is from *'shall not be granted'* to *'may be denied.'* This is the modification which the Planning Board ultimately decided not to propose amending because they liked how stringent and predictable this statement made the criteria. However, staff is recommending this amendment because it will allow the flexibility of an application to be

approved if the applicant can demonstrate that two uses are compatible with each other on the same lot or that the application is not being utilized as an alternative to subdivision review. This would permit an application to be reviewed and approved with conditions related to subdivision improvements such as roads, utilities, streetlights, parkland dedication etc., in case the property eventually came through for a subdivision. If the Planning Board recommendation is approved, Planning Staff would be required to recommend denial of application or not accept an application at all. If an application is denied by the Whitefish City Council, the applicant's only option would be to appeal the decision to District Court. If the Planning Director denies the proposal through a Zoning Administrator Interpretation, then an appeal would go before the Whitefish Board of Adjustment. Staff considers this as something better reviewed on a case-by-case basis.

This item has been placed on the agenda for your regularly scheduled meeting on March 3, 2014. 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,

Bailey Minnich, CFM
Planner II

Att: Exhibit A, Planning Board recommendation, 2-20-14
Draft minutes of the 2-20-14 Planning Board meeting
Staff Report, WZTA-14-02, 2-20-14

c: w/att Necile Lorang, City Clerk

Exhibit A
WTZA 14-02
Whitefish City-County Planning Board
Recommendation
February 20, 2014

Amendment – Section 11-3-14(B)

Multiple Uses on Same Lot, Conditional Use Permit Criteria

1. Total signage shall be limited to that permitted based on building frontage. A master sign plan shall be submitted showing the size, location, materials and design of any proposed signage with the application for conditional use permit.

2. Parking shall be provided according to the sum of the uses on the property. A generalized parking, drainage and landscaping plan shall be submitted with the application for conditional use permit to show that the necessary parking, drainage and landscaping can be accommodated on the property.

3. When the use requires the construction of multiple buildings, the site layout and building design shall ensure that lots or sublots meeting the requirements of subsection C of this section and the city subdivision regulations can be created. All reservations that would be necessary for future roads and utilities in the event of subdivision shall be identified in the application. Development of these areas is not permitted.

4. All buildings or groups of buildings shall be so arranged as to permit emergency vehicle access by some practical means to all sides of each building.

5. Uses which are generally compatible with one another shall be integrated by design to the degree of their compatibility and separated to the degree of their incompatibility.

6. A conditional use permit shall not be granted in cases where the proposed uses are ~~unrelated~~ incompatible ~~and~~ or the conditional use permit process is being used as an alternative to subdivision. (Ord. 97-2, 10-20-1997; amd. Ord. 05-25, 11-21-2005)

Draft

WHITEFISH CITY PLANNING BOARD
MINUTES OF MEETING
FEBRUARY 20, 2014

CALL TO ORDER AND ROLL CALL

The regular meeting of the Whitefish City-County Planning Board was called to order at 6:00 p.m. Board members present were Diane Smith, Ken Stein, Chad Phillips, John Ellis, Vik Workman and Greg Gunderson. Zak Anderson was absent. Planning Director Taylor, Senior Planner Compton-Ring, and Planner II Minnich represented the Whitefish Planning & Building Department. Diane Smith was asked to chair the meeting until a new Chair was appointed.

BOARD MEMBER CONFIRMATION

Planning Board Confirmation of Flathead Conservation District Appointment:

- John Ellis, Jr.

Smith asked Ellis to introduce himself and he said he was appointed to the Flathead Conservation District and has lived here about seven years. He is glad to be here and part of the Board.

The Board indicated unanimous approval of the appointment.

BOARD APPOINTMENTS

- Selection of Planning Board Chair
- Selection of Planning Board Vice-Chair

Phillips moved and Smith seconded to appoint Greg Gunderson as Planning Board Chair. The motion passed unanimously.

Smith moved and Workman seconded to appoint Ken Stein as Planning Board Vice-Chair. The motion passed unanimously.

APPROVAL OF MINUTES

Chad Phillips offered a correction on Public Items, which should read, "No one else" instead of "No else one." Gunderson offered a correction under the Approval of Minutes, Page 11, and paragraph 2, to replace "world" with "word" referring to the wetland.

Phillips moved and Smith seconded to approve the City minutes of the December 19, 2013 Whitefish Planning Board as amended. On a vote by acclamation the motion passed unanimously.

PUBLIC ITEMS NOT ON AGENDA

No one wished to speak.

OLD BUSINESS

None.

CITY OF WHITEFISH ZONING TEXT AMENDMENT REQUEST

A request by the City of Whitefish for a Zoning Text Amendment to Section 11-3-14-B, Multiple Uses on Same Lot, Conditional Use Permit Criteria, to clarify the requirements.

STAFF REPORT WZTA 14-

Planner II Minnich reported that this is a zoning amendment

02 proposed by the City to clarify a section of the regulations regarding the criteria used to issue a conditional use permit for multiple uses on the same lot. Currently a Conditional Use Permit for multiple uses on the same lot can only be denied on the basis that the permit is being sought to avoid subdivision requirements if the proposed multiple uses are unrelated.

The section was originally adopted in October 1997 by Ordinance #97-2. In 1997, the Whitefish City Council adopted the current language found in Section 11-2-3(B)(12) and the special provisions in 11-3-14(B) as additional criteria when reviewing a conditional use permit application for multiple uses. Based on the minutes from the Whitefish City Council meeting on October 6, 1997, the intent of the criteria was to *'address potential problems associated with the development of a site.'* The minutes further state that staff noted *'there are some uses that are compatible with each other and could be approved by conditional use permit as well as there will be some uses that would conflict...however, if it seems the only intent for such an application is to circumvent subdivision then in that case the conditional use permit would be denied and subdivision recommended.'*

Criteria #6 currently reads in the City Code of ordinances as:

> *A conditional use permit shall not be granted in cases where the proposed uses are unrelated and the conditional use permit process is being used as an alternative to subdivision.*

This proposal is based on the result of a previous zoning administrator's interpretation which identified a potential conflict with the criteria. A previous application for multiple uses on the same lot argued that since the uses were related, the second half of the criteria did not apply in consideration of the conditional use permit, even if it was obvious the application was being used to circumvent subdivision review with its required criteria of parkland dedication, sidewalks, street lights, landscaping, etc. Staff is proposing to modify the existing language slightly in order to close a potential loophole in the review process. This would allow a CUP the potential of being denied if the uses are related but the proposal can be documented as an evasion of subdivision.

Staff proposes the following amendment to criteria #6 for issuance of a CUP for multiple uses on the same lot:

6. A conditional use permit ~~shall not be granted~~ may be denied in cases where the proposed uses are ~~unrelated~~ incompatible ~~and~~ or the conditional use permit process is being used as an alternative to subdivision. (Ord. 97-2, 10-20-1997; amd. Ord. 05-25, 11-21-2005).

PUBLIC HEARING The public hearing was opened to those who wished to speak on the

issue.

PUBLIC HEARING

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

BOARD DISCUSSION

Phillips said he liked the definite language as well. Smith asked for an example and Minnich said if an applicant had two uses on the same lot that are considered incompatible, but they don't want to sub-divide the lot and add improvements, then this standard would come into play. Smith asked what the problem is that they're trying to solve. Minnich said she had an applicant who came in with related uses, but they felt he wasn't trying to avoid subdivision standards.

Ellis said they can solve the problem with "and" and "or." Gunderson asked how they know when something is incompatible and Director Taylor said he knows it when he sees it. They might not have the access or parking they need. Director Taylor said the applicants don't want to split the lot but they want to condo out the uses. They still have to lay out their buildings in such a way that in the future in could be subdivided. Stein said if they change the "and" to "or" and delete the phrase than Ellis suggested, then they would be able to move forward. Gunderson said "shall not be" is stopped at staff level, but "may be denied" could allow the applicant to go to the City Council and the public process. It gives a strong message, but it isn't hard and fast. Ellis said if staff denies it they could still appeal to the Council, and Director Taylor said they could, but the different language gives them a slim chance to get something approved.

Stein said he liked the idea of having it be cut and dry. Director Taylor said one example could be someone who wants multiple duplexes on one single lot without subdividing it. If they had a subdivision there would have to be standards for fire safety and standards for utilities. With a Conditional Use Permit it is harder to get a developer to put in the sidewalks and utilities. There is always someone who wants to do something without paying the price. Phillips said it would be good to have examples of compatible uses. He said they might say compatible and synergistic.

MOTION

Ellis moved and Phillips seconded to adopt staff report WZTA 14-02 as findings of fact and recommend that the City Council approve a request by the City of Whitefish for a Zoning Text Amendment to Section 11-3-14-B, Multiple Uses on Same Lot, Conditional Use Permit Criteria, to clarify the requirements, amending the language as recommended, but retaining "shall not be granted" instead of "may be denied" as recommended in the staff report.

VOTE

The motion passed 5-1 with Workman voting in opposition. (Scheduled for City Council on March 3, 2014.)

PROPOSED CODE AMENDMENTS
TITLE 11, CHAPTER 3, SECTION 14(B): MULTIPLE USES ON SAME LOT:
CONDTIONAL USE CRITERIA #6
STAFF REPORT #WZTA-14-02
FEBRUARY 20, 2014

This is a staff report to the Whitefish City-County Planning Board and Whitefish City Council amending criteria #6 for issuance of a Conditional Use Permit (CUP) for multiple uses on the same lot. The Planning Board public hearing is scheduled for **February 20, 2014** and a subsequent hearing is scheduled before the City Council on **March 3, 2014**.

BACKGROUND INFORMATION

This is a zoning amendment proposed by the city to clarify a section of the regulations regarding the criteria used to issue a conditional use permit for multiple uses on the same lot. Currently a Conditional Use Permit for multiple uses on the same lot can only be denied on the basis that the permit is being sought to avoid subdivision requirements if the proposed multiple uses are unrelated.

The section was originally adopted in October 1997 by Ordinance #97-2. The previous zoning regulations only permitted one primary use per lot. In 1997, the Whitefish City Council adopted the current language found in Section 11-2-3(B)(12) and the special provisions in 11-3-14(B) as additional criteria when reviewing a conditional use permit application for multiple uses. Based on the minutes from the Whitefish City Council meeting on October 6, 1997, the intent of the criteria was to *'address potential problems associated with the development of a site.'* The minutes further state that staff noted *'there are some uses that are compatible with each other and could be approved by conditional use permit as well as there will be some uses that would conflict...however, if it seems the only intent for such an application is to circumvent subdivision then in that case the conditional use permit would be denied and subdivision recommended.'*

Criteria #6 currently reads in the city code of ordinances as:

> *A conditional use permit shall not be granted in cases where the proposed uses are unrelated and the conditional use permit process is being used as an alternative to subdivision.*

This proposal is based on the result of a previous zoning administrator interpretation which identified a potential conflict with the criteria. A previous application for multiple uses on the same lot argued that since the uses were related, the second half of the criteria did not apply in consideration of the conditional use permit, even if it was obvious the application was being used to circumvent subdivision review with its required criteria of parkland dedication, sidewalks, street lights, landscaping, etc. Staff is proposing to modify the existing language slightly in order to close a potential loophole in the review process. The new proposed language would replace 'and' with 'or,' replace 'shall not be granted' with 'may be denied,' and replace 'unrelated' with

'incompatible.' This would allow a CUP the potential of being denied if the uses are related but the proposal can be documented as an evasion of subdivision.

PROPOSAL

Staff proposes the following amendment to criteria #6 for issuance of a CUP for multiple uses on the same lot:

6. A conditional use permit ~~shall not be granted~~ may be denied in cases where the proposed uses are ~~unrelated~~ incompatible ~~and~~ or the conditional use permit process is being used as an alternative to subdivision. (Ord. 97-2, 10-20-1997; amd. Ord. 05-25, 11-21-2005)

REVIEW AND FINDINGS OF FACT

The proposed changes shall be evaluated based on the criteria for consideration for amendments to the provisions of the Zoning Regulations per Section 11-7-12E.

1. Zoning Regulations Must Be:

a. Made in Accordance with a Growth Policy

The Whitefish City-County Growth Policy includes several Future Land Use Goals and Policies which support the proposed modifications to the criteria. These include goals found in Chapter 3 of the Growth Policy regarding Land Use Element:

1. Preserve and enhance the character, qualities, and small town feel and ambience of the Whitefish community through an innovative and comprehensive growth management system.

5. Protect and preserve the special character, scale, and qualities of existing neighborhoods while supporting and encouraging attractive, well-designed, neighborhood compatible infill development.

And policies founding Chapter 3 of the Growth Policy regarding Land Use Element:

1. All land development regulations shall be consistent with and based on the Growth Policy in accordance with Montana State Law.

5. The City of Whitefish shall give priority to infill development over Growth Policy amendments that would redesignate land to Urban or Suburban.

Finding 1: The proposed amendment is in accordance with the Whitefish City-County Growth Policy because it is supported by goals and policies outlined in Chapter 3 regarding Land Use Elements.

b. Designed to:

i. Secure safety from fire and other dangers

The proposed amendment to the multiple uses criteria will not change the overall criteria of Section 11-7-8(J) used for the evaluation of a Conditional Use Permit application. The only modification proposed is a change in the supplemental criteria used to evaluate proposals for Multiple Uses on the Same Lot. Therefore, the criteria regarding safety and other dangers will remain unchanged. Additionally, by requiring an applicant to proceed through the subdivision process, the city could better regulate an application to meet city standards for fire and public safety.

Finding 2: The proposed code amendment will not modify existing language regarding safety from fire and other dangers because the proposed amendment is to the supplemental criteria for evaluation of Multiple Uses on the Same Lot.

ii. Promote public health, public safety and general welfare

As stated in the previous discussion, the proposed amendment to the multiple uses criteria will not change the overall criteria of Section 11-7-8(J) used for the evaluation of a Conditional Use Permit application. The only modification proposed is a change in the supplemental criteria used to evaluate proposals for Multiple Uses on the Same Lot. Therefore, the criteria regarding public health, safety, and general welfare will remain unchanged. Furthermore, as identified above, if an applicant's proposal is required to be evaluated through the subdivision regulations, the city can better regulate an application to meet city standards for compliance with public health, safety, and general welfare.

Finding 3: The proposed code amendment will not modify existing language regarding public health, safety, and general welfare because the proposed amendment is to the supplemental criteria for evaluation of Multiple Uses on the Same Lot; however if subdivision review is required the city can better ensure infrastructure is developed in compliance with city standards.

iii. Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements

As discussed in the previous sections, the proposed amendment to the multiple uses criteria will not change the overall criteria of Section 11-7-8(J) used for the evaluation of a Conditional Use Permit application. The only modification proposed is a change in the supplemental criteria used to evaluate proposals for Multiple Uses on the Same Lot. Therefore, the amendment has no impact on the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. The overall criteria used for CUP evaluation will remain unchanged. However, as previously discussed, if an applicant's proposal is found to be an evasion of subdivision and is required to be evaluated by the subdivision regulations, the city can more adequately enforce the requirements of subdivision including parkland dedication, installation of infrastructure, schools, and utility placement.

Finding 4: The proposed code amendment will not modify existing language regarding the facilitation of adequate transportation, water, sewerage, schools, parks, or other public requirements because the proposed amendment is to the supplemental criteria

for evaluation of Multiple Uses on the Same Lot, and the overall criteria used for CUP evaluations will remain unchanged; however if subdivision review is required the city can better ensure infrastructure is developed in compliance with city standards.

2. In the adoption of zoning regulations, the city shall consider:

a. Reasonable provision of adequate light and air

The amendment proposed by staff would be a modification to the supplemental criteria used to evaluate a Conditional Use Permit requests for Multiple Uses on the Same Lot. There would be no changes to the general review criteria utilized for evaluation of all Conditional Use Permit applications. Therefore, there would be no modifications relating to reasonable provisions of adequate light and air.

Finding 5: The proposed code amendment is unrelated to reasonable provisions of adequate light and air because it is a modification to the supplemental criteria used to evaluate CUP requests for multiple uses on the same lot.

b. The effect on motorized and nonmotorized transportation systems

As discussed in previous sections, the amendment proposed by staff would be a modification to the supplemental criteria used to evaluate a Conditional Use Permit requests for Multiple Uses on the Same Lot. There would be no changes to the general review criteria utilized for evaluation of all Conditional Use Permit applications. Therefore, there would be no modifications relating to the effect on motorized and nonmotorized transportation systems. However, if an application is denied because it is found to be an evasion of subdivision and is required to be processed as a subdivision proposal, the city could more adequately regulate street dedication and connectivity.

Finding 6: The proposed code amendment has no impact on motorized and nonmotorized transportation systems because it is a modification to the supplemental criteria used to only evaluate requests for Conditional Use Permits for multiple uses on the same lot; however if subdivision review is required the city can better ensure infrastructure is developed in compliance with city standards.

c. Promotion of compatible urban growth

The amendment proposed by staff would modify an existing criteria used in the evaluation of Conditional Use Permit applications for multiple uses on the same lot. The proposed change would replace 'and' with 'or,' replace 'shall not be granted' with 'may be denied,' and replace 'unrelated' with 'incompatible.' This modification would essentially separate the two sentences and allow a request the potential of being denied even if the uses are related. While the overall intent of the criteria is to promote compatible growth on specific sites, this modification allows any request to be denied if it is an evasion of subdivision review or the uses are clearly incompatible.

Finding 7: The overall intent of the existing criteria language is to promote compatible urban growth on specific sites, and the proposed code amendment will continue to

support this policy because it would maintain the ability to deny any request if it is ultimately an evasion of subdivision review.

d. The character of the district and its particular suitability of the property for the particular uses

The proposed amendment to modify the language of criteria #6 for review of a multiple use Conditional Use Permit is intended to support the overall character of a district and evaluate the particular suitability of proposed uses on a property. The intent of the modification is to promote compatible multiple uses on a single property while maintaining the ability to deny an application if it is ultimately an evasion of subdivision review. Therefore, staff's proposed changes will allow for better evaluations, and in the end, help separate legitimate applications for multiple uses suitable on one property from those attempting to circumvent the subdivision procedure outlined in Montana State Law.

Finding 8: The proposed code amendment is intended to support the overall character of the district and particular suitable uses on a property because it will promote compatible multiple uses on a single property while maintaining the ability to deny an application if the end result is ultimately to circumvent the subdivision review process outlined in Montana State Law.

e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area; and

The proposed amendment to criteria #6 for evaluation of a multiple use Conditional Use Permit is intended to support the value of buildings and encouraging the most appropriate use of land. The intent of the modification is to promote the most appropriate compatible use for a single property while maintaining the ability to deny an application if it is determined to be an evasion of subdivision review. Therefore, staff's proposed changes will allow for better evaluations, and help separate legitimate applications from those attempting to circumvent the subdivision procedure outlined in Montana State Law. By requiring use to be compatible and appropriate for the use of the land, the value of surroundings buildings will be maintained.

Finding 9: The proposed code amendment is intended to support the value of buildings and encourage the most appropriate use of land because it will promote compatible or related multiple uses on a single property while maintaining the ability to deny an application if the applicant's goal is to evade subdivision review.

f. That historical uses and established uses patterns and recent change in use trends will be weighed equally and consideration not be given one to the exclusion of the other.

This criterion does not appear to be applicable to this code amendment as it pertains more to specific site development rather that the community wide zoning regulations.

However, as discussed in the previous sections, the proposed amendment to the multiple uses criteria will not change the overall criteria of Section 11-7-8(J) used for the evaluation of a Conditional Use Permit application. The only modification proposed is a change in the supplemental criteria used to evaluate proposals for Multiple Uses on the Same Lot. Therefore, the amendment has no impact on historical uses and patterns, and the overall criteria used for CUP evaluation will remain unchanged.

Finding 10: This criterion is not applicable to this code amendment because it pertains more to specific site development rather than the community wide zoning regulations, and the proposed amendment will only modify the supplemental criteria used to evaluate proposals for multiple uses on one lot not the overall criteria used for all Conditional Use Permit applications.

ADDITIONAL FINDINGS

Finding 11: Staff finds the considerations in Section 11-7-12(E) are either met or are not applicable;

Finding 12: Whereas, legal public notice according to the Whitefish City Code was published in the *Daily Interlake* and the *Whitefish Pilot* on February 5, 2014;

Finding 13: Whereas, staff sent a notice February 5, 2014 to twenty-three (23) reviewing agencies, departments and other service providers regarding the zoning regulation update.

We find it is in the best interest of the City of Whitefish to amend criteria #6 in the special provisions section regarding the supplemental Conditional Use Permit criteria for multiple uses on the same lot. The proposed code amendment would replace 'and' with 'or,' replace 'shall not be granted' with 'may be denied,' and replace 'unrelated' with 'incompatible.' This would allow a CUP the potential of being denied if the uses are related but the proposal can be documented as an evasion of subdivision.

OVERALL RECOMMENDATION

Staff recommends the Planning Board **approve** the recommendations set forth in the staff report to amend §11-3-14(B)(6) of the Zoning Regulations and adopt the findings of fact and transmit same to the Whitefish City Council for further action.

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ORDINANCE NO. 14-____

An Ordinance of the City Council of the City of Whitefish, Montana, amending Zoning Regulations in Whitefish City Code Section 11-2K-2 to identify Business Services as a permitted use in the Secondary Business District (WB-2) and adding the definition of Business Services and amending the definitions of Personal Services and Professional Services in Section 11-9-2.

WHEREAS, the City of Whitefish initiated an effort to identify business services as a permitted use in the Secondary Business District (WB-2) in Section 11-2K-2, and add the definition of business services and amend the definition of personal services and professional services in Section 11-9-2; and

WHEREAS, in response to the proposal to amend Title 11, Chapter 2, Article 2K, Section 2 and Title 11, Article 9, Section 2 in the Whitefish City Code, the Whitefish Planning and Building Department prepared Staff Report WZTA-14-03, dated February 13, 2014; and

WHEREAS, at a lawfully noticed public hearing on February 20, 2014, the Whitefish City-County Planning Board received an oral report from Planning staff, reviewed Staff Report WZTA-14-03, invited public comment, and thereafter voted to recommend approval of the proposed text amendments; and

WHEREAS, at a lawfully noticed public hearing on March 3, 2014, the Whitefish City Council received an oral report from Planning staff, reviewed Staff Report WZTA-14-03, invited public input, and thereafter voted to recommend approval of the proposed text amendment; 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: Staff Report WZTA-14-03 is hereby adopted as Findings of Fact.

Section 3: An amendment to Whitefish City Code Section 11-2K-2, WB-2 Secondary Business District Permitted Uses, as provided below, with the insertion shown underlined, is hereby adopted:

* Business services.

Section 4: Amendments to Whitefish City Code Section 11-9-2, Definitions, as provided below, with insertions shown underlined, are hereby adopted:

> BUSINESS SERVICES: Uses that are primarily engaged in rendering services to business establishments on a contract or fee basis. Such uses include advertising, bookkeeping, building service, credit reporting, collection of claims, computer services, data processing, graphic design, mailing, photocopying, publishing, reproduction, security, shipping, sign making, office equipment rental, lease and repair services, and other similar services. This is differentiated from uses that provide services to an individual (see definition of Personal Services) or services provided by a professional (see definition of Professional Services). Business services should not include retail sales except on an incidental basis.
>
> PERSONAL SERVICES: A use that provides a service to an individual customer designed to accommodate a specialized need, provide a convenience, or cater to a particular lifestyle. Such services shall be those types that require mechanical skill or manual dexterity, as differentiated from mental disciplines generally requiring licensing or certification such as those listed under professional services (see definition of Professional Services) and services provided primarily to business such as those listed under business services (see definition of Business Services). Examples of personal services would include, but are not limited to: delivery and pick up, catering, event planning, recreational guiding and outfitting, personal training, tattoo, and personal spa and grooming services such as manicure, facial, hairstylists, and makeup consulting. Personal services should not involve retail sales except on an incidental basis such as the selling of hair products at a salon.
>
> PROFESSIONAL SERVICES: Conduct of a service business which is commonly identified as a profession and which may be licensed by the state. Such services include engineers, architects, planners, surveyors, designers, lawyers, accountants, real estate brokers, insurance agents, dentists, physical therapists, massage therapists, chiropractors, or physicians. Additionally, accounting, journalism, research, editing, administration or analysis; the conduct of a business by salespersons, sales representatives or manufacturer's representatives, or the conduct of business by professionals is included. Professional services do not include veterinarians, showrooms, manufacturing, repair, testing, retail sales, the storage, sale or delivery of goods located on the premises, or other occupations requiring physical skill such as those found under personal services (see definition of Personal Services) and services

provided primarily to business such as those listed under business services (see definition of Business Services).

Section 5: 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 6: 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

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

February 24, 2014

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

Re: Zoning Text Amendment – Business Services: WZTA 14-03

Honorable Mayor and Council:

Summary of Requested Action: This application is a request by the city of Whitefish to add a definition for 'business services' and add 'business services' as a permitted use in the WB-2 zone.

Planning Board Recommendation: The Whitefish City-County Planning Board held a public hearing on February 20, 2014. Following this hearing, the Planning Board unanimously recommended approval of the amendments and adopted the supporting findings of fact in the staff report. (Anderson was absent)

City Staff Recommendation: Staff recommended approval of the text amendment attached to the staff report.

Public Hearing: At the public hearing, one member of the public spoke in favor of the proposed amended draft ordinance. The draft minutes of the Planning Board hearing are included.

This item has been placed on the agenda for your regularly scheduled meeting on March 3, 2014. 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,

Wendy Compton-Ring, AICP
Senior Planner

Att: Exhibit A, Planning Board recommendation, 2-20-14
Draft minutes of the 2-20-14 Planning Board meeting
Staff Report, WZTA 14-03, 2-13-14

c: w/att Necile Lorang, City Clerk

Exhibit A
WTZA 14-01
Whitefish City-County Planning Board
Recommendation
February 20, 2014

Amendment #1 – add BUSINESS SERVICES to §11-9-2 and amend PERSONAL SERVICES and PROFESSIONAL SERVICES:

BUSINESS SERVICES: Uses that are primarily engaged in rendering services to business establishments on a contract or fee basis. Such uses include advertising, bookkeeping, building service, credit reporting, collection of claims, computer services, data processing, graphic design, mailing, photocopying, publishing, reproduction, security, shipping, sign making, office equipment rental, lease and repair services, and other similar services. This is differentiated from uses that provide services to an individual (see definition of Personal Services) or services provided by a professional (see definition of Professional Services). Business services should not include retail sales except on an incidental basis.

PERSONAL SERVICES: A use that provides a service to an individual customer designed to accommodate a specialized need, provide a convenience, or cater to a particular lifestyle. Such services shall be those types that require mechanical skill or manual dexterity, as differentiated from mental disciplines generally requiring licensing or certification such as those listed under professional services (see definition of Professional Services) and services provided primarily to business such as those listed under business services (see definition of Business Services). Examples of personal services would include, but are not limited to: delivery and pick up, catering, event planning, recreational guiding and outfitting, personal training, tattoo, and personal spa and grooming services such as manicure, facial, hairstylists, and makeup consulting. Personal services should not involve retail sales except on an incidental basis such as the selling of hair products at a salon.

PROFESSIONAL SERVICES: Conduct of a service business which is commonly identified as a profession and which may be licensed by the state. Such services include engineers, architects, planners, surveyors, designers, lawyers, accountants, real estate brokers, insurance agents, dentists, physical therapists, massage therapists, chiropractors, or physicians. Additionally, accounting, journalism, research, editing, administration or analysis; the conduct of a business by salespersons, sales representatives or manufacturer's representatives, or the conduct of business by professionals is included. Professional services do not include veterinarians, showrooms, manufacturing, repair, testing, retail sales, the storage, sale or delivery of goods located on the premises, or other occupations requiring physical skill such as those found under personal services (see definition of Personal Services) and services provided primarily to business such as those listed under business services (see definition of Business Services).

Amendment #2 – add the following permitted use to §11-2K-2:

- Business Services.

"may be denied" as recommended in the staff report.

VOTE

The motion passed 5-1 with Workman voting in opposition. (Scheduled for City Council on March 3, 2014.)

CITY OF WHITEFISH ZONING TEXT AMENDMENT REQUEST

A request by the City of Whitefish for a Zoning Text Amendment to Section 11-2-K-2, WB-2 Secondary Business District, Permitted Uses, to add Business Services, and to 11-9-2, Definitions, to add a definition of Business Services.

STAFF REPORT WZTA 14-03

Senior Planner Compton-Ring reported that the City is proposing to add a new definition, Business Services, to the zoning regulations and make it a permitted use in the WB-2 zone. The zoning regulations have two definitions related to services -- 'personal services' and 'professional services', but the zoning has been silent on the use of business services in the WB-2 and the zoning has not clearly defined the term business services.

Business Services is a distinct and different use from both 'professional services' and 'personal services'. Staff reviewed the US Department of Labor *Standard Industrial Classification* (https://www.osha.gov/pls/imis/sicsearch.html) which is a system used to classify industry in a uniform manner. Some municipalities use it as a way to identify use categories in zones, while it isn't always a practical tool, it can be a good starting point for discussion. There is a separate listing for Business Services from Personal Services. Business services are those uses that provide a service for businesses – such as advertising, credit reporting, graphic design, copying, building maintenance, equipment/computer rental, leasing and repair, computer programming, etc. Personal services are specifically geared toward the support of an individual and professional services are services provided by individuals that may be licensed by the state. Professional offices are allowing in the WB-2 zone, whereas personal services, with the exception of hair salons, are not. Business services may have a need for larger parking areas to service the delivery and pick-up of larger items, which makes it a compatible use within the WB-2 zone and the stated intent.

Over the years the City has allowed 'business service' types of uses to go into the WB-2 as staff has considered them professional services, but they technically were a business service. There may be some concerns that adding business services to the list of permitted used in the WB-2 zone may pull business from the downtown, but these types of uses are already permitted in the WB-1 and the WBSD. Staff also pointed out that the WB-4, the WI and the WBMV also permit service-type uses.

An example of this type of use is the UPS store. This business has

been in the WB-2 zoning district since the 1980s in various locations. It has most recently moved to a new building adjacent to Walgreens. The UPS store provides shipping, packaging, mailing and copying services. This particular use does not neatly fit within the personal services or professional services. In addition, there are a number of other existing uses within the WB-2 district that also provide similar services to businesses so it made some sense to create a 'business service' use in this district to capture these various uses.

Staff proposed a definition for 'Business Services', an amendment to both Personal and Professional Services, and identifying Business Services as a permitted use in the WB-2.

Director Taylor said this solves the problem of business services that the city has been considering professional offices.

PUBLIC HEARING

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

PUBLIC HEARING

Bill Halama, 235 Good Medicine Drive, said he owns the shopping center that the UPS store moved into recently. He said this is not a use that would fit downtown. He said this business is a perfectly compatible use in this area. He said the UPS store has been in business for a long time in this zone. He said this text amendment just cleans up the language.

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

MOTION

Phillips moved and Ellis seconded Whitefish to adopt staff report WZTA 14-03 as findings of fact and recommend that the City Council approve a request by the City of Whitefish for a Zoning Text Amendment to Section 11-2-K-2, WB-2 Secondary Business District, Permitted Uses, to add Business Services, and to 11-9-2, Definitions, to add a definition of Business Services.

VOTE

The motion passed unanimously. (Scheduled for City Council on March 3, 2014.)

CITY OF WHITEFISH ZONING TEXT AMENDMENT REQUEST

A request by the City of Whitefish for a Zoning Text Amendment to Section 11-3-23, Vendors, to streamline the permitting process, allowing for a one-year permit for food vendors rather a 30-day and two 90-day permits.

Ellis asked if the vendors had to be on private property and Director Taylor said they do, but there is limited private property downtown. He said it is a nice business incubator for some small businesses. There is nowhere to get food after 10 p.m. so the vendors do meet a need. Gunderson asked and Director Taylor said the vendors pay

PROPOSED CODE AMENDMENTS
TITLE 11, CHAPTER 2K: SECONDARY BUSINESS DISTRICT
TITLE 11, CHAPTER 9: DEFINTIONS
STAFF REPORT # WZTA 14-03
February 13, 2014

This is a staff report to the Whitefish City-County Planning Board and Whitefish City Council amending the permitted uses in the Secondary Business District (WB-2), adding a definition and amending two definitions. The Planning Board public hearing is scheduled for **February 20, 2014** and a subsequent hearing is scheduled before the City Council on **March 3, 2014**.

BACKGROUND INFORMATION

The city is proposing to add a new definition, Business Services, to the zoning regulations and make it a permitted use in the WB-2 zone. The zoning regulations have the following two definitions related to services they are 'personal services' and 'professional services'. The zoning has been silent on the use of business services in the WB-2 and the zoning has not clearly defined the term business services.

Personal Services are defined as:

> *A use that provides a service to an individual customer designed to accommodate a specialized need, provide a convenience, or cater to a particular lifestyle. Such services shall be those types that require mechanical skill or manual dexterity, as differentiated from mental disciplines generally requiring licensing or certification such as those listed under professional services (see definition of Professional Services). Examples of personal services would include, but are not limited to: delivery and pick up, catering, event planning, recreational guiding and outfitting, personal training, tattoo, and personal spa and grooming services such as manicure, facial, hairstylists, and makeup consulting. Personal services should not involve retail sales except on an incidental basis such as the selling of hair products at a salon.*

Professional Services are defined as:

> *Conduct of a service business which is commonly identified as a profession and which may be licensed by the state. Such services include engineers, architects, planners, surveyors, designers, lawyers, accountants, real estate brokers, insurance agents, dentists, physical therapists, massage therapists, chiropractors, or physicians. Additionally, accounting, journalism, research, editing, administration or analysis; the conduct of a business by salespersons, sales representatives or manufacturer's representatives, or the conduct of business by*

professionals is included. Professional services do not include veterinarians, showrooms, manufacturing, repair, testing, retail sales, the storage, sale or delivery of goods located on the premises, or other occupations requiring physical skill such as those found under personal services (see definition of Personal Services).

There is not a definition for 'business services' in the zoning. Business Services is a distinct and different use from both 'professional services' and 'personal services'. Staff reviewed the US Department of Labor *Standard Industrial Classification* (https://www.osha.gov/pls/imis/sicsearch.html) which is a system used to classify industry in a uniform manner. Some municipalities use it as a way to identify use categories in zones, while it isn't always a practical tool, it can be a good starting point for discussion. Staff found a separate listing for Business Services (Division I Services; Major Group 73) from Personal Services (Division I Services; Major Group 72). Business services are those uses that provide a service for businesses – such as advertising, credit reporting, graphic design, copying, building maintenance, equipment/computer rental, leasing and repair, computer programming, etc. Personal services are specifically geared toward the support of an individual and professional services are services provided by individuals that may be licensed by the state. Professional offices are allowing in the WB-2 zone, whereas personal services, with the exception of hair salons, are not. Business services may have a need for larger parking areas to service the delivery and pick-up of larger items, which makes it a compatible use within the WB-2 zone and the stated intent.

Over the years the city has allowed 'business service' types of uses to go into the WB-2 as we have considered them professional services, but they technically were a business service. There may be some concerns that adding business services to the list of permitted used in the WB-2 zone may pull business from the downtown, but these types of uses are already permitted the WB-1 and the WBSD. The WB-1 permits all services less than 4,000 square feet and the Business Service District (Highway 40 and Dillon/Conn Road) permits certain business services such as 'private postal and shipping' and 'printing, publishing, etc'.

An example of this type of use is the UPS store. This business has been in the WB-2 zoning district since the 1980s in various locations. It has most recently moved to a new building adjacent to the Walgreens from the mall. The UPS store provides shipping, packaging, mailing and copying services. This particular use does not neatly fit within the personal services or professional services. In addition, there are a number of other existing uses within the WB-2 district that also provide similar services to businesses so it made some sense to create a 'business service' use in this district to capture these various uses.

PROPOSAL

Staff proposes the following amendments: a definition for 'Business Services', an amendment to both Personal and Professional Services, and identifying Business Services as a permitted use in the WB-2.

Amendment #1 – add BUSINESS SERVICES to §11-9-2 and amend PERSONAL SERVICES and PROFESSIONAL SERVICES:

BUSINESS SERVICES: Uses that are primarily engaged in rendering services to business establishments on a contract or fee basis. Such uses include advertising, bookkeeping, building service, credit reporting, collection of claims, computer services, data processing, graphic design, mailing, photocopying, publishing, reproduction, security, shipping, sign making, office equipment rental, lease and repair services, and other similar services. This is differentiated from uses that provide services to an individual (see definition of Personal Services) or services provided by a professional (see definition of Professional Services). Business services should not include retail sales except on an incidental basis.

PERSONAL SERVICES: A use that provides a service to an individual customer designed to accommodate a specialized need, provide a convenience, or cater to a particular lifestyle. Such services shall be those types that require mechanical skill or manual dexterity, as differentiated from mental disciplines generally requiring licensing or certification such as those listed under professional services (see definition of Professional Services) and services provided primarily to business such as those listed under business services (see definition of Business Services). Examples of personal services would include, but are not limited to: delivery and pick up, catering, event planning, recreational guiding and outfitting, personal training, tattoo, and personal spa and grooming services such as manicure, facial, hairstylists, and makeup consulting. Personal services should not involve retail sales except on an incidental basis such as the selling of hair products at a salon.

PROFESSIONAL SERVICES: Conduct of a service business which is commonly identified as a profession and which may be licensed by the state. Such services include engineers, architects, planners, surveyors, designers, lawyers, accountants, real estate brokers, insurance agents, dentists, physical therapists, massage therapists, chiropractors, or physicians. Additionally, accounting, journalism, research, editing, administration or analysis; the conduct of a business by salespersons, sales representatives or manufacturer's representatives, or the conduct of business by professionals is included. Professional services do not include veterinarians, showrooms, manufacturing, repair, testing, retail sales, the storage, sale or delivery of goods located on the premises, or other occupations requiring physical skill such as those found under personal services (see definition of Personal Services) and services provided

primarily to business such as those listed under business services (see definition of Business Services).

Amendment #2 – add the following permitted use to §11-2K-2:

- Business Services.

REVIEW AND FINDINGS OF FACT

The proposed changes shall be evaluated based on the criteria for consideration for amendments to the provisions of the Zoning Regulations per Section 11-7-12E.

1. Zoning Regulations Must Be:
a. Made in Accordance with a Growth Policy

Finding 1: The Growth Policy promotes a diversification of the economy. Providing opportunities for a variety of uses supports this diversification; therefore, the proposed amendment is in accordance with the Growth Policy.

b. Designed to:
i. Secure safety from fire and other dangers

Finding 2: The proposed code amendment is unrelated to securing safety from fire and other dangers.

ii. Promote public health, public safety and general welfare

Finding 3: The proposed amendments promote public health, public safety and general welfare by providing additional compatible uses within the zoning district.

iii. Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements

Finding 4: The proposed code amendment has no impact on the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.

2. In the adoption of zoning regulations, the city shall consider:
a. Reasonable provision of adequate light and air

Finding 5: The proposed code amendment is unrelated to reasonable provisions of adequate light and air.

b. The effect on motorized and nonmotorized transportation systems

Finding 6: The proposed code amendment has no impact on motorized and nonmotorized transportation systems.

c. Promotion of compatible urban growth

Finding 7: The proposed code amendment has no impact on compatible urban growth.

d. The character of the district and its particular suitability of the property for the particular uses

Finding 8: The character of the district and its particular suitability of the property for the particular use is not applicable to this code amendment as it pertains more to site development than community wide zoning regulations. However, the district is characterized by larger lots with large parking areas suitable to the 'Business Services' use. In addition, the Purpose and Intent of the zoning chapter describes the WB-2 as a district intended for 'services'.

e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area; and

Finding 9: The proposed code amendments do not affect the value of buildings.

f. That historical uses and established uses patterns and recent change in use trends will be weighed equally and consideration not be given one to the exclusion of the other.

Finding 10: This criterion is not applicable to this code amendment as it pertains more to site development than community wide zoning regulations.

ADDITIONAL FINDINGS

Finding 11: Staff finds the considerations in Section 11-7-12(E) are either met or are not applicable;

Finding 12: Whereas, legal public notice according to the Whitefish City Code was published in the *Daily Interlake* on February 5, 2014;

Finding 13: Whereas, staff sent a notice February 5, 2014 to twenty-three (23) reviewing agencies, departments and other service providers regarding the zoning regulation update.

We find it is in the best interest of the City of Whitefish to amend the Secondary Business District (WB-2) to add business services as permitted use, add a definition of Business Services and amend Personal Services and Professional Services.

OVERALL RECOMMENDATION

Staff recommends the Planning Board **approve** the recommendations set forth in the staff report to amend §11-2K-2 and §11-9-2 of the Zoning Regulations and adopt the findings of fact and transmit same to the Whitefish City Council for further action.

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MANAGER REPORT

February 26, 2014

EARLY INDICATION FROM MMIA ON MEDICAL INSURANCE RATE INCREASES FOR FY15

We received a memo from the Montana Municipal Interlocal Authority, our insurance provider, about the early indications for rate increases on medical insurance for FY15, the next budget year. The memo is attached to this report in the packet, but their early indications are that medical insurance increases will be in the range of 5-8% and dental and vision insurance may not require any increases in the premiums. This information is very preliminary and could change in the next two months, but it is pretty good news. Last year's rate increase was 5% for medical insurance with no rate increases for dental or vision insurance.

MEETINGS

BBER Economic Outlook (2/14) – I attended the annual Economic Outlook Seminar in Kalispell which the University of Montana's Bureau of Business and Economic Research puts on each year. They are generally upbeat about economic growth for Flathead County and the State of Montana next year. Three of the most significant pages from the presentations are attached to this report in the packet.

UPCOMING SPECIAL EVENTS

REMINDERS

Respectfully submitted,

Chuck Stearns, City Manager

MEMORANDUM

TO: MMIA Employee Benefit Program Member Entities

FROM: Amanda Clark, MMIA EB Program Manager

DATE: February 14, 2014

RE: Early EB Rate Adjustment Indication for 2014-2015

The MMIA Employee Benefits Program will establish the preliminary rates for our medical, dental and vision plans at the beginning of April and will release the final rates for these plans at the beginning of May. Because the MMIA EB Program Agreements require notification of withdrawal no later than March 1st, we are providing an early indication of our estimated rate adjustment for the upcoming 2014-2015 coverage year, based on the most current claim data.

Based on claims data through January 31st, it appears that a rate adjustment between 5-8% for the medical plans is possible for the upcoming policy year. However, final rates will be set using claims data through March 31st. This additional two months of data could impact final rates either positively or negatively. This indication is our best guess, based upon incomplete data, of where rates could end up for next year. At this time, the dental and vision programs do not appear to require any rate adjustment for the 2014-2015 coverage year. These rate indications are non-binding and are meant only to provide preliminary information for early decision making.

Per the Employee Benefits Program Agreements, each participating member commits to participating in the program for five years. After that initial commitment, a member entity automatically renews their participation in the program for each succeeding coverage year, unless the member provides written notice of their desire to withdraw from the program at least 120 days notice prior to the start of the next coverage year. This means that a member that has participated for at least five years and wishes to withdraw from the program as of June 30 must send written notice to the MMIA Board of Directors by March 1st. Any member that does withdraw from the program will not be eligible to apply to rejoin the program for a period of three years. Final rates are set after any notifications of withdrawal have been received, so that the actuary can rate appropriately, including the impact of changed participation levels.

Please also note, Open Enrollment for the program will be from May 15th to June 16th. This time period is the opportunity for employees to elect coverage changes, such as adding or dropping a dependent. If your entity allows individuals to choose between plan options, employees may also change their plan elections at this time. Prior to the start of Open Enrollment, your entity may also elect different benefit plan choices to offer your employees. You may choose to open up the medical plans to individual selection, or perhaps change the dental plan offered to the group. We will send out group election forms for your benefit selections along with preliminary rates at the beginning of April. Please keep an eye out for further information on open enrollment from us as well. Please feel free to contact me if you have any questions regarding the benefit plan choices available to your entity.

The Employee Benefits Program Agreement can be found on our website at www.mmia.net, under the Employee Benefits tab and then the Program Documents tab. Please let me know if you have any further questions regarding program participation, the 2014-2015 coverage year, or open enrollment.

Flathead County

Climbing Out of the Recession Hole

Paul E. Polzin, Director Emeritus, Bureau of Business and Economic Research

The Great Recession hit the Flathead economy hard. But, unlike some other parts of western Montana, the Flathead economy recovered quickly and is now growing moderately. Beginning in 2008, the Flathead economy was pummeled by:

- a one-third decline in construction activity;
- significant layoffs in the wood products industry;
- a sizable drop of nonresident visitors;
- the mothballing of the aluminum refinery; and,
- shift reductions and layoffs at the major high-tech manufacturing plant.

After two years of declines, including an almost 10 percent decrease in 2009, the Flathead economy posted 1 percent to 3 percent growth each year from 2010 to 2013.

To a large extent, the recent growth was due to reversals of the recession-caused declines. For example:

- Construction has begun to inch upward, but has a long way to go before regaining pre-recession levels.
- The rekindling of home building nationwide is slowly bringing the wood products industry back to life.
- The improved U.S. economy means that people are once again traveling.
- Better worldwide economic trends have improved conditions in high-tech manufacturing.

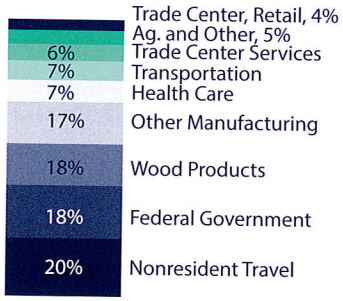
Flathead County Profile	
Total Population, 2013	93,100
Percent Change in Population, 2012-2013	1.6%
Median Age, 2012	41.4
Percent 65 or Older, 2012	15.0%
Percent of Population with Bachelor's Degree or Higher, 2012	19.7%
Median Household Income, 2012	$44,734
Percent of Population without Health Insurance Coverage, 2012	22.1%
Unemployment Rate, November 2013	7.3%
Lived in a Different House in 2011	9.1%

Sources: American Community Survey, U.S. Census Bureau; Research and Analysis Bureau, Montana Department of Labor and Industry.

The emergence of Kalispell as a regional trade and service center has added an additional dimension to the economic base of Flathead County. The additional retail opportunities along North 93 have not only attracted nonresident shoppers but also mean that locals do not need to travel to Missoula or Spokane to find diversity. The most recent data suggest that the health care industry now attracts more dollars than it sends to other medical centers, such as Missoula and Great Falls. There is some evidence that more Canadians are crossing the border for elective procedures.

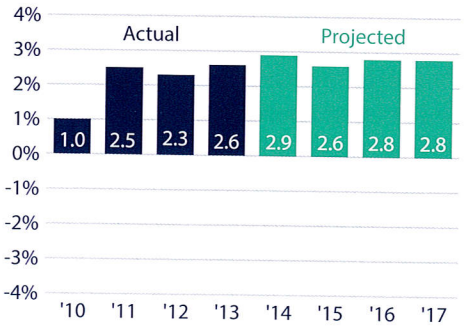
The Flathead outlook incorporates continued improvement in home construction (although not a return to pre-recession levels), a gradual increase in wood products as workers return and hours increase, and continuation of worldwide market trends for high-tech products. Nonresident travel will also respond to the growing U.S. economy. Nonfarm labor income is projected to increase about 2.9 percent in 2014 and then continue to grow at an average of slighltly less than 3 percent per year from 2015 to 2017. 14

Figure 1
Earnings in Basic Industries, Flathead County, 2011-2013, Percent of Total



Sources: Bureau of Business and Economic Research, University of Montana; Bureau of Economic Analysis, U.S. Department of Commerce.

Figure 2
Actual and Projected Change in Nonfarm Earnings, Flathead County, 2010-2017

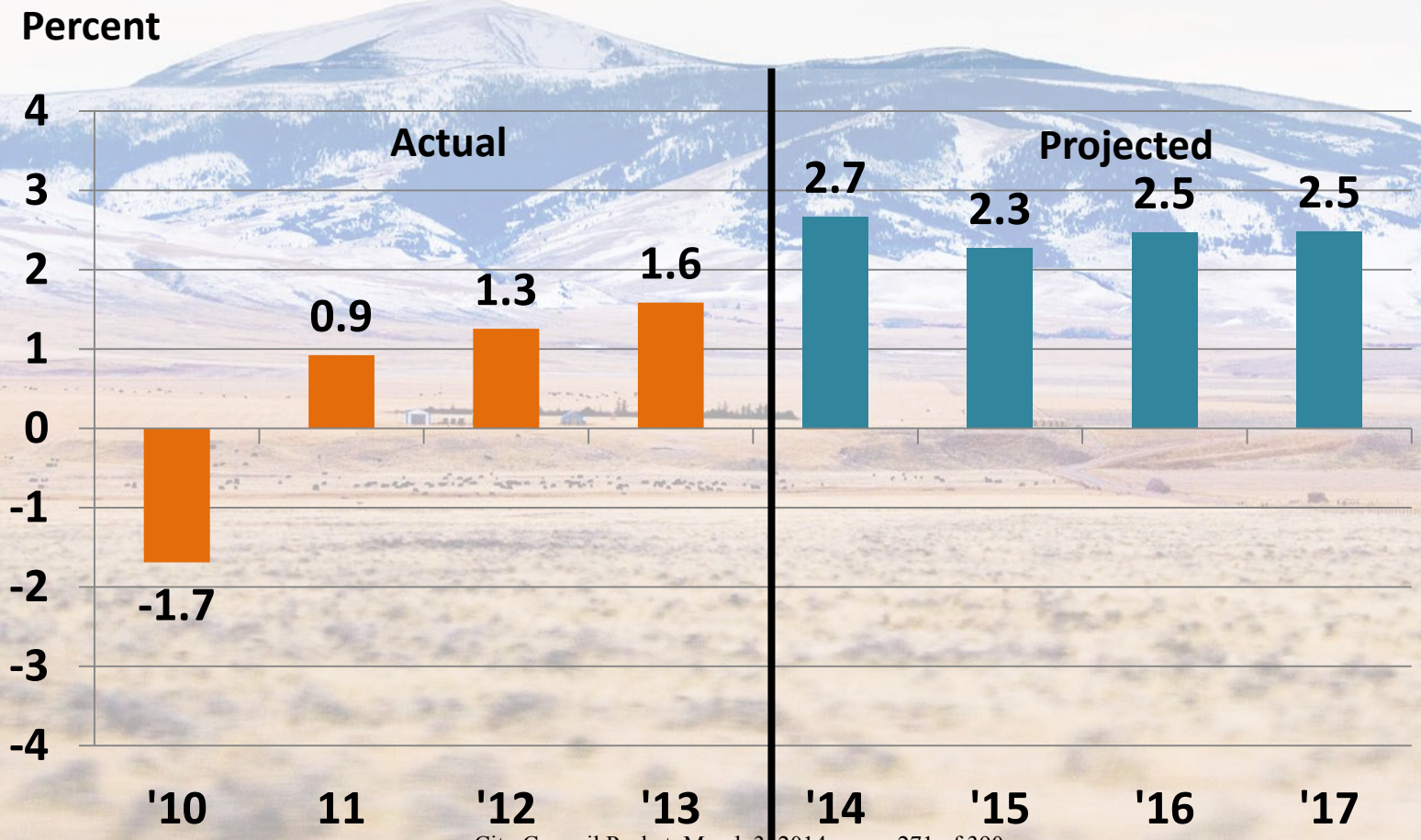


Sources: Bureau of Business and Economic Research, University of Montana; Bureau of Economic Analysis, U.S. Department of Commerce.

Flathead County's Economic Base 2012-2014

Trade Center-Retail	4%	Canadians??
Ag. and Other	5%	
Trade Center-Services	6%	Moderate Growth
Transportation	7%	Energy Growth
Health Care	8%	Now Basic Industry
Other Manufacturing	15%	Positive Signs
Wood Products	15%	Rebound Beginning
Federal Government	19%	Stable at Best
Nonresident Travel	21%	Moderate Growth
Construction		Solid Rebound

Actual and Projected Change in Nonfarm Earnings, Flathead County, 2010-2017



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(GENERAL FUND LOAN)

RESOLUTION AUTHORIZING PARTICIPATION IN THE INTERCAP PROGRAM

CERTIFICATE OF MINUTES RELATING TO
RESOLUTION NO._____

Issuer: City of Whitefish

Kind, date, time and place of meeting: A _____ meeting held on _____ at ____o'clock ___.m. in _____, Montana.

Members present: _____

Members absent: _____

RESOLUTION NO. _____

RESOLUTION AUTHORIZING PARTICIPATION IN THE BOARD OF INVESTMENTS OF THE STATE OF MONTANA ANNUAL ADJUSTABLE RATE TENDER OPTION MUNICIPAL FINANCE CONSOLIDATION ACT BONDS (INTERCAP REVOLVING PROGRAM), APPROVING THE FORM AND TERMS OF THE LOAN AGREEMENT AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATED THERETO

I, the undersigned, being the fully qualified and acting recording officer of the public body issuing the obligations referred to in the title of this certificate, certify that the documents attached hereto, as described above, have been carefully compared with the original records of the public body in my legal custody, from which they have been transcribed; that the documents are a correct and complete transcript of the minutes of a meeting of the governing body at the meeting, insofar as they relate to the obligations; and that the meeting was duly held by the governing body at the time and place and was attended throughout by the members indicated above, pursuant to call and notice of such meeting given as required by law.

WITNESS my hand officially as such recording officer this ____ day of _____, 2014.

By _____
Its _____

RESOLUTION NO. _____

RESOLUTION AUTHORIZING PARTICIPATION IN THE BOARD OF INVESTMENTS OF THE STATE OF MONTANA ANNUAL ADJUSTABLE RATE TENDER OPTION MUNICIPAL FINANCE CONSOLIDATION ACT BONDS (INTERCAP REVOLVING PROGRAM), APPROVING THE FORM AND TERMS OF THE LOAN AGREEMENT AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATED THERETO

BE IT RESOLVED BY THE _____ (the Governing Body) OF THE CITY OF WHITEFISH (the Borrower) AS FOLLOWS:

ARTICLE I

DETERMINATIONS AND DEFINITIONS

Section 1.01. Definitions. The following terms will have the meanings indicated below for all purposes of this Resolution unless the context clearly requires otherwise. Capitalized terms used in this Resolution and not defined herein shall have the meanings set forth in the Loan Agreement.

Adjusted Interest Rate means the rate of interest on the Bonds determined in accordance with the provisions of Section 3.03 of the Indenture.

Authorized Representative shall mean the officers of the Borrower designated and duly empowered by the Governing Body and set forth in the application.

Board shall mean the Board of Investments of the State of Montana, a public body corporate organized and existing under the laws of the State and its successors and assigns.

Board Act shall mean Section 2-15-1808, Title 17, Chapter 5, Part 16, MCA, as amended.

Bonds shall mean the Bonds issued by the Board pursuant to the Indenture to finance the Program.

Borrower shall mean the Borrower above named.

Indenture shall mean that certain Indenture of Trust dated March 1, 1991 by and between the Board and the Trustee pursuant to which the Bonds are to be issued and all supplemental indentures thereto.

Loan means the loan of money by the Board to the Borrower under the terms of the Loan Agreement pursuant to the Act and the Borrower Act and evidenced by the Note.

Loan Agreement means the Loan Agreement between the Borrower and the Board, including any amendment thereof or supplement thereto entered into in accordance with the provisions thereof and hereof.

Loan Agreement Resolution means this Resolution or such other form of resolution that the Board may approve and all amendments and supplements thereto.

Loan Date means the date of closing a Loan.

Loan Rate means the rate of interest on the Loan which is initially 1.00% per annum through February 15, 2014 and thereafter a rate equal to the Adjusted Interest Rate on the Bonds and up to 1.5% per annum as necessary to pay Program Expenses.

Note means the promissory note to be executed by the Borrower pursuant to the Loan Agreement, in accordance with the provisions hereof and thereof, in substantially the form set forth in the Promissory Note, or in such form that may be approved by the Board.

Program shall mean the INTERCAP Program of the Board pursuant to which the Board will issue and sell Bonds and use the proceeds to make loans to participating Eligible Government Units.

Project shall mean those items of equipment, personal or real property improvements to be acquired, installed, financed or refinanced under the Program as set forth in the Description of the Project/Summary of Draws.

Security Instrument means a security agreement in substantially the form set forth, and, a Uniform Commercial Code financing statement, in a form acceptable to the Board and the Trustee granting a security interest in, or a lien on, the property constituting the Project or other real or personal properties added to or substituted therefor.

Trustee shall mean U. S. Bank National Association (formerly known as First Trust Company of Montana National Association) and its successors.

Section 1.02. Authority. The Borrower is authorized to undertake the Project and is further authorized by the Borrower Act to enter into the Loan Agreement for the purpose of obtaining a loan to finance or refinance the acquisition and installation costs of the Project.

Section 1.03. Execution of Agreement and Delivery of Note. Pursuant to the Indenture and the Board Act, the Board has issued and sold the Bonds and deposited a part of proceeds thereof in the Loan Fund held by the Trustee. The Board has, pursuant to the Term Sheet, agreed to make a Loan to the Borrower in the principal amount of $155,597.00 and upon the further terms and conditions set forth herein, and as set forth in the Term Sheet and the Loan Agreement.

ARTICLE II

THE LOAN AGREEMENT

Section 2.01. Terms. (a) The Loan Agreement shall be dated as of the Loan Date, in the principal amount of $155,597.00 and shall constitute a valid and legally binding obligation of the Borrower. The obligation to repay the Loan shall be evidenced by a Promissory Note. The Loan shall bear interest at the initial rate of 1.00% per annum through February 15, 2014 and thereafter at the Adjusted Interest Rate, plus up to 1.5% per annum as necessary to pay the cost of administering the Program (the Program Expenses). All payments may be made by check or wire transfer to the Trustee at its principal corporate trust office.

(b) The Loan Repayment Dates shall be February 15 and August 15 of each year.

(c) The principal amount of the Loan may be prepaid in whole or in part provided that the Borrower has given written notice of its intention to prepay the Loan in whole or in part to the Board no later than 30 days prior to the designated prepayment date.

(d) The Prepayment Amount shall be equal to the principal amount of the Loan outstanding, plus accrued interest thereon to the date of prepayment.

(e) Within fifteen days following an Adjustment Date, the Trustee shall calculate the respective amounts of principal and interest payable by each Borrower on and with respect to its Loan Agreement and Note for the subsequent August 15 and February 15 payments, and prepare and mail by first class mail a statement therefor to the Borrower.

Section 2.02. Use and Disbursement of the Proceeds. The proceeds of the Loan will be expended solely for the purposes set forth in the Description of the Project/Summary of Draws. The proceeds from the sale of the Note to the Board shall remain in the Borrower's Account pending disbursement at the request of the Borrower to pay the budgeted expenditures in anticipation of which the Note was issued. Requests for disbursement of the Loan shall be made to the Board. Prior to the closing of the Loan and the first disbursement, the Borrower shall have delivered to the Trustee a certified copy of this Resolution, the executed Loan Agreement and Note in a form satisfactory to the Borrower's Counsel and the Board's Bond Counsel and such other certificates, documents and opinions as set forth in the Loan Agreement or as the Board or Trustee may require. The Borrower will pay the loan proceeds to a third party within five business days after the date they are advanced (except for proceeds to reimburse the Borrower for previously paid expenditures, which are deemed allocated on the date advanced).

Section 2.03. Payment and Security for the Note. In consideration of the making of the Loan to the Borrower by the Board, the provisions of this Resolution shall be a part of the Agreement of the Borrower with the Board. The provisions, covenants and Agreements herein set forth to be performed by or on behalf of the Borrower shall be for the benefit of the Board. The Loan Agreement and Note shall constitute a valid and legally binding obligation of the Borrower and the principal of and interest on the Loan shall be payable from the general fund of the Borrower, and any other money and funds of the Borrower otherwise legally available therefor. [The repayment of the Loan shall be secured by a security interest in the Project being financed.] The Borrower shall enforce its rights to receive and collect all such taxes and revenues to insure the prompt payment of the Borrower obligations hereunder.

Section 2.04. Representation Regarding the Property Tax Limitation Act. The Borrower recognizes and acknowledges that the amount of taxes it may levy is limited by the state pursuant to Section 15-10-402, et. seq. (the Property Tax Limitation Act). The Borrower is familiar with the Property Tax Limitation Act and acknowledges that the obligation to repay the Loan under the Agreement and Note are not exceptions to the provisions of the Property Tax Limitation Act. The Borrower represents and covenants that the payment of principal of and interest on the Loan can and will be made from revenues available to the Borrower in the years as they become due, notwithstanding the provisions of the Property Tax Limitation Act.

Section 2.05. Levy and Appropriate Funds to Repay Loan. The Borrower agrees that in order to meet its obligation to repay the Loan and all other payments hereunder that it will budget, levy taxes for and appropriate in each fiscal year during the term of the Loan an amount sufficient to pay the principal of and interest hereon within the limitations of the Property Tax Limitation Act, as may be amended, and will reduce other expenditures if necessary to make the payments hereunder when due.

ARTICLE III

CERTIFICATIONS, EXECUTION AND DELIVERY

Section 3.01. Authentication of Transcript. The Authorized Representatives are authorized and directed to prepare and furnish to the Board and to attorneys approving the validity of the Bonds, certified copies of this Resolution and all other resolutions and actions of the Borrower and of said officers relating to the Loan Agreement, the Note, the Security Agreement and certificates as to all other proceedings and records of the Borrower which are reasonably required to evidence the validity and marketability of the Note. All such certified copies and certificates shall be deemed the representations and recitals of the Borrower as to the correctness of the statements contained therein.

Section 3.02. Legal Opinion. The attorney to the Borrower is hereby authorized and directed to deliver to the Board at the time of Closing of the Loan his or her opinion regarding the Loan, the Loan Agreement, the Note and this Resolution in substantially the form of the opinion set forth in the Attorney's Opinion.

Section 3.03. Execution. The Loan Agreement, Note, Security Agreement and any other document required to close the Loan shall be executed in the name of the Borrower and shall be executed on behalf of the Borrower by the signatures of the Authorized Representatives of the Borrower.

PASSED AND APPROVED by the _____ this _____ day of _____, 2014.

By _____
Its Mayor

Attest:

By _____
Its City Clerk

MEMORANDUM
#2014-006

To: Mayor John Muhlfeld
City Councilors

From: Chuck Stearns, City Manager

Re: Staff Report – Resolution for Intercap Loan for Fire Ambulance

Date: February 20, 2014

Introduction/History

This year's budget anticipated purchasing a new Fire Ambulance and financing it through the State of Montana INTERCAP program. The INTERCAP financing program provides short term financing (up to 10 years) for capital equipment and other capital assets with a variable interest rate which is reset each February. The current interest rate is 1.00% which is a very good interest rate and for the ambulance we are doing a five year loan.

On May 20, 2013, the City Council awarded the contract for the purchase of the ambulance to Braun NW up to the amount of $155,597. The ambulance was delivered last December and is currently in use. The final cost of the ambulance was $153,780. The loan amount is still $155,597, but we will only draw and use the $153,780.

Current Report

The INTERCAP program has approved our application and sent us the documents which we need to execute for the loan. The documents enclosed in the packet are:

1. A Resolution authorizing the loan
2. A Loan Agreement
3. A Promissory Note
4. A Security Agreement

City Attorney Mary VanBuskirk and I have reviewed these documents and found them to be in order.

Financial Requirement/Impact

For the next five years, each year's budget will have to include approximately $30,000 - $32,000 per year (decreasing as the principal balance is paid off) to repay this loan. Our first payment will not be until next year's budget, FY15, because we have already passed the two, semi-annual debt payments dates for FY14.

Recommendation

Staff respectfully recommends the City Council approve Resolution No. 14-___; A Resolution authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (Intercap Revolving Program), Approving the form and terms of the loan agreement and authorizing the execution and delivery of documents related thereto – Fire Ambulance (p.)

Loan #2545

LOAN AGREEMENT

between

BOARD OF INVESTMENTS
OF THE STATE OF MONTANA

as Lender

and

CITY OF WHITEFISH

as Borrower

DATE OF AGREEMENT: March 14, 2014

LOAN AMOUNT: ONE HUNDRED FIFTY-FIVE THOUSAND FIVE HUNDRED NINETY-SEVEN AND 00/100 DOLLARS ($155,597.00)

ADDRESS OF BORROWER:
City of Whitefish
418 E 2nd Street
Whitefish, MT 59937

CONTACT PERSON OF BORROWER:

NAME	John Muhlfeld
TITLE	Mayor
TELEPHONE	(406) 863-2400
FACSIMILE	(406) 863-2419
E-MAIL	Jmuhlfeld@cityofwhitefish.org

ALTERNATE CONTACT PERSON

NAME	Charles Stearns
TITLE	City Manager
TELEPHONE	(406) 863-2405
FACSIMILE	(406) 863-2419
E-MAIL	cstearns@cityofwhitefish.org

STATUTORY AUTHORITY FOR BORROWING: 7-7-4101, and 7-16-4104, 7-5-4306, M.C.A.

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This Loan Agreement (the "Agreement") dated as of March 14, 2014, and entered into between the Board of Investments of the State of Montana (the "Board"), a public body corporate and instrumentality of the state of Montana, and City of Whitefish ("the Borrower"), a political subdivision of the State of Montana;

WITNESSETH:

WHEREAS, pursuant to Section 2-15-1808, Montana Code Annotated and Title 17, Chapter 5, Part 16, Montana Code Annotated (the "Act") and in accordance with the Indenture of Trust, dated as of March 1, 1991, between the Board and U. S. Bank National Association (formerly known as First Trust Company of Montana National Association) (the "Trustee"), has established its INTERCAP Revolving Program pursuant to which the Board will issue, from time to time, its Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program) (the "Bonds"), for the purpose of making loans to Eligible Government Units to finance or refinance the acquisition and installation of equipment, personal and real property improvements, to provide temporary financing of projects or for other authorized corporate purposes of an Eligible Government Unit (the "Projects"); and

WHEREAS, the Board has agreed to loan part of the proceeds of an issue of such Bonds to the Borrower in the amount of $155,597.00, and the Borrower has agreed to borrow such amount from the Board, subject to the terms and conditions of and for the purposes set forth in this Agreement; and

WHEREAS, the Borrower is authorized under the laws of the State of Montana, and has taken all necessary action, to enter into this Agreement for the Project as identified in the Description of the Project/Summary of Disbursements attached hereto.

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

ARTICLE I. DEFINITIONS AND RULES OF INTERPRETATION.

Section 1.01. Definitions

The following terms will have the meanings indicated below for all purposes of this Agreement unless the context clearly requires otherwise. Capitalized terms used in this Agreement and not defined herein shall have the meanings set forth in the Indenture.

"Act" means Section 2-15-1808, Montana Code Annotated and Title 17, Chapter 5, Part 16, Montana Code Annotated as now in effect and as it may from time to time hereafter be amended or supplemented.

"Adjusted Interest Rate" shall mean the interest rate on the Loan determined and established pursuant to the Promissory Note hereto and the Loan Agreement or Bond Resolution.

"Adjustment Date" means the Initial Adjustment Date or a Subsequent Adjustment Date.

"Adjustment Period" means the period beginning on an Adjustment Date and ending on the day before the next succeeding Adjustment Date.

"Amortization Schedule" means the schedule prepared for a loan advance to the Borrower showing the principal amount advanced, the amortization of the principal, and the interest and principal payments due to the Subsequent Interest Adjustment Date.

"Authorized Representative" shall mean the officers of the Borrower designated by the Governing Body and set forth in the Application and signed on behalf of the Borrower by a duly authorized official.

"Board" means the Board of Investments of the State of Montana, a public body corporate organized and existing under the laws of the State and its successors and assigns.

"Bonds" means the Board of Investments of the State of Montana's Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program) authorized to be issued for the Program.

"Borrower" means City of Whitefish, the Eligible Government Unit, which is borrowing and using the proceeds of the Loan to finance, refinance or be reimbursed for, all or a portion of the Cost of the Total Project.

"Borrower Act" means 7-7-4101, and 7-16-4104, 7-5-4306 , the section of Montana Code Annotated that authorizes an Eligible Government Unit to borrow money on terms consistent with the Program.

"Borrower Resolution" means a resolution, duly and validly adopted by a Borrower authorizing the execution and delivery to the Board of an Agreement and Note, in substantially the form provided, or such other form of Resolution that the Board may approve and all amendments and supplements thereto.

"Commencement Date" means March 14, 2014, the date of the Agreement when the term of this Agreement begins and the obligation of the Borrower to make Loan Repayments begins to accrue.

"Counsel" means an attorney or firm of attorneys duly admitted to practice law before the highest court of any state.

"Default" means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

"Eligible Government Unit" shall mean any municipal corporation or political subdivision of the state, including without limitation any city, town, county, school district, or other special taxing district or assessment or service district authorized by law to borrow money or any board, agency, or department of the state, or the board of regents of the Montana university system when authorized by law to borrow money.

"Event of Default" means any occurrence or event described in Article X hereof.

"Fiscal Year" means the fiscal year of the Borrower beginning on July 1 and ending June 30.

"Governing Body" shall mean (i) with respect to a county, the Board of County Commissioners, (ii) with respect to a city, the City Council or Commission, and (iii) with respect to a school district, county water or sewer district, hospital district, rural fire district, or any other special purpose district, the Board of Trustees.

"Indenture" means that certain Indenture of Trust, dated as of March 1, 1991, by and between the Board and the Trustee, as originally executed or as it may from time to time be supplemented, modified or amended in accordance with its terms.

"Initial Adjustment Date" means the first February 16 following the date of the Agreement.

"Initial Interest Rate" means the Loan Rate from the date of the Agreement to the Initial Adjustment Date.

"Loan" means the loan of money by the Board to the Borrower under the terms of this Agreement pursuant to the Act and the Borrower Act, evidenced by the Note.

"Loan Agreement" or "Agreement" means this Agreement, including, the attachments hereto, and the Security Instrument, if any, as originally executed or as they may from time to time be supplemented, modified or amended in accordance with the terms hereof and of the Indenture.

"Loan Date" means the date of closing a Loan.

"Loan Rate" means the rate of interest on the Loan as provided for in Section 5.01 of this Agreement.

"Loan Repayment Date" means February 15th and August 15th or, if any such day is not a Business Day, the next Business Day thereafter, during the term of the Loan.

"Loan Repayments" means the payments payable by the Borrower pursuant to Article V of this Agreement.

"Loan Term" means the term provided for in Article VI of this Agreement.

"Maximum Interest Rate" means the maximum rate of interest on the Bonds which shall not exceed fifteen percent (15%) per annum.

"Note" means the promissory note executed and delivered by the Borrower attached hereto and made a part hereof.

"Program" means the Board's INTERCAP Program established under the Act and pursuant to which the Board finances Projects for Eligible Government Units.

"Program Expenses" means the expenses of the Program, including (without limitation) the fees and expenses of the Trustee and such other fees and expenses of the Program or of the Board relating thereto as shall be approved by the Board.

"Project" means those items of equipment, personal or real property improvements to be acquired, installed, financed or refinanced under the Program and set forth in the Description of the Project/Summary of Disbursements attached hereto.

"Project Costs" shall mean the portion of the costs of the Total Project to be financed by the INTERCAP Loan. The Project Costs may not exceed the Loan Amount as set forth on the cover hereof.

"Security Instrument" means a Security Agreement in substantially the form set forth hereto, and, a Uniform Commercial Code financing statement, in a form acceptable to the Board and the Trustee granting a security interest in, or a lien on, the property constituting the Project or other real or personal properties added to or substituted therefor.

"Series Supplemental Indenture of Trust" means a Supplemental Indenture of Trust authorizing the issuance of an additional series of bonds in accordance with the provisions of the Indenture.

"State" means the state of Montana.

"Subsequent Interest Adjustment Date or Subsequent Adjustment Date" means February 16 in the years the Loan remains outstanding.

"Term Sheet" shall mean the document containing the terms and conditions issued by the Board to the Borrower that must be satisfied prior to entering into a Loan Agreement.

"Term Sheet Issuance Date" means the date the Board executes its Term Sheet under the Board's Program.

"Total Project" shall mean the project as described in Section 14 of the Term Sheet and/or Section 2 of the application, of which some or all is to be financed by the INTERCAP Loan.

"Total Project Costs" shall mean the entire cost of acquiring, completing or constructing the project as further described in Section 14 of the Terms & Conditions Sheet and/or Section 2 of the application.

"Trustee" means the U. S. Bank National Association (formerly known as First Trust Company of Montana National Association), a corporation organized and existing under the laws of the United States, or its successor as trustee as provided in the Indenture.

Section 1.02. Rules of Interpretation.

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) "This Agreement" means this instrument as originally executed and as it may from time to time be modified or amended.

(b) All references in this instrument to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words "herein", "hereof", "hereunder", and "herewith" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles.

(e) The terms defined elsewhere in this Agreement shall have the meanings therein prescribed for them.

(f) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter gender.

(g) The headings or captions used in this Agreement are for convenience of reference only and shall not define or limit or describe any of the provisions hereof or the scope or intent hereof.

(h) This Agreement shall be construed in accordance with the laws of the State.

Section 1.03. Attachments

The following are attachments and a part of this Agreement:

Description of the Project/Summary of Disbursements.
Borrower's Draw Certificate.
Promissory Note.
Opinion of Borrower's Counsel.
Certificate of Appropriation (if applicable).
Form of Security Instrument (if applicable).

ARTICLE II. REPRESENTATIONS, COVENANTS AND WARRANTIES OF BORROWER.

Section 2.01. Representations and Warranties.

Borrower represents and warrants for the benefit of the Board, the Trustee and the Bondholders as follows:

(a) Organization and Authority. The Borrower:

(1) is a political subdivision of the State of Montana; and

(2) has complied with all public bidding and other State and Federal laws applicable to this Agreement and the acquisition or installation of the Project.

(b) Full Disclosure. There is no fact that the Borrower has not disclosed to the Board or its agents in writing that materially adversely affects or (so far as the Borrower can now foresee), except for pending or proposed legislation or regulations that are a matter of public information affecting the ability of the Borrower to levy property taxes, collect fees and charges for services provided by the Borrower or otherwise receive revenues, that will materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the Borrower or the ability of the Borrower to make all repayments and otherwise perform its obligations under this Agreement, the Note, and the Security Instrument.

(c) Pending Litigation. There are no proceedings pending, or to the knowledge of the Borrower threatened against or affecting the Borrower in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the Borrower, or the ability of the Borrower to make all Loan Repayments and otherwise perform its obligations under this Agreement, the Note, and the Security Instrument, and that have not been disclosed in writing to the Board.

(d) Borrowing Legal and Authorized. The transaction provided for in this Agreement, the Note, and the Security Instrument:

(1) are within the powers of the Borrower and have been duly authorized by all necessary action on the part of the Borrower, including the adoption of a resolution substantially in the form provided hereto with such modification as may be provided by the Board; and

(2) 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 indenture, loan agreement or other instrument (other than this Agreement, the Note, and the Security Instrument) to which the Borrower is a party or by which the Borrower may be bound, nor will such action result in any violation of the provisions of any state laws, or ordinances or resolutions of the Borrower; and

(3) the amount of the Loan represented hereby has been added to the amount of all other outstanding debt of the Borrower and together therewith does not result in the Borrower exceeding its statutory debt limitation.

(e) No Violation. No event has occurred and no condition exists that, upon execution of this Agreement, the Note, and the Security Instrument or receipt of the Loan, would constitute a Default or an Event of Default. The Borrower is not in violation in any material respect, and has not received notice of any claimed violation, of any term of any agreement, statute, ordinance, resolution, bylaw or other instrument to which it is a party or by which it or its property may be bound.

(f) Use of Proceeds. The Borrower will apply the proceeds of the Loan solely to finance the Project Costs described in the Description of the Project/Summary of Disbursements attached hereto. In addition, the Borrower will pay the loan proceeds to a third party within five business days after the date they are advanced (except for proceeds to reimburse the Borrower for previously paid expenditures, which are deemed allocated on the date advanced). Investment of proceeds by the Borrowers within the five business day period of disbursement to a third party (except for proceeds to reimburse the Borrower for previously paid expenditures) should be in Non-AMT Obligations as that term is defined in the Board's tax certificates.

(g) Completion of the Total Project; Payment of Total Project Costs. The Borrower shall proceed diligently to complete the Total Project and to obtain the necessary funds to pay the Total Project Costs thereof. The Borrower shall pay any amount required for the acquisition, construction and equipping of the Total Project in excess of the Loan Amount as set forth on the cover hereof.

Section 2.02. Particular Covenants of Borrower.

(a) Compliance with Statutory Requirements, Competitive Bidding, Montana Labor Laws, Environmental Review, and Other Legal Requirements. The Borrower has complied with all statutory requirements, including competitive bidding and labor requirements and environmental review, applicable to the acquisition and construction of the Project.

(b) Maintenance and Use of Project. The Borrower shall maintain the Project in good condition, make all necessary renewals, replacements, additions, betterments and improvements thereto and maintain insurance with respect to the Project, its other properties and its operations in such amounts and against such risks as are customary for governmental entities such as the Borrower.

(c) Financial Reports and Audits. The Borrower shall comply with the provisions of Title 2, Chapter 7, Part 5 Montana Code Annotated and shall file with the Board financial reports and audits when such reports and audits are required to be filed by the Department of Commerce.

(d) Security Interest. The Borrower shall grant the Board a first security interest in the Project being financed by the Loan to the extent allowed by law, by executing and delivering the Security Instrument.

(e) Liens. The Borrower shall not create, incur or suffer to exist any lien, charge or encumbrance on the property constituting the Project prior to the security interest granted hereunder other than (i) any security interest or lien pursuant to a loan agreement, mortgage, deed of trust, indenture or similar financing agreement of the Borrower in force and effect as of the date of this Agreement which creates a security interest or lien in after-acquired property of the Borrower and which is approved in writing by the Board, (ii), any security interest, mortgage or deed of trust permitted in writing by the Trustee, or (iii) any security interest or lien imposed or arising by statute or operation of law.

(f) Expenses. The Borrower will, at the request of the Board, pay all expenses relating to the Loan, the Note, and the Security Instrument and this Agreement, including but not limited to:

(1) The Borrower will cause all financing statements necessary to be filed in connection with the security interest granted in the Security Instrument, if any is required hereunder, to be executed and filed, at Borrower's expense.

ARTICLE III. LOAN TO BORROWER.

Subject to the terms and conditions of this Agreement, the Board hereby agrees to loan and advance to the Borrower, and the Borrower agrees to borrow and accept from the Board, the Loan in the principal amount not to exceed $155,597.00.

ARTICLE IV. LOAN PROVISIONS.

Section 4.01. Commencement of Loan Agreement

This Agreement shall commence on the date hereof unless otherwise provided in this Agreement.

Section 4.02. Termination of Agreement.

This Agreement will terminate upon payment in full of all amounts due under this Agreement and upon the full and complete performance and payment of all of the Borrower's other obligations hereunder. Until such termination, all terms, conditions, and provisions of this Agreement shall remain in full force and effect.

Section 4.03. Term of Loan Agreement.

This Agreement shall be valid for the entire loan amount approved for one year from the Term Sheet Issuance Date. Beginning one year after the Term Sheet Issuance Date, the Board may refuse to make a loan advance if the Board determines that there has been a material adverse change in the circumstances of the Borrower.

Section 4.04. Loan Closing Submissions.

Concurrently with the execution and delivery of this Agreement, the Borrower is providing to the Board and the Trustee, the following documents (except that the Board may waive any of such documents):

(a) A certified resolution of the Borrower in form and substance substantially identical to that provided hereto; provided, however, that the Board may permit variances in such certified resolution from the form or substance of such resolution if, in the good faith judgment of the Board, such variance is not to the material detriment of the interests of the Program, the Bondholders and such certified resolutions are acceptable to the Trustee;

(b) An opinion of the Borrower's counsel in form and substance substantially identical to the Attorney's Opinion hereto; provided, however, that the Board may permit variances in such opinion from the form or substance of such Attorney's Opinion if, in the good faith judgment of the Board, such variance is not to the material detriment of the interests of the Program, the Bondholders and such opinion is acceptable to the Trustee;

(c) The executed Security Instrument, attached hereto, required by the Board, including evidence of filing of a financing statement, if any, in every office in which it is required to be filed in order to perfect the security interest of the Board in the personal property pledged pursuant to the Security Instrument;

(d) A bill, or bills of sale, construction contract or contracts, invoice or invoices, purchase order or purchase orders or other evidence satisfactory to the Board that the Project has been purchased, ordered, constructed or installed by the Borrower or that any construction has been substantially completed and that payment therefor is due and owing or, if the Borrower is to be reimbursed, that payment has been made; and for any debt being refinanced, the canceled note or other financing document or other evidence satisfactory to the Board of such refinancing;

(e) Such other closing documents and certificates as the Board may reasonably request.

Section 4.05. Initial and Subsequent Draws of Loan.

For the initial draw of the Loan, the Borrower shall deliver to the Board an executed copy of the Agreement, complete with all attachments as listed in Section 4.04 including the Note and the Agreement Resolution and other documents the Board requires.

For subsequent draws, if applicable, the Borrower shall deliver to the Board, an executed copy of a Disbursement Request and Security Instrument, if required, and any other documents the Board requires.

ARTICLE V. LOAN REPAYMENTS AND NOTE.

Section 5.01. Payment of Loan Repayments

(a) The Loan Repayment Dates shall be on February 15 and August 15 of each year with the first Loan Repayment Date determined as follows:

Date of Draw	First Loan Repayment Date	Payment Consisting of:
February 15 through April 17	August 15	Principal and Interest
April 18 through June 16	August 15	Interest only
June 17 through August 14	February 15	Principal and interest from date of draw
August 15 through October 18	February 15	Principal and Interest
October 19 through December 17	February 15	Interest only
December 18 through February 14	August 15	Principal and Interest from date of draw

(b) Borrower hereby agrees to make Loan Repayments to the Trustee on each Loan Repayment Date to be calculated by the Trustee and consisting of the sum of the following items:

(i) Principal in an amount based upon the initial Amortization Schedule, the Amortization Schedule being initially determined utilizing the Initial Interest Rate. Each advance of the principal of the Loan as shown on the Amortization Schedule shall be repaid in semiannual installments on each Loan Repayment Date commencing on the first Loan Repayment Date following the date thereof and ending on the final maturity date set forth on the Amortization Schedule. Principal payments will not be adjusted but the interest payment will be adjusted as provided in Section 5.01 hereof.

(ii) Interest for each Adjustment Period at the Loan Rate.

(c) The Loan Rate shall equal the interest rate on the Board's bonds, as determined pursuant to Section 3.03 of the Indenture, plus up to 1 1/2% per annum as is necessary to pay the Borrower's share of Program Expenses as determined by the Board. The interest rate on the Bonds shall not exceed 15% per annum.

(d) Within thirty days of the Adjustment Date the Trustee shall calculate the new interest component of the Loan Repayments and shall send a revised Amortization Schedule to the Borrower showing the amount of the Borrower's semiannual Loan Repayments.

(e) Loan Repayments may be made by check, wire transfer, or Automatic Clearing House (ACH) of funds to the Trustee.

Section 5.02. Delinquent Loan Payments.

From and after any Loan Repayment Date, until repaid, the Loan shall bear interest at a rate equal to two percent on the yield (coupon equivalent) as of the Loan Repayment Date, on United States of America Treasury Bills of a duration as close as possible to the term over which the Loan Repayment is delinquent.

Section 5.03. The Note.

On the date of this Agreement, the Borrower shall execute the attached Note. The obligations of the Borrower under the Note shall be deemed to be amounts payable under Section 5.01. Each payment made to the

Trustee pursuant to the Note shall be deemed to be a credit against the corresponding obligation of the Borrower under Section 5.01 and any such payment made to the Trustee shall fulfill the Borrower's obligation to pay such amount hereunder and under the Note.

ARTICLE VI. TERM.

The term of the Loan will be a maximum of five (5) years and the specific term for each loan draw will be set forth in the Borrower's Draw Certificate.

ARTICLE VII. OBLIGATIONS OF BORROWER UNCONDITIONAL

Section 7.01. Obligations of Borrower.

The obligations of the Borrower to make the payments required hereunder shall be absolute and unconditional without any defense or right of set off, counterclaim or recoupment by reason of any default by the Board under the Loan Agreement or under any other indebtedness or liability at any time owing to the Borrower by the Board or for any other reason.

ARTICLE VIII. FINANCIAL COVENANTS (GENERAL FUND).

Section 8.01. Representation Regarding the Property Tax Limitation Act.

The Borrower recognizes and acknowledges that the amount of taxes it may levy is limited by the state pursuant to Section 15-10-420, as amended (the Property Tax Limitation Act). The Borrower is familiar with the Property Tax Limitation Act and acknowledges that the Loan Repayments to be made under the Agreement and Note are not exceptions to the provisions of the Property Tax Limitation Act. The Borrower represents and covenants that such Loan Repayments can and will be made from revenues available to the Borrower, notwithstanding the provisions of the Property Tax Limitation Act.

Section 8.02. Levy and Appropriate Funds to Repay Loan.

The Borrower agrees that in order to meet its obligation to make the Loan Repayments and all other payments hereunder that it will budget for as authorized and appropriate from taxes or any other available sources in each fiscal year during the term of this Agreement an amount sufficient to pay the principal of and interest hereon within the limitations of the Property Tax Limitation Act and will reduce other expenditures if necessary to make the payments hereunder when due.

Section 8.03. Reports and Opinion; Inspections.

(a) The Borrower shall deliver to the Board by no later than August 15 of each year during the term of this Agreement, a certificate in substantially the form attached hereto that the Governing Body of the Borrower has budgeted and appropriated for the then current Fiscal Year an amount sufficient to make the Loan Repayments due in that Fiscal Year, as required in Article VIII hereof.

(b) The Borrower agrees to permit the Board and the Trustee to examine, visit and inspect, at any reasonable time, the property constituting the Project, and the Borrower's facilities, and any accounts, books and records, including its receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and to supply such reports and information as the Board or the Trustee may reasonably require.

ARTICLE IX. DISCLAIMER OF WARRANTIES.

THE BOARD AND ITS AGENTS MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR

FITNESS FOR ANY OR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PROJECT OR ANY PORTION THEREOF OR ANY OTHER WARRANTY WITH RESPECT THERETO. In no event shall the Board or the Trustee or their respective agents be liable for any incidental, indirect, special or consequential damages in connection with or arising out of this Agreement or the Project or the existence, furnishing, functioning or Borrower's use of the Project or any item or products or services provided for in this Agreement.

ARTICLE X. OPTION TO PREPAY LOAN.

The Borrower may prepay the Loan in whole or in part upon giving 30 days prior written notice to the Board.

If the Loan is prepaid in part, the principal amount of the Loan shall be reduced by the portion of the prepayment representing principal and the Loan shall be reamortized by ratably reducing the principal portion of each remaining Loan Repayment.

ARTICLE XI. ASSIGNMENT.

Section 11.01. Assignment by Board or Trustee.

(a) The Borrower expressly acknowledges that all right, title and interest of the Board in and to this Agreement (except for the rights of the Board to indemnification pursuant to Section 13.08 hereof) the Note, and the Security Instrument have been assigned to the Trustee, as security for the Bonds, under and as provided in the Indenture, and that if any Event of Default shall occur, the Trustee shall be entitled to act hereunder in the place and stead of the Board. In addition, the Borrower acknowledges that the Board has appointed the Trustee as servicer entitled to act hereunder in the place and stead of the Board. This Agreement, the Note, and the Security Instrument, including (without limitation) the right to receive payments required to be made by the Borrower hereunder and to compel or otherwise enforce performance by the Borrower of its other obligations hereunder, may be further assigned and reassigned in whole or in part to one or more assignees or subassignees by the Trustee at any time subsequent to their execution without the necessity of obtaining the consent of the Borrower. Forthwith upon any such assignment the Trustee shall notify the Borrower thereof.

(b) The Borrower acknowledges that payment of the Bonds does not constitute payment of the amounts due under this Agreement.

Section 11.02. Assignment by Borrower.

This Agreement may not be assigned or encumbered by the Borrower for any reason without the express written consent of the Trustee and the Board.

ARTICLE XII. EVENTS OF DEFAULT AND REMEDIES.

Section 12.01. Events of Default Defined.

If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) Failure by the Borrower to pay any Loan Repayment required to be paid hereunder at the time specified herein and the continuation of such failure for a period of three (3) days after telephonic or e-mail notice by the Trustee that such payment has not been received;

(b) Failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, other than as referred to in Section 12.01(a) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is

given to the Borrower by the Trustee, unless the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Default is corrected;

(c) Any warranty, representation or other statement by or on behalf of the Borrower contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement or in connection with the Loan, is false or misleading in any material respect;

(d) The Borrower files a petition in voluntary bankruptcy under the United States Bankruptcy Code or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under such law;

(e) The Borrower is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including without limitation a receiver, liquidator or trustee) of the Borrower or any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than 30 days;

(f) A default occurs under the Security Instrument, if any.

Section 12.02. Notice of Default.

The Borrower agrees to give the Trustee and the Board prompt written notice if any petition referred to in Section 12.01(d) is filed by the Borrower or of the occurrence of any other event or condition which constitutes a Default or an Event of Default immediately upon becoming aware of the existence thereof.

Section 12.03. Remedies on Default.

If an Event of Default referred to in Section 12.01(d) shall have occurred, the Trustee shall declare the Loan and all other amounts due hereunder to be immediately due and payable, and upon notice to the Borrower the same shall become due and payable without further notice or demand. Whenever any Event of Default referred to in Section 12.01 hereof shall have happened and be continuing, the Trustee or the Board shall have the right to take any action permitted or required pursuant to the Indenture and shall take one or any combination of the following remedial steps:

(a) Declare the Loan and all other amounts due hereunder to be immediately due and payable, and upon notice to the Borrower the same shall become immediately due and payable by Borrower without further notice or demand; and

(b) Take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its or the Board's rights hereunder, including without limitation, the appointment of a receiver as provided in the Act.

Section 12.04. Attorneys Fees and Other Expenses.

The Borrower shall on demand pay to the Board or the Trustee the reasonable fees and expenses of attorneys and other reasonable expenses incurred by either of them, or by any agency of the State selected by the Board to act on its behalf or by the Attorney General, in the collection of Loan Repayments or any other sum due or the enforcement of performance of any other obligations of Borrower upon an Event of Default.

Section 12.05. Application of Moneys.

Any moneys collected by the Board or the Trustee pursuant to Section 12.03 hereof shall be applied (a) first, to pay any attorney's fees or other fees and expenses owed by Borrower pursuant to Section 12.04 hereof; (b) second, to pay interest due on the Loan; (c) third, to pay principal due on the Loan; (d) fourth, to pay any other amounts due hereunder; and (e) fifth, to pay interest and principal on the Loan and other amounts payable hereunder but which are not due, as they become due (in the same order, as to amounts which come due simultaneously, as in (a) through (d) in this Section 12.05).

Section 12.06. No Remedy Exclusive, Waiver and Notice.

No remedy herein conferred upon or reserved to the Board or the Trustee is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Default or Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Board or the Trustee to exercise any remedy reserved to it in this Article XII, it shall not be necessary to give any notice, other than such notice as may be required in this Article XII.

ARTICLE XIII. MISCELLANEOUS.

Section 13.01. Notices.

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or five days after mailed by registered or certified mail, postage prepaid, to the Borrower at the address specified on the cover hereof and to the other parties at the following addresses:

(1) Board: Montana Board of Investments
Attn: Bond Program Office
P.O. Box 200126
Helena, Montana 59620-0126

(2) Trustee: U. S. Bank National Association
Corporate Trust Services PD-WA-T7CT
1420 Fifth Avenue, 7th Floor
Seattle, WA 98101

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

Section 13.02. Binding Effect.

This Agreement shall inure to the benefit of and shall be binding upon the Board, the Borrower and their respective successors and assigns.

Section 13.03. Severability.

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.04. Amendments, Changes and Modifications.

This Agreement may not be amended by the Board and the Borrower unless such amendment shall have been consented to in writing by the Trustee.

Section 13.05. Execution in Counterparts.

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.06. Applicable Act.

This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 13.07. Consents and Approvals.

Whenever the written consent or approval of the Board shall be required under the provisions of this Agreement, such consent or approval may be given by the Executive Director of the Board, unless otherwise provided by law or by rules, regulations or resolutions of the Board or unless delegated to the Trustee.

Section 13.08. Indemnity.

The Borrower agrees to indemnify and hold harmless the Board and the Trustee, their respective officers, employees and agents, from and against any and all losses, claims, damages, liability or expenses, of every conceivable kind, character and nature whatsoever, including, but not limited to, losses, claims, damages, liabilities or expenses (including reasonable fees for attorneys, accountants, consultants and other experts) (collectively referred to hereinafter in this Section 13.08 as "Damages") as follows:

(a) For all Damages arising out of, resulting from or in any way connected with the Loan or this Agreement, without limitation; and

(b) For all Damages arising out of, resulting from or in any way connected with the acquisition, construction, installation and operation of the Project.

Notwithstanding the foregoing, the Borrower shall have no liability for damages solely arising out of, resulting from or connected to the Loan or Agreement of any other Borrower.

Section 13.09. Waiver of Personal Liability.

No member, officer, agent or employee of the Board shall be individually or personally liable for the making of the Loan or be subject to any personal liability or accountability by reason hereof; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or by this Agreement.

Section 13.10. Captions.

The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

IN WITNESS WHEREOF, the Board has executed this Agreement by its duly authorized officers and the Borrower has caused this Agreement to be executed in its name by its duly authorized officers. All of the above occurred as of the date first above written.

BOARD OF INVESTMENTS OF THE
STATE OF MONTANA

By Julie Flynn
Its Bond Program Officer

CITY OF WHITEFISH

By John Muhlfeld
Its Mayor

WITNESS OR ATTEST:

By Necile Lorang
Its City Clerk

PROMISSORY NOTE

FOR VALUE RECEIVED, the City of Whitefish, a political subdivision organized under the laws of the state of Montana (the "Borrower"), hereby promises to pay to the order of the Board of Investments of the State of Montana (the "Board") the principal amount of ONE HUNDRED FIFTY-FIVE THOUSAND FIVE HUNDRED NINETY-SEVEN AND 00/100 DOLLARS ($155,597.00) or such lesser amount as shall actually be advanced to the Borrower under the Loan Agreement (hereinafter defined) as evidenced by the Amortization Schedule attached hereto and as annually revised by March 15 for every year the loan advance is outstanding, together with interest thereon in the amount calculated as provided in the Loan Agreement, payable semiannually on February 15 and August 15 in the amounts and as provided in the Loan Agreement and as set forth hereto.

The maturity date of this loan as evidenced by this Promissory Note is February 15, 2019 or sooner at the option of the Borrower pursuant to the Loan Agreement.

This Promissory Note is issued pursuant to the Loan Agreement dated as of March 14, 2014, between the Board and the Borrower (the "Loan Agreement"), and issued in consideration of the loan made thereunder (the "Loan") and in evidence of the obligations of the Borrower set forth in Section 5 thereof. This Promissory Note has been assigned to the Trustee under the Indentures of the Program. Payments hereunder shall be made directly to the Trustee for the account of the Board pursuant to such assignment. Such assignment has been made as security for the payment of the Board of Investments' INTERCAP bonds. All of the terms, conditions and provisions of the Loan Agreement are, by this reference hereto, incorporated herein as a part of this Promissory Note.

Interest on this Note is computed on a 365/365 simple interest basis; that is, by applying the ratio of the interest rate over the number of days in a year, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method.

Pursuant to the Loan Agreement, advances shall be made to the Borrower under the Loan Agreement from time to time upon the terms and conditions set forth in the Loan Agreement.

This Promissory Note is entitled to the benefits and is subject to the conditions of the Loan Agreement. The obligations of the Borrower to make the payments required hereunder shall be absolute and unconditional without any defense or right of setoff, counterclaim or recoupment by reason of any default by the Board under the Loan Agreement or under any other indebtedness or liability at any time owing to the Borrower by the Board or for any other reason.

This Promissory Note is subject to optional prepayment under the terms and conditions provided in Article X of the Loan Agreement upon giving 30 days prior written notice to the Board.

If an "Event of Default" occurs under Section 12.01 of the Loan Agreement, the principal of this Promissory Note may be declared due and payable in the manner and to the extent provided in Article XII of the Loan Agreement.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all acts, conditions and things required by the Constitution and laws of the State of Montana to be done, to exist, to happen and to be performed precedent to and in the issuance of this Note, in order to make it a valid and binding obligation of the Borrower according to its terms, have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required; that the Borrower will, as authorized by and according to applicable provisions and limitations of law annually levy sufficient tax receipts or collect sufficient revenues, as

the case may be, with other funds available therefor, to pay the principal and interest hereon when due; and that this Note, together with all other indebtedness of the Borrower outstanding on the date of original issue hereof and on the date of its actual issuance and delivery, does not exceed any constitutional or statutory limitation of indebtedness of the Borrower.

IN WITNESS WHEREOF, the City of Whitefish has caused this Promissory Note to be duly executed, attested and delivered, as of this 14th day of March, 2014.

CITY OF WHITEFISH

_____

By John Muhlfeld
Its Mayor

(SEAL)

ATTEST:

_____

By Necile Lorang
Its City Clerk

Board of Investments of the State of Montana hereby assigns the foregoing Loan Agreement and Promissory Note to U. S. Bank National Association (formerly known as First Trust Company of Montana), as Trustee.

BOARD OF INVESTMENTS OF THE
STATE OF MONTANA

_____

By Julie Flynn
Its Bond Program Officer

SECURITY AGREEMENT

This SECURITY AGREEMENT (the "Security Agreement" or "Agreement") is made as of March 14, 2014 by and between the City of Whitefish (the "Borrower"), an Eligible Government Unit, duly organized and validly existing under the laws and Constitution of the state of Montana, and the Board of Investments of the State of Montana (the "Board"). The Borrower enters this agreement in consideration of the loan to it by the Board and for the purpose of securing the Borrower's performance of each and every covenant contained in this agreement and in that certain Loan Agreement dated as of March 14, 2014 by and between the Board and the Borrower (the "Loan Agreement"). All right, title and interest of the Board in this Agreement and the Collateral subject hereto shall be assigned to U. S. Bank National Association (formerly known as First Trust Company of Montana National Association and as the First Trust Company of Montana) (the "Trustee"), as Trustee, under the Indenture of Trust dated March 1, 1991, a First Supplemental Indenture of Trust dated as of March 1, 1992, and a Second Supplemental Indenture of Trust dated as of June 1, 1994 (together the "Indenture") between the Board and the Trustee.

Section 1. Grant.

The Borrower hereby grants the Board a security interest in all goods, equipment, machinery, inventory, furniture, furnishings, fixtures, and all other tangible personal property of the Borrower described in this Security Agreement, whether currently owned or hereafter acquired, together with all accessories, attachments, and additions thereto and replacements therefor and all rents, income and proceeds therefrom (all such property being herein referred to collectively as the "Collateral").

Section 2. Representations.

Borrower represents and warrants that the Collateral, or any part thereof, is not subject to, and shall be kept free from, any security interest, lien or encumbrance other than permitted encumbrances as hereinafter defined in Section 8 hereof ("Permitted Encumbrances").

Section 3. Covenants of the Borrower.

For the purpose of protecting and preserving the security of this Security Agreement, the Borrower promises:

(a) (i) to care for and keep all of the Collateral in good condition and repair; (ii) not to remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or regulations) the Collateral; provided, however, that the Borrower may make such proper replacements, repairs, removals and alterations as it shall in good faith determine to be necessary or advisable to maintain or enhance the efficiency and value of the security created hereby; (iii) to comply with all laws, ordinances, regulations, conditions and restrictions now or hereafter affecting the Collateral or any part thereof; (iv) not to commit or permit any waste and not to permit any deterioration of the Collateral; and (v) not to commit, suffer or permit any act to be done in, upon, or with the Collateral in violation of any law or ordinance if such act might have consequences that would materially and adversely affect the financial condition, assets, properties or operation of the Borrower;

(b) to provide and maintain hazard insurance on the Collateral for its full replacement value; to obtain such insurance from a company of the Borrower's choice, subject to the Trustee's and the Board's approval; to name the Trustee and the Board as additional insured parties in such policies; to deliver duplicate originals or certified copies of the policies of said insurance to the Trustee upon its request;

(c) to appear in and defend any action or proceeding affecting or purporting to affect the security of this Security Agreement, and additional or other security for any of the obligations secured hereby, or the interest, rights, powers, or duties of the Trustee of the Board hereunder, it being agreed, however, that in the case of an action or proceeding against the Trustee or the Board said Trustee or Board, at their option, may appear in and defend any such action or proceeding and, in addition, it being agreed that the Trustee may commence any action or proceeding deemed necessary by it to perfect, maintain or protect such interest, rights, powers or duties, all in such manner and to such extent as it may see fit, and the Trustee is authorized to pay, purchase or compromise on behalf of the Borrower any encumbrance or claim which in its judgment appears or purports to affect the security hereof or to be superior hereto; to pay all costs and expenses, including costs of evidence of title and attorney's fees in a reasonable sum, in any above described action or proceeding in which the Board or the Trustee may appear;

(d) to pay immediately and without demand all reasonable and necessary sums that the Trustee or the Board expend to enforce the terms of this agreement, including attorneys' fees, with interest from date of expenditure at the rate of twelve percent (12%) per annum; and

(e) (i) to inform the Trustee and the Board in writing of the location of such Collateral and of any changes in the Collateral's location, to execute and deliver to the Trustee and the Board such financing statements and other documents in a form satisfactory to the Trustee and the Board, (ii) to do all acts that may be reasonably requested in order to establish and maintain a perfected interest in the Collateral, and (iii) to pay the costs of filing any notices or statements in any public office in which the Trustee deems filing or recording to be necessary or desirable.

Section 4. Acceptance Not Waiver.

By accepting payment of any sum secured hereby after its due date, neither the Trustee nor the Board shall be deemed to have waived its right either to require prompt payment when due of all other sums so secured or to declare default as herein provided for failure so to pay.

Section 5. Amendment, Additional Security.

Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Security Agreement upon any property not then or theretofore released as security for the full amount of all unpaid obligations, the Trustee may, upon written request by the Board, and without notice to the Borrower, release any person other than the Borrower so liable, extend the maturity or alter any of the terms of any such obligation, or grant other indulgences or releases or cause to be released any portion or all of the Collateral, release any other or additional security for any obligation herein mentioned, to make compositions or other arrangements with debtors in relation thereto; and if the Trustee at any time holds any additional security for any obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same at its option, either before or concurrently herewith or after a sale is made hereunder.

Section 6. Right of Entry for Inspection.

The Trustee and the Board and their employees and agents may inspect the Collateral at any reasonable time or times, regardless of where such Collateral is located.

Section 7. Entry, Possession, Operation of Equipment and Other Remedies.

If the Borrower fails or refuses to make any payment or to do any act which this agreement obligates it to make or do at the time and in the manner herein provided, then the Trustee and the Board, in their sole discretion, without notice to or demand upon the Borrower and without releasing the Borrower from any obligation hereof, are each authorized to do any of the following:

(a) make any such payment or do any such act in such manner and to such extent as they may deem necessary to protect the security hereof; or

(b) pay, contest or compromise any claim, debt, lien, charge or encumbrance which in the judgment of the Trustee or Board may affect or appear to affect the security of this Security Agreement, the interest of the Board or the rights, powers or duties of the Trustee or the Board hereunder.

In addition to any right or remedies it may have hereunder or otherwise, the Trustee or the Board shall have all the rights and remedies of a secured party under the Uniform Commercial Code of Montana, including without limitation, the right to dispose of such Collateral at public or private sale.

The Trustee and the Board are not obligated to make any of the payments or to do any of the acts mentioned above, but, upon election so to do, employment of an attorney is authorized and payment of such attorney's fees and of all other necessary expenditures is hereby secured under this Security Agreement.

Section 8. Permitted Encumbrances.

There are no Permitted Encumbrances allowed under this Agreement.

Section 9. Duration of Security Interest.

The security interest herein granted shall continue in full force and effect until all indebtedness hereby secured shall have been fully paid and satisfied and all commitments of the Board to extend credit to or for the account of the Borrower have expired.

Section 10. Additional Security.

The Trustee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Security Agreement or under any other agreement or any laws now or hereafter in force, notwithstanding that some or all of the indebtedness and obligations secured hereby are now or shall hereafter be otherwise secured, whether by mortgage, deed of trust, security agreement, lien, or otherwise. The obligation to repay the indebtedness secured hereby remains without reference to condition, disposition or location of the Collateral. Neither the Trustee's acceptance of this Security Agreement nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the Trustee's right to realize upon or enforce any other security now or hereafter held by the Trustee or the Board.

Section 11. Successors and Assigns.

This Security Agreement applies to, inures to the benefit of, and binds all parties hereto, the Board and the successors and assigns of any of them.

Section 12. Severability.

If any provision hereof should be held unenforceable or void, in whole or in part, then such unenforceable or void provision or part shall be deemed separable from the remaining provisions and shall in no way affect the validity of the remainder of this Security Agreement.

Section 13. Notice of Actions.

The Trustee shall be under no obligation to notify any party hereto of any action or proceeding of any kind in which the Borrower, the Board or the Trustee shall be a party, unless brought by the Trustee, or of any pending sale under any other deed of trust or security agreement.

Section 14. Charge for Provision of Statement.

For any statement regarding the obligations secured hereby, a charge, which the Borrower agrees to pay, may be made in an amount not exceeding the maximum allowed by law at the time any such statement is requested.

Section 15. Waiver of Statute of Limitations.

The right to plead any and all statutes of limitations as a defense to any demand secured by this Security Agreement is hereby waived.

Section 16. Substitution of Trustee.

The Board may substitute a successor Trustee from time to time by recording at the places required by law an instrument stating the election by the Board to make such substitution and identifying this Security Agreement.

Section 17. Choice of Law.

The laws of the state of Montana shall govern the construction and interpretation of this agreement.

Section 18. Notice.

Notices to the Borrower may be mailed to it at: _____, Attention: _____, or at such other address as the Borrower may file in writing with the Trustee. Notices to the Trustee hereunder may be mailed to it at: U. S. Bank National Association, Corporate Trust Services PD-WA-T7CT, 1420 Fifth Avenue, 7th Floor, Seattle, WA 98101, or at such other address as the Trustee may file in writing with the Borrower. Notices to the Board may be mailed to the Board of Investments of the State of Montana, P.O. Box 200126, Helena, Montana 59620-0126

IN WITNESS WHEREOF, the Borrower has caused this Security Agreement to be duly executed as of this 14th day of March, 2014.

CITY OF WHITEFISH

_____

By John Muhlfeld
Its Mayor

(SEAL)

ATTEST:

_____

By Necile Lorang
Its City Clerk

For value received, the undersigned hereby grants, assigns and transfers to U. S. Bank National Association (formerly known as First Trust Company of Montana National Association and as First Trust Company of Montana), as trustee under the Indenture of Trust dated March 1, 1991, between the undersigned and said trustee for the holders of the Board of Investments of the state of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program), Series 1991, all of its right, title and interest in this Security Agreement and the Collateral subject hereto.

Dated: March 14, 2014

BOARD OF INVESTMENTS OF THE
STATE OF MONTANA

_____

By Julie Flynn
Its Bond Program Officer

DESCRIPTION OF COLLATERAL

Item	Serial and Model Number	Amount
2013 Dodge D3500 North Star Ambulance	VIN 3C7WRTBLSDG565699	$153,780.00

Braun NW, Inc.
150 North Star Drive
PO Box 1204
Chehalis, WA 98532
United States

Voice: (360) 748-0195
Fax: (360) 748-0256

INVOICE

Invoice Number: 15941
Invoice Date: Dec 9, 2013
Page: 1

Bill To	Ship To
City of Whitefish PO Box 158 Whitefish, MT 59937	City of Whitefish 275 Flathead Ave Whitefish, MT 59937

Customer ID	Customer PO	Payment Terms	
CityWhite	PROPOSAL 5/22/13	Net 30 Days	
Sales Rep ID	**Shipping Method**	**Ship Date**	**Due Date**
	Hand Deliver	12/16/13	1/8/14

Quantity	Item	Description	Unit Price	Amount
1.00	M	2013 NORTH STAR AMBULANCE ON DODGE D3500 CHASSIS (1822-1) VIN # 3C7WRTBL2DG565699	155,597.00	155,597.00
-1.00	M	CHANGE ORDER #1- DATED 8/26/13-SEE ENCLOSED LIST	2,225.00	-2,225.00
1.00	M	CHANGE ORDER #2B- DATED 9/25/13	158.00	158.00
1.00	M	CHANGE ORDER #3- DATED 10/10/13	250.00	250.00
		TERMS: NINETY PERCENT (90%) PAYMENT DUE UPON RECEIPT OF VEHICLE. BALANCE DUE IN THIRTY (30) DAYS. THANK YOU!		

Subtotal	153,780.00
Sales Tax	
Total Invoice Amount	153,780.00
Payment/Credit Applied	
TOTAL	**153,780.00**

Thank you for your business!

(This page left blank intentionally to separate printed sections)

COPY

(GENERAL FUND LOAN)

RESOLUTION AUTHORIZING PARTICIPATION IN THE INTERCAP PROGRAM

CERTIFICATE OF MINUTES RELATING TO
RESOLUTION NO._____

Issuer: City of Whitefish

Kind, date, time and place of meeting: A _____ meeting held on _____ at ____o'clock ___.m. in _____, Montana.

Members present: _____

Members absent: _____

RESOLUTION NO. _____

RESOLUTION AUTHORIZING PARTICIPATION IN THE BOARD OF INVESTMENTS OF THE STATE OF MONTANA ANNUAL ADJUSTABLE RATE TENDER OPTION MUNICIPAL FINANCE CONSOLIDATION ACT BONDS (INTERCAP REVOLVING PROGRAM), APPROVING THE FORM AND TERMS OF THE LOAN AGREEMENT AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATED THERETO

I, the undersigned, being the fully qualified and acting recording officer of the public body issuing the obligations referred to in the title of this certificate, certify that the documents attached hereto, as described above, have been carefully compared with the original records of the public body in my legal custody, from which they have been transcribed; that the documents are a correct and complete transcript of the minutes of a meeting of the governing body at the meeting, insofar as they relate to the obligations; and that the meeting was duly held by the governing body at the time and place and was attended throughout by the members indicated above, pursuant to call and notice of such meeting given as required by law.

WITNESS my hand officially as such recording officer this ____ day of _____, 2014.

By _____
Its _____

RESOLUTION NO. _____

RESOLUTION AUTHORIZING PARTICIPATION IN THE BOARD OF INVESTMENTS OF THE STATE OF MONTANA ANNUAL ADJUSTABLE RATE TENDER OPTION MUNICIPAL FINANCE CONSOLIDATION ACT BONDS (INTERCAP REVOLVING PROGRAM), APPROVING THE FORM AND TERMS OF THE LOAN AGREEMENT AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATED THERETO

BE IT RESOLVED BY THE _____ (the Governing Body) OF THE CITY OF WHITEFISH (the Borrower) AS FOLLOWS:

ARTICLE I

DETERMINATIONS AND DEFINITIONS

Section 1.01. Definitions. The following terms will have the meanings indicated below for all purposes of this Resolution unless the context clearly requires otherwise. Capitalized terms used in this Resolution and not defined herein shall have the meanings set forth in the Loan Agreement.

Adjusted Interest Rate means the rate of interest on the Bonds determined in accordance with the provisions of Section 3.03 of the Indenture.

Authorized Representative shall mean the officers of the Borrower designated and duly empowered by the Governing Body and set forth in the application.

Board shall mean the Board of Investments of the State of Montana, a public body corporate organized and existing under the laws of the State and its successors and assigns.

Board Act shall mean Section 2-15-1808, Title 17, Chapter 5, Part 16, MCA, as amended.

Bonds shall mean the Bonds issued by the Board pursuant to the Indenture to finance the Program.

Borrower shall mean the Borrower above named.

Indenture shall mean that certain Indenture of Trust dated March 1, 1991 by and between the Board and the Trustee pursuant to which the Bonds are to be issued and all supplemental indentures thereto.

Loan means the loan of money by the Board to the Borrower under the terms of the Loan Agreement pursuant to the Act and the Borrower Act and evidenced by the Note.

Loan Agreement means the Loan Agreement between the Borrower and the Board, including any amendment thereof or supplement thereto entered into in accordance with the provisions thereof and hereof.

Loan Agreement Resolution means this Resolution or such other form of resolution that the Board may approve and all amendments and supplements thereto.

Loan Date means the date of closing a Loan.

Loan Rate means the rate of interest on the Loan which is initially 1.00% per annum through February 15, 2014 and thereafter a rate equal to the Adjusted Interest Rate on the Bonds and up to 1.5% per annum as necessary to pay Program Expenses.

Note means the promissory note to be executed by the Borrower pursuant to the Loan Agreement, in accordance with the provisions hereof and thereof, in substantially the form set forth in the Promissory Note, or in such form that may be approved by the Board.

Program shall mean the INTERCAP Program of the Board pursuant to which the Board will issue and sell Bonds and use the proceeds to make loans to participating Eligible Government Units.

Project shall mean those items of equipment, personal or real property improvements to be acquired, installed, financed or refinanced under the Program as set forth in the Description of the Project/Summary of Draws.

Security Instrument means a security agreement in substantially the form set forth, and, a Uniform Commercial Code financing statement, in a form acceptable to the Board and the Trustee granting a security interest in, or a lien on, the property constituting the Project or other real or personal properties added to or substituted therefor.

Trustee shall mean U. S. Bank National Association (formerly known as First Trust Company of Montana National Association) and its successors.

Section 1.02. Authority. The Borrower is authorized to undertake the Project and is further authorized by the Borrower Act to enter into the Loan Agreement for the purpose of obtaining a loan to finance or refinance the acquisition and installation costs of the Project.

Section 1.03. Execution of Agreement and Delivery of Note. Pursuant to the Indenture and the Board Act, the Board has issued and sold the Bonds and deposited a part of proceeds thereof in the Loan Fund held by the Trustee. The Board has, pursuant to the Term Sheet, agreed to make a Loan to the Borrower in the principal amount of $16,339.00 and upon the further terms and conditions set forth herein, and as set forth in the Term Sheet and the Loan Agreement.

ARTICLE II

THE LOAN AGREEMENT

Section 2.01. Terms. (a) The Loan Agreement shall be dated as of the Loan Date, in the principal amount of $16,339.00 and shall constitute a valid and legally binding obligation of the Borrower. The obligation to repay the Loan shall be evidenced by a Promissory Note. The Loan shall bear interest at the initial rate of 1.00% per annum through February 15, 2014 and thereafter at the Adjusted Interest Rate, plus up to 1.5% per annum as necessary to pay the cost of administering the Program (the Program Expenses). All payments may be made by check or wire transfer to the Trustee at its principal corporate trust office.

(b) The Loan Repayment Dates shall be February 15 and August 15 of each year.

(c) The principal amount of the Loan may be prepaid in whole or in part provided that the Borrower has given written notice of its intention to prepay the Loan in whole or in part to the Board no later than 30 days prior to the designated prepayment date.

(d) The Prepayment Amount shall be equal to the principal amount of the Loan outstanding, plus accrued interest thereon to the date of prepayment.

(e) Within fifteen days following an Adjustment Date, the Trustee shall calculate the respective amounts of principal and interest payable by each Borrower on and with respect to its Loan Agreement and Note for the subsequent August 15 and February 15 payments, and prepare and mail by first class mail a statement therefor to the Borrower.

Section 2.02. Use and Disbursement of the Proceeds. The proceeds of the Loan will be expended solely for the purposes set forth in the Description of the Project/Summary of Draws. The proceeds from the sale of the Note to the Board shall remain in the Borrower's Account pending disbursement at the request of the Borrower to pay the budgeted expenditures in anticipation of which the Note was issued. Requests for disbursement of the Loan shall be made to the Board. Prior to the closing of the Loan and the first disbursement, the Borrower shall have delivered to the Trustee a certified copy of this Resolution, the executed Loan Agreement and Note in a form satisfactory to the Borrower's Counsel and the Board's Bond Counsel and such other certificates, documents and opinions as set forth in the Loan Agreement or as the Board or Trustee may require. The Borrower will pay the loan proceeds to a third party within five business days after the date they are advanced (except for proceeds to reimburse the Borrower for previously paid expenditures, which are deemed allocated on the date advanced).

Section 2.03. Payment and Security for the Note. In consideration of the making of the Loan to the Borrower by the Board, the provisions of this Resolution shall be a part of the Agreement of the Borrower with the Board. The provisions, covenants and Agreements herein set forth to be performed by or on behalf of the Borrower shall be for the benefit of the Board. The Loan Agreement and Note shall constitute a valid and legally binding obligation of the Borrower and the principal of and interest on the Loan shall be payable from the general fund of the Borrower, and any other money and funds of the Borrower otherwise legally available therefor. [The repayment of the Loan shall be secured by a security interest in the Project being financed.] The Borrower shall enforce its rights to receive and collect all such taxes and revenues to insure the prompt payment of the Borrower obligations hereunder.

Section 2.04. Representation Regarding the Property Tax Limitation Act. The Borrower recognizes and acknowledges that the amount of taxes it may levy is limited by the state pursuant to Section 15-10-402, et. seq. (the Property Tax Limitation Act). The Borrower is familiar with the Property Tax Limitation Act and acknowledges that the obligation to repay the Loan under the Agreement and Note are not exceptions to the provisions of the Property Tax Limitation Act. The Borrower represents and covenants that the payment of principal of and interest on the Loan can and will be made from revenues available to the Borrower in the years as they become due, notwithstanding the provisions of the Property Tax Limitation Act.

Section 2.05. Levy and Appropriate Funds to Repay Loan. The Borrower agrees that in order to meet its obligation to repay the Loan and all other payments hereunder that it will budget, levy taxes for and appropriate in each fiscal year during the term of the Loan an amount sufficient to pay the principal of and interest hereon within the limitations of the Property Tax Limitation Act, as may be amended, and will reduce other expenditures if necessary to make the payments hereunder when due.

ARTICLE III

CERTIFICATIONS, EXECUTION AND DELIVERY

Section 3.01. Authentication of Transcript. The Authorized Representatives are authorized and directed to prepare and furnish to the Board and to attorneys approving the validity of the Bonds, certified copies of this Resolution and all other resolutions and actions of the Borrower and of said officers relating to the Loan Agreement, the Note, the Security Agreement and certificates as to all other proceedings and records of the Borrower which are reasonably required to evidence the validity and marketability of the Note. All such certified copies and certificates shall be deemed the representations and recitals of the Borrower as to the correctness of the statements contained therein.

Section 3.02. Legal Opinion. The attorney to the Borrower is hereby authorized and directed to deliver to the Board at the time of Closing of the Loan his or her opinion regarding the Loan, the Loan Agreement, the Note and this Resolution in substantially the form of the opinion set forth in the Attorney's Opinion.

Section 3.03. Execution. The Loan Agreement, Note, Security Agreement and any other document required to close the Loan shall be executed in the name of the Borrower and shall be executed on behalf of the Borrower by the signatures of the Authorized Representatives of the Borrower.

PASSED AND APPROVED by the _____ this _____ day of _____, 2014.

By _____
Its Mayor

Attest:

By _____
Its City Clerk

Staff Memorandum

To: Mayor John Muhlfeld and City Councilors
Chuck Stearns, City Manager

From: Corey Swisher, Assistant City Manager/Finance Director

Date: February 24, 2014

Re: Police Department Administration Vehicle Aquisition - INTERCAP Loan

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Background Information:

The proposed Resolution is intended to authorize the financing of a Police Department Administrative Vehicle (2014 Ford F150 pickup). The total amount that would be financed is $16,339. The vehicle has replaced a 2003 Chevy pickup and is currently in use.

Narrative:

The Loan Agreement will be dated as of the date the Resolution is approved, in the principal amount of $16,339.00 and will constitute a valid and legally binding obligation of the City. The obligation to repay the loan will be in the form of a promissory note payable over a 36 month period. The initial rate of the loan will be 1.00% per annum through February 15, 2014 and thereafter at the adjusted interest rate, plus up to 1.5% per annum as necessary to pay the cost of administering the INTERCAP program. The 2014, base loan rate is currently not known but will be provided to the City prior to Council consideration of the Resolution. It is anticipated if there is an increase it will be negligible.

The INTERCAP loan program administered through the State of Montana Board of Investments provides low interest loans to Montana local governments, state agencies, and universities for a variety of purposes.

Current Report:

The INTERCAP program has approved our application and sent us the documents which we need to execute for the loan. The documents enclosed in the packet are:

1. A Resolution authorizing the loan
2. A Loan Agreement
3. A Promissory Note
4. A Security Agreement

Council Recommendation:

Staff recommends the City Council adopt a Resolution authorizing participation in the INTERCAP Loan Program for the purchase of a Police Department Administrative Vehicle and authorize the City Manager to execute all related documents.

COPY

Loan #2547

LOAN AGREEMENT

between

BOARD OF INVESTMENTS
OF THE STATE OF MONTANA

as Lender

and

CITY OF WHITEFISH

as Borrower

DATE OF AGREEMENT: March 14, 2014

LOAN AMOUNT: SIXTEEN THOUSAND THREE HUNDERED THRITY NINE AND 00/100 DOLLARS ($16,339.00)

ADDRESS OF BORROWER: City of Whitefish
418 E 2nd Street
Whitefish, MT 59937

CONTACT PERSON OF BORROWER:

NAME	John Muhlfeld
TITLE	Mayor
TELEPHONE	(406) 863-2400
FACSIMILE	(406) 863-2419
E-MAIL	jmuhlfeld@cityofwhitefish.org

ALTERNATE CONTACT PERSON

NAME	Charles Stearns
TITLE	City Manager
TELEPHONE	(406) 863-2405
FACSIMILE	(406) 863-2419
E-MAIL	cstearns@cityofwhitefish.org

STATUTORY AUTHORITY FOR BORROWING: 7-7-4101, and 7-16-4104, 7-5-4306, M.C.A.

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This Loan Agreement (the "Agreement") dated as of March 14, 2014, and entered into between the Board of Investments of the State of Montana (the "Board"), a public body corporate and instrumentality of the state of Montana, and City of Whitefish ("the Borrower"), a political subdivision of the State of Montana;

WITNESSETH:

WHEREAS, pursuant to Section 2-15-1808, Montana Code Annotated and Title 17, Chapter 5, Part 16, Montana Code Annotated (the "Act") and in accordance with the Indenture of Trust, dated as of March 1, 1991, between the Board and U. S. Bank National Association (formerly known as First Trust Company of Montana National Association) (the "Trustee"), has established its INTERCAP Revolving Program pursuant to which the Board will issue, from time to time, its Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program) (the "Bonds"), for the purpose of making loans to Eligible Government Units to finance or refinance the acquisition and installation of equipment, personal and real property improvements, to provide temporary financing of projects or for other authorized corporate purposes of an Eligible Government Unit (the "Projects"); and

WHEREAS, the Board has agreed to loan part of the proceeds of an issue of such Bonds to the Borrower in the amount of $16,339.00, and the Borrower has agreed to borrow such amount from the Board, subject to the terms and conditions of and for the purposes set forth in this Agreement; and

WHEREAS, the Borrower is authorized under the laws of the State of Montana, and has taken all necessary action, to enter into this Agreement for the Project as identified in the Description of the Project/Summary of Disbursements attached hereto.

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

ARTICLE I. DEFINITIONS AND RULES OF INTERPRETATION.

Section 1.01. Definitions

The following terms will have the meanings indicated below for all purposes of this Agreement unless the context clearly requires otherwise. Capitalized terms used in this Agreement and not defined herein shall have the meanings set forth in the Indenture.

"Act" means Section 2-15-1808, Montana Code Annotated and Title 17, Chapter 5, Part 16, Montana Code Annotated as now in effect and as it may from time to time hereafter be amended or supplemented.

"Adjusted Interest Rate" shall mean the interest rate on the Loan determined and established pursuant to the Promissory Note hereto and the Loan Agreement or Bond Resolution.

"Adjustment Date" means the Initial Adjustment Date or a Subsequent Adjustment Date.

"Adjustment Period" means the period beginning on an Adjustment Date and ending on the day before the next succeeding Adjustment Date.

"Amortization Schedule" means the schedule prepared for a loan advance to the Borrower showing the principal amount advanced, the amortization of the principal, and the interest and principal payments due to the Subsequent Interest Adjustment Date.

"Authorized Representative" shall mean the officers of the Borrower designated by the Governing Body and set forth in the Application and signed on behalf of the Borrower by a duly authorized official.

"Board" means the Board of Investments of the State of Montana, a public body corporate organized and existing under the laws of the State and its successors and assigns.

"Bonds" means the Board of Investments of the State of Montana's Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program) authorized to be issued for the Program.

"Borrower" means City of Whitefish, the Eligible Government Unit, which is borrowing and using the proceeds of the Loan to finance, refinance or be reimbursed for, all or a portion of the Cost of the Total Project.

"Borrower Act" means 7-7-4101, and 7-16-4104, 7-5-4306 , the section of Montana Code Annotated that authorizes an Eligible Government Unit to borrow money on terms consistent with the Program.

"Borrower Resolution" means a resolution, duly and validly adopted by a Borrower authorizing the execution and delivery to the Board of an Agreement and Note, in substantially the form provided, or such other form of Resolution that the Board may approve and all amendments and supplements thereto.

"Commencement Date" means March 14, 2014, the date of the Agreement when the term of this Agreement begins and the obligation of the Borrower to make Loan Repayments begins to accrue.

"Counsel" means an attorney or firm of attorneys duly admitted to practice law before the highest court of any state.

"Default" means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

"Eligible Government Unit" shall mean any municipal corporation or political subdivision of the state, including without limitation any city, town, county, school district, or other special taxing district or assessment or service district authorized by law to borrow money or any board, agency, or department of the state, or the board of regents of the Montana university system when authorized by law to borrow money.

"Event of Default" means any occurrence or event described in Article X hereof.

"Fiscal Year" means the fiscal year of the Borrower beginning on July 1 and ending June 30.

"Governing Body" shall mean (i) with respect to a county, the Board of County Commissioners, (ii) with respect to a city, the City Council or Commission, and (iii) with respect to a school district, county water or sewer district, hospital district, rural fire district, or any other special purpose district, the Board of Trustees.

"Indenture" means that certain Indenture of Trust, dated as of March 1, 1991, by and between the Board and the Trustee, as originally executed or as it may from time to time be supplemented, modified or amended in accordance with its terms.

"Initial Adjustment Date" means the first February 16 following the date of the Agreement.

"Initial Interest Rate" means the Loan Rate from the date of the Agreement to the Initial Adjustment Date.

"Loan" means the loan of money by the Board to the Borrower under the terms of this Agreement pursuant to the Act and the Borrower Act, evidenced by the Note.

"Loan Agreement" or "Agreement" means this Agreement, including, the attachments hereto, and the Security Instrument, if any, as originally executed or as they may from time to time be supplemented, modified or amended in accordance with the terms hereof and of the Indenture.

"Loan Date" means the date of closing a Loan.

"Loan Rate" means the rate of interest on the Loan as provided for in Section 5.01 of this Agreement.

"Loan Repayment Date" means February 15th and August 15th or, if any such day is not a Business Day, the next Business Day thereafter, during the term of the Loan.

"Loan Repayments" means the payments payable by the Borrower pursuant to Article V of this Agreement.

"Loan Term" means the term provided for in Article VI of this Agreement.

"Maximum Interest Rate" means the maximum rate of interest on the Bonds which shall not exceed fifteen percent (15%) per annum.

"Note" means the promissory note executed and delivered by the Borrower attached hereto and made a part hereof.

"Program" means the Board's INTERCAP Program established under the Act and pursuant to which the Board finances Projects for Eligible Government Units.

"Program Expenses" means the expenses of the Program, including (without limitation) the fees and expenses of the Trustee and such other fees and expenses of the Program or of the Board relating thereto as shall be approved by the Board.

"Project" means those items of equipment, personal or real property improvements to be acquired, installed, financed or refinanced under the Program and set forth in the Description of the Project/Summary of Disbursements attached hereto.

"Project Costs" shall mean the portion of the costs of the Total Project to be financed by the INTERCAP Loan. The Project Costs may not exceed the Loan Amount as set forth on the cover hereof.

"Security Instrument" means a Security Agreement in substantially the form set forth hereto, and, a Uniform Commercial Code financing statement, in a form acceptable to the Board and the Trustee granting a security interest in, or a lien on, the property constituting the Project or other real or personal properties added to or substituted therefor.

"Series Supplemental Indenture of Trust" means a Supplemental Indenture of Trust authorizing the issuance of an additional series of bonds in accordance with the provisions of the Indenture.

"State" means the state of Montana.

"Subsequent Interest Adjustment Date or Subsequent Adjustment Date" means February 16 in the years the Loan remains outstanding.

"Term Sheet" shall mean the document containing the terms and conditions issued by the Board to the Borrower that must be satisfied prior to entering into a Loan Agreement.

"Term Sheet Issuance Date" means the date the Board executes its Term Sheet under the Board's Program.

"Total Project" shall mean the project as described in Section 14 of the Term Sheet and/or Section 2 of the application, of which some or all is to be financed by the INTERCAP Loan.

"Total Project Costs" shall mean the entire cost of acquiring, completing or constructing the project as further described in Section 14 of the Terms & Conditions Sheet and/or Section 2 of the application.

"Trustee" means the U. S. Bank National Association (formerly known as First Trust Company of Montana National Association), a corporation organized and existing under the laws of the United States, or its successor as trustee as provided in the Indenture.

Section 1.02. Rules of Interpretation.

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) "This Agreement" means this instrument as originally executed and as it may from time to time be modified or amended.

(b) All references in this instrument to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words "herein", "hereof", "hereunder", and "herewith" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles.

(e) The terms defined elsewhere in this Agreement shall have the meanings therein prescribed for them.

(f) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter gender.

(g) The headings or captions used in this Agreement are for convenience of reference only and shall not define or limit or describe any of the provisions hereof or the scope or intent hereof.

(h) This Agreement shall be construed in accordance with the laws of the State.

Section 1.03. Attachments

The following are attachments and a part of this Agreement:

Description of the Project/Summary of Disbursements.
Borrower's Draw Certificate.
Promissory Note.
Opinion of Borrower's Counsel.
Certificate of Appropriation (if applicable).
Form of Security Instrument (if applicable).

ARTICLE II. REPRESENTATIONS, COVENANTS AND WARRANTIES OF BORROWER.

Section 2.01. Representations and Warranties.

Borrower represents and warrants for the benefit of the Board, the Trustee and the Bondholders as follows:

(a) Organization and Authority. The Borrower:

(1) is a political subdivision of the State of Montana; and

(2) has complied with all public bidding and other State and Federal laws applicable to this Agreement and the acquisition or installation of the Project.

(b) Full Disclosure. There is no fact that the Borrower has not disclosed to the Board or its agents in writing that materially adversely affects or (so far as the Borrower can now foresee), except for pending or proposed legislation or regulations that are a matter of public information affecting the ability of the Borrower to levy property taxes, collect fees and charges for services provided by the Borrower or otherwise receive revenues, that will materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the Borrower or the ability of the Borrower to make all repayments and otherwise perform its obligations under this Agreement, the Note, and the Security Instrument.

(c) Pending Litigation. There are no proceedings pending, or to the knowledge of the Borrower threatened against or affecting the Borrower in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the Borrower, or the ability of the Borrower to make all Loan Repayments and otherwise perform its obligations under this Agreement, the Note, and the Security Instrument, and that have not been disclosed in writing to the Board.

(d) Borrowing Legal and Authorized. The transaction provided for in this Agreement, the Note, and the Security Instrument:

(1) are within the powers of the Borrower and have been duly authorized by all necessary action on the part of the Borrower, including the adoption of a resolution substantially in the form provided hereto with such modification as may be provided by the Board; and

(2) 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 indenture, loan agreement or other instrument (other than this Agreement, the Note, and the Security Instrument) to which the Borrower is a party or by which the Borrower may be bound, nor will such action result in any violation of the provisions of any state laws, or ordinances or resolutions of the Borrower; and

(3) the amount of the Loan represented hereby has been added to the amount of all other outstanding debt of the Borrower and together therewith does not result in the Borrower exceeding its statutory debt limitation.

(e) No Violation. No event has occurred and no condition exists that, upon execution of this Agreement, the Note, and the Security Instrument or receipt of the Loan, would constitute a Default or an Event of Default. The Borrower is not in violation in any material respect, and has not received notice of any claimed violation, of any term of any agreement, statute, ordinance, resolution, bylaw or other instrument to which it is a party or by which it or its property may be bound.

(f) Use of Proceeds. The Borrower will apply the proceeds of the Loan solely to finance the Project Costs described in the Description of the Project/Summary of Disbursements attached hereto. In

addition, the Borrower will pay the loan proceeds to a third party within five business days after the date they are advanced (except for proceeds to reimburse the Borrower for previously paid expenditures, which are deemed allocated on the date advanced). Investment of proceeds by the Borrowers within the five business day period of disbursement to a third party (except for proceeds to reimburse the Borrower for previously paid expenditures) should be in Non-AMT Obligations as that term is defined in the Board's tax certificates.

(g) Completion of the Total Project; Payment of Total Project Costs. The Borrower shall proceed diligently to complete the Total Project and to obtain the necessary funds to pay the Total Project Costs thereof. The Borrower shall pay any amount required for the acquisition, construction and equipping of the Total Project in excess of the Loan Amount as set forth on the cover hereof.

Section 2.02. Particular Covenants of Borrower.

(a) Compliance with Statutory Requirements, Competitive Bidding, Montana Labor Laws, Environmental Review, and Other Legal Requirements. The Borrower has complied with all statutory requirements, including competitive bidding and labor requirements and environmental review, applicable to the acquisition and construction of the Project.

(b) Maintenance and Use of Project. The Borrower shall maintain the Project in good condition, make all necessary renewals, replacements, additions, betterments and improvements thereto and maintain insurance with respect to the Project, its other properties and its operations in such amounts and against such risks as are customary for governmental entities such as the Borrower.

(c) Financial Reports and Audits. The Borrower shall comply with the provisions of Title 2, Chapter 7, Part 5 Montana Code Annotated and shall file with the Board financial reports and audits when such reports and audits are required to be filed by the Department of Commerce.

(d) Security Interest. The Borrower shall grant the Board a first security interest in the Project being financed by the Loan to the extent allowed by law, by executing and delivering the Security Instrument.

(e) Liens. The Borrower shall not create, incur or suffer to exist any lien, charge or encumbrance on the property constituting the Project prior to the security interest granted hereunder other than (i) any security interest or lien pursuant to a loan agreement, mortgage, deed of trust, indenture or similar financing agreement of the Borrower in force and effect as of the date of this Agreement which creates a security interest or lien in after-acquired property of the Borrower and which is approved in writing by the Board, (ii), any security interest, mortgage or deed of trust permitted in writing by the Trustee, or (iii) any security interest or lien imposed or arising by statute or operation of law.

(f) Expenses. The Borrower will, at the request of the Board, pay all expenses relating to the Loan, the Note, and the Security Instrument and this Agreement, including but not limited to:

(1) The Borrower will cause all financing statements necessary to be filed in connection with the security interest granted in the Security Instrument, if any is required hereunder, to be executed and filed, at Borrower's expense.

ARTICLE III. LOAN TO BORROWER.

Subject to the terms and conditions of this Agreement, the Board hereby agrees to loan and advance to the Borrower, and the Borrower agrees to borrow and accept from the Board, the Loan in the principal amount not to exceed $16,339.00.

ARTICLE IV. LOAN PROVISIONS.

Section 4.01. Commencement of Loan Agreement

This Agreement shall commence on the date hereof unless otherwise provided in this Agreement.

Section 4.02. Termination of Agreement.

This Agreement will terminate upon payment in full of all amounts due under this Agreement and upon the full and complete performance and payment of all of the Borrower's other obligations hereunder. Until such termination, all terms, conditions, and provisions of this Agreement shall remain in full force and effect.

Section 4.03. Term of Loan Agreement.

This Agreement shall be valid for the entire loan amount approved for one year from the Term Sheet Issuance Date. Beginning one year after the Term Sheet Issuance Date, the Board may refuse to make a loan advance if the Board determines that there has been a material adverse change in the circumstances of the Borrower.

Section 4.04. Loan Closing Submissions.

Concurrently with the execution and delivery of this Agreement, the Borrower is providing to the Board and the Trustee, the following documents (except that the Board may waive any of such documents):

(a) A certified resolution of the Borrower in form and substance substantially identical to that provided hereto; provided, however, that the Board may permit variances in such certified resolution from the form or substance of such resolution if, in the good faith judgment of the Board, such variance is not to the material detriment of the interests of the Program, the Bondholders and such certified resolutions are acceptable to the Trustee;

(b) An opinion of the Borrower's counsel in form and substance substantially identical to the Attorney's Opinion hereto; provided, however, that the Board may permit variances in such opinion from the form or substance of such Attorney's Opinion if, in the good faith judgment of the Board, such variance is not to the material detriment of the interests of the Program, the Bondholders and such opinion is acceptable to the Trustee;

(c) The executed Security Instrument, attached hereto, required by the Board, including evidence of filing of a financing statement, if any, in every office in which it is required to be filed in order to perfect the security interest of the Board in the personal property pledged pursuant to the Security Instrument;

(d) A bill, or bills of sale, construction contract or contracts, invoice or invoices, purchase order or purchase orders or other evidence satisfactory to the Board that the Project has been purchased, ordered, constructed or installed by the Borrower or that any construction has been substantially completed and that payment therefor is due and owing or, if the Borrower is to be reimbursed, that payment has been made; and for any debt being refinanced, the canceled note or other financing document or other evidence satisfactory to the Board of such refinancing;

(e) Such other closing documents and certificates as the Board may reasonably request.

Section 4.05. Initial and Subsequent Draws of Loan.

For the initial draw of the Loan, the Borrower shall deliver to the Board an executed copy of the Agreement, complete with all attachments as listed in Section 4.04 including the Note and the Agreement Resolution and other documents the Board requires.

For subsequent draws, if applicable, the Borrower shall deliver to the Board, an executed copy of a Disbursement Request and Security Instrument, if required, and any other documents the Board requires.

ARTICLE V. LOAN REPAYMENTS AND NOTE.

Section 5.01. Payment of Loan Repayments

(a) The Loan Repayment Dates shall be on February 15 and August 15 of each year with the first Loan Repayment Date determined as follows:

Date of Draw	First Loan Repayment Date	Payment Consisting of:
February 15 through April 17	August 15	Principal and Interest
April 18 through June 16	August 15	Interest only
June 17 through August 14	February 15	Principal and interest from date of draw
August 15 through October 18	February 15	Principal and Interest
October 19 through December 17	February 15	Interest only
December 18 through February 14	August 15	Principal and Interest from date of draw

(b) Borrower hereby agrees to make Loan Repayments to the Trustee on each Loan Repayment Date to be calculated by the Trustee and consisting of the sum of the following items:

(i) Principal in an amount based upon the initial Amortization Schedule, the Amortization Schedule being initially determined utilizing the Initial Interest Rate. Each advance of the principal of the Loan as shown on the Amortization Schedule shall be repaid in semiannual installments on each Loan Repayment Date commencing on the first Loan Repayment Date following the date thereof and ending on the final maturity date set forth on the Amortization Schedule. Principal payments will not be adjusted but the interest payment will be adjusted as provided in Section 5.01 hereof.

(ii) Interest for each Adjustment Period at the Loan Rate.

(c) The Loan Rate shall equal the interest rate on the Board's bonds, as determined pursuant to Section 3.03 of the Indenture, plus up to 1 1/2% per annum as is necessary to pay the Borrower's share of Program Expenses as determined by the Board. The interest rate on the Bonds shall not exceed 15% per annum.

(d) Within thirty days of the Adjustment Date the Trustee shall calculate the new interest component of the Loan Repayments and shall send a revised Amortization Schedule to the Borrower showing the amount of the Borrower's semiannual Loan Repayments.

(e) Loan Repayments may be made by check, wire transfer, or Automatic Clearing House (ACH) of funds to the Trustee.

Section 5.02. Delinquent Loan Payments.

From and after any Loan Repayment Date, until repaid, the Loan shall bear interest at a rate equal to two percent on the yield (coupon equivalent) as of the Loan Repayment Date, on United States of America Treasury Bills of a duration as close as possible to the term over which the Loan Repayment is delinquent.

Section 5.03. The Note.

On the date of this Agreement, the Borrower shall execute the attached Note. The obligations of the Borrower under the Note shall be deemed to be amounts payable under Section 5.01. Each payment made to the

Trustee pursuant to the Note shall be deemed to be a credit against the corresponding obligation of the Borrower under Section 5.01 and any such payment made to the Trustee shall fulfill the Borrower's obligation to pay such amount hereunder and under the Note.

ARTICLE VI. TERM.

The term of the Loan will be a maximum of three (3) years and the specific term for each loan draw will be set forth in the Borrower's Draw Certificate.

ARTICLE VII. OBLIGATIONS OF BORROWER UNCONDITIONAL

Section 7.01. Obligations of Borrower.

The obligations of the Borrower to make the payments required hereunder shall be absolute and unconditional without any defense or right of set off, counterclaim or recoupment by reason of any default by the Board under the Loan Agreement or under any other indebtedness or liability at any time owing to the Borrower by the Board or for any other reason.

ARTICLE VIII. FINANCIAL COVENANTS (GENERAL FUND).

Section 8.01. Representation Regarding the Property Tax Limitation Act.

The Borrower recognizes and acknowledges that the amount of taxes it may levy is limited by the state pursuant to Section 15-10-420, as amended (the Property Tax Limitation Act). The Borrower is familiar with the Property Tax Limitation Act and acknowledges that the Loan Repayments to be made under the Agreement and Note are not exceptions to the provisions of the Property Tax Limitation Act. The Borrower represents and covenants that such Loan Repayments can and will be made from revenues available to the Borrower, notwithstanding the provisions of the Property Tax Limitation Act.

Section 8.02. Levy and Appropriate Funds to Repay Loan.

The Borrower agrees that in order to meet its obligation to make the Loan Repayments and all other payments hereunder that it will budget for as authorized and appropriate from taxes or any other available sources in each fiscal year during the term of this Agreement an amount sufficient to pay the principal of and interest hereon within the limitations of the Property Tax Limitation Act and will reduce other expenditures if necessary to make the payments hereunder when due.

Section 8.03. Reports and Opinion; Inspections.

(a) The Borrower shall deliver to the Board by no later than August 15 of each year during the term of this Agreement, a certificate in substantially the form attached hereto that the Governing Body of the Borrower has budgeted and appropriated for the then current Fiscal Year an amount sufficient to make the Loan Repayments due in that Fiscal Year, as required in Article VIII hereof.

(b) The Borrower agrees to permit the Board and the Trustee to examine, visit and inspect, at any reasonable time, the property constituting the Project, and the Borrower's facilities, and any accounts, books and records, including its receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and to supply such reports and information as the Board or the Trustee may reasonably require.

ARTICLE IX. DISCLAIMER OF WARRANTIES.

THE BOARD AND ITS AGENTS MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR

FITNESS FOR ANY OR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PROJECT OR ANY PORTION THEREOF OR ANY OTHER WARRANTY WITH RESPECT THERETO. In no event shall the Board or the Trustee or their respective agents be liable for any incidental, indirect, special or consequential damages in connection with or arising out of this Agreement or the Project or the existence, furnishing, functioning or Borrower's use of the Project or any item or products or services provided for in this Agreement.

ARTICLE X. OPTION TO PREPAY LOAN.

The Borrower may prepay the Loan in whole or in part upon giving 30 days prior written notice to the Board.

If the Loan is prepaid in part, the principal amount of the Loan shall be reduced by the portion of the prepayment representing principal and the Loan shall be reamortized by ratably reducing the principal portion of each remaining Loan Repayment.

ARTICLE XI. ASSIGNMENT.

Section 11.01. Assignment by Board or Trustee.

(a) The Borrower expressly acknowledges that all right, title and interest of the Board in and to this Agreement (except for the rights of the Board to indemnification pursuant to Section 13.08 hereof) the Note, and the Security Instrument have been assigned to the Trustee, as security for the Bonds, under and as provided in the Indenture, and that if any Event of Default shall occur, the Trustee shall be entitled to act hereunder in the place and stead of the Board. In addition, the Borrower acknowledges that the Board has appointed the Trustee as servicer entitled to act hereunder in the place and stead of the Board. This Agreement, the Note, and the Security Instrument, including (without limitation) the right to receive payments required to be made by the Borrower hereunder and to compel or otherwise enforce performance by the Borrower of its other obligations hereunder, may be further assigned and reassigned in whole or in part to one or more assignees or subassignees by the Trustee at any time subsequent to their execution without the necessity of obtaining the consent of the Borrower. Forthwith upon any such assignment the Trustee shall notify the Borrower thereof.

(b) The Borrower acknowledges that payment of the Bonds does not constitute payment of the amounts due under this Agreement.

Section 11.02. Assignment by Borrower.

This Agreement may not be assigned or encumbered by the Borrower for any reason without the express written consent of the Trustee and the Board.

ARTICLE XII. EVENTS OF DEFAULT AND REMEDIES.

Section 12.01. Events of Default Defined.

If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) Failure by the Borrower to pay any Loan Repayment required to be paid hereunder at the time specified herein and the continuation of such failure for a period of three (3) days after telephonic or e-mail notice by the Trustee that such payment has not been received;

(b) Failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, other than as referred to in Section 12.01(a) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is

given to the Borrower by the Trustee, unless the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the Default is corrected;

(c) Any warranty, representation or other statement by or on behalf of the Borrower contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement or in connection with the Loan, is false or misleading in any material respect;

(d) The Borrower files a petition in voluntary bankruptcy under the United States Bankruptcy Code or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under such law;

(e) The Borrower is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including without limitation a receiver, liquidator or trustee) of the Borrower or any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than 30 days;

(f) A default occurs under the Security Instrument, if any.

Section 12.02. Notice of Default.

The Borrower agrees to give the Trustee and the Board prompt written notice if any petition referred to in Section 12.01(d) is filed by the Borrower or of the occurrence of any other event or condition which constitutes a Default or an Event of Default immediately upon becoming aware of the existence thereof.

Section 12.03. Remedies on Default.

If an Event of Default referred to in Section 12.01(d) shall have occurred, the Trustee shall declare the Loan and all other amounts due hereunder to be immediately due and payable, and upon notice to the Borrower the same shall become due and payable without further notice or demand. Whenever any Event of Default referred to in Section 12.01 hereof shall have happened and be continuing, the Trustee or the Board shall have the right to take any action permitted or required pursuant to the Indenture and shall take one or any combination of the following remedial steps:

(a) Declare the Loan and all other amounts due hereunder to be immediately due and payable, and upon notice to the Borrower the same shall become immediately due and payable by Borrower without further notice or demand; and

(b) Take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its or the Board's rights hereunder, including without limitation, the appointment of a receiver as provided in the Act.

Section 12.04. Attorneys Fees and Other Expenses.

The Borrower shall on demand pay to the Board or the Trustee the reasonable fees and expenses of attorneys and other reasonable expenses incurred by either of them, or by any agency of the State selected by the Board to act on its behalf or by the Attorney General, in the collection of Loan Repayments or any other sum due or the enforcement of performance of any other obligations of Borrower upon an Event of Default.

Section 12.05. Application of Moneys.

Any moneys collected by the Board or the Trustee pursuant to Section 12.03 hereof shall be applied (a) first, to pay any attorney's fees or other fees and expenses owed by Borrower pursuant to Section 12.04 hereof; (b) second, to pay interest due on the Loan; (c) third, to pay principal due on the Loan; (d) fourth, to pay any other amounts due hereunder; and (e) fifth, to pay interest and principal on the Loan and other amounts payable hereunder but which are not due, as they become due (in the same order, as to amounts which come due simultaneously, as in (a) through (d) in this Section 12.05).

Section 12.06. No Remedy Exclusive, Waiver and Notice.

No remedy herein conferred upon or reserved to the Board or the Trustee is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Default or Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Board or the Trustee to exercise any remedy reserved to it in this Article XII, it shall not be necessary to give any notice, other than such notice as may be required in this Article XII.

ARTICLE XIII. MISCELLANEOUS.

Section 13.01. Notices.

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or five days after mailed by registered or certified mail, postage prepaid, to the Borrower at the address specified on the cover hereof and to the other parties at the following addresses:

(1) Board: Montana Board of Investments
Attn: Bond Program Office
P.O. Box 200126
Helena, Montana 59620-0126

(2) Trustee: U. S. Bank National Association
Corporate Trust Services PD-WA-T7CT
1420 Fifth Avenue, 7th Floor
Seattle, WA 98101

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

Section 13.02. Binding Effect.

This Agreement shall inure to the benefit of and shall be binding upon the Board, the Borrower and their respective successors and assigns.

Section 13.03. Severability.

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.04. Amendments, Changes and Modifications.

This Agreement may not be amended by the Board and the Borrower unless such amendment shall have been consented to in writing by the Trustee.

Section 13.05. Execution in Counterparts.

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.06. Applicable Act.

This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 13.07. Consents and Approvals.

Whenever the written consent or approval of the Board shall be required under the provisions of this Agreement, such consent or approval may be given by the Executive Director of the Board, unless otherwise provided by law or by rules, regulations or resolutions of the Board or unless delegated to the Trustee.

Section 13.08. Indemnity.

The Borrower agrees to indemnify and hold harmless the Board and the Trustee, their respective officers, employees and agents, from and against any and all losses, claims, damages, liability or expenses, of every conceivable kind, character and nature whatsoever, including, but not limited to, losses, claims, damages, liabilities or expenses (including reasonable fees for attorneys, accountants, consultants and other experts) (collectively referred to hereinafter in this Section 13.08 as "Damages") as follows:

(a) For all Damages arising out of, resulting from or in any way connected with the Loan or this Agreement, without limitation; and

(b) For all Damages arising out of, resulting from or in any way connected with the acquisition, construction, installation and operation of the Project.

Notwithstanding the foregoing, the Borrower shall have no liability for damages solely arising out of, resulting from or connected to the Loan or Agreement of any other Borrower.

Section 13.09. Waiver of Personal Liability.

No member, officer, agent or employee of the Board shall be individually or personally liable for the making of the Loan or be subject to any personal liability or accountability by reason hereof; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or by this Agreement.

Section 13.10. Captions.

The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

IN WITNESS WHEREOF, the Board has executed this Agreement by its duly authorized officers and the Borrower has caused this Agreement to be executed in its name by its duly authorized officers. All of the above occurred as of the date first above written.

BOARD OF INVESTMENTS OF THE
STATE OF MONTANA

By Julie Flynn
Its Bond Program Officer

CITY OF WHITEFISH

By John Muhlfeld
Its Mayor

WITNESS OR ATTEST:

By Necile Lorang
Its City Clerk

COPY

Loan #2547

PROMISSORY NOTE

FOR VALUE RECEIVED, the City of Whitefish, a political subdivision organized under the laws of the state of Montana (the "Borrower"), hereby promises to pay to the order of the Board of Investments of the State of Montana (the "Board") the principal amount of SIXTEEN THOUSAND THREE HUNDRED THIRTY NINE AND 00/100 DOLLARS ($16,339.00) or such lesser amount as shall actually be advanced to the Borrower under the Loan Agreement (hereinafter defined) as evidenced by the Amortization Schedule attached hereto and as annually revised by March 15 for every year the loan advance is outstanding, together with interest thereon in the amount calculated as provided in the Loan Agreement, payable semiannually on February 15 and August 15 in the amounts and as provided in the Loan Agreement and as set forth hereto.

The maturity date of this loan as evidenced by this Promissory Note is February 15, 2017 or sooner at the option of the Borrower pursuant to the Loan Agreement.

This Promissory Note is issued pursuant to the Loan Agreement dated as of March 14, 2014, between the Board and the Borrower (the "Loan Agreement"), and issued in consideration of the loan made thereunder (the "Loan") and in evidence of the obligations of the Borrower set forth in Section 5 thereof. This Promissory Note has been assigned to the Trustee under the Indentures of the Program. Payments hereunder shall be made directly to the Trustee for the account of the Board pursuant to such assignment. Such assignment has been made as security for the payment of the Board of Investments' INTERCAP bonds. All of the terms, conditions and provisions of the Loan Agreement are, by this reference hereto, incorporated herein as a part of this Promissory Note.

Interest on this Note is computed on a 365/365 simple interest basis; that is, by applying the ratio of the interest rate over the number of days in a year, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method.

Pursuant to the Loan Agreement, advances shall be made to the Borrower under the Loan Agreement from time to time upon the terms and conditions set forth in the Loan Agreement.

This Promissory Note is entitled to the benefits and is subject to the conditions of the Loan Agreement. The obligations of the Borrower to make the payments required hereunder shall be absolute and unconditional without any defense or right of setoff, counterclaim or recoupment by reason of any default by the Board under the Loan Agreement or under any other indebtedness or liability at any time owing to the Borrower by the Board or for any other reason.

This Promissory Note is subject to optional prepayment under the terms and conditions provided in Article X of the Loan Agreement upon giving 30 days prior written notice to the Board.

If an "Event of Default" occurs under Section 12.01 of the Loan Agreement, the principal of this Promissory Note may be declared due and payable in the manner and to the extent provided in Article XII of the Loan Agreement.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all acts, conditions and things required by the Constitution and laws of the State of Montana to be done, to exist, to happen and to be performed precedent to and in the issuance of this Note, in order to make it a valid and binding obligation of the Borrower according to its terms, have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required; that the Borrower will, as authorized by and according to applicable provisions and limitations of law annually levy sufficient tax receipts or collect sufficient revenues, as

the case may be, with other funds available therefor, to pay the principal and interest hereon when due; and that this Note, together with all other indebtedness of the Borrower outstanding on the date of original issue hereof and on the date of its actual issuance and delivery, does not exceed any constitutional or statutory limitation of indebtedness of the Borrower.

IN WITNESS WHEREOF, the City of Whitefish has caused this Promissory Note to be duly executed, attested and delivered, as of this 14th day of March, 2014.

CITY OF WHITEFISH

_____

By John Muhlfeld
Its Mayor

(SEAL)

ATTEST:

_____

By Necile Lorang
Its City Clerk

Board of Investments of the State of Montana hereby assigns the foregoing Loan Agreement and Promissory Note to U. S. Bank National Association (formerly known as First Trust Company of Montana), as Trustee.

BOARD OF INVESTMENTS OF THE
STATE OF MONTANA

_____

By Julie Flynn
Its Bond Program Officer

MONTANA BOARD OF INVESTMENTS
ANNUAL ADJUSTABLE RATE TENDER OPTION
MUNICIPAL FINANCE CONSOLIDATION ACT BONDS
(INTERCAP REVOLVING PROGRAM)

Municipality:	**City of Whitefish**	Final Payment:	February 15, 2017
Total Commitment:	**$16,339.00**	Total # of Payments:	6
Total Draws to Date:	**$0.00**	Draw Number:	**2547 1**
This Draw Down:	**$16,339.00**	Date of this Draw:	March 14, 2014
Remaining Commitment:	**$0.00**	Date of Loan Agreement:	March 14, 2014
Project:	Purchase Police Dept. Admin vehicle	Series:	**1998**

Payment Due	Interest Rate	# Days Due	Interest Payment	Principal Payment	O/S Loan Balance	Total Amount of Payment
				Beginning Balance	16,339.00	***please see comments**
08/15/14		154		2,702.08	13,636.92	
02/15/15		184		2,702.28	10,934.64	
08/15/15		181		2,716.80	8,217.85	
02/15/16		184		2,729.59	5,488.25	
08/15/16		182		2,743.73	2,744.52	
02/15/17		184		2,744.52	0.00	
				16,339.00		

COMMENTS:

Interest payments are not shown on this statement as the interest rate will change February 16.
After the interest rate changes, a new amortization schedule will be sent to reflect the actual payments.
Principal payments have been calculated based on an assumed interest rate of 1.00%. These will remain constant.

IMPORTANT: If payment is made by check, please send the enclosed amortization schedule(s) with check for proper credit. ***Please make sure that SpA Lockbox CM9695 is on both the check and envelope.***

Please mail a **copy of the amortization schedule** with a check made payable to:

U.S. Bank Trust-SpA Lockbox CM9695
ATTN: Operations Center
1200 Energy Park Drive
St. Paul, MN 55108

OR

Please wire funds to:

U.S. Bank N.A. (Minneapolis)
ABA 091000022
FFC: U.S. Bank Trust N.A.
Account # 180121167365
Wire Clearing Account # 47300023
ATTN: 50364256/996103DKO
INTERCAP: City of Whitefish

COPY

SECURITY AGREEMENT

This SECURITY AGREEMENT (the "Security Agreement" or "Agreement") is made as of March 14, 2014 by and between the City of Whitefish (the "Borrower"), an Eligible Government Unit, duly organized and validly existing under the laws and Constitution of the state of Montana, and the Board of Investments of the State of Montana (the "Board"). The Borrower enters this agreement in consideration of the loan to it by the Board and for the purpose of securing the Borrower's performance of each and every covenant contained in this agreement and in that certain Loan Agreement dated as of March 14, 2014 by and between the Board and the Borrower (the "Loan Agreement"). All right, title and interest of the Board in this Agreement and the Collateral subject hereto shall be assigned to U. S. Bank National Association (formerly known as First Trust Company of Montana National Association and as the First Trust Company of Montana) (the "Trustee"), as Trustee, under the Indenture of Trust dated March 1, 1991, a First Supplemental Indenture of Trust dated as of March 1, 1992, and a Second Supplemental Indenture of Trust dated as of June 1, 1994 (together the "Indenture") between the Board and the Trustee.

Section 1. Grant.

The Borrower hereby grants the Board a security interest in all goods, equipment, machinery, inventory, furniture, furnishings, fixtures, and all other tangible personal property of the Borrower described in this Security Agreement, whether currently owned or hereafter acquired, together with all accessories, attachments, and additions thereto and replacements therefor and all rents, income and proceeds therefrom (all such property being herein referred to collectively as the "Collateral").

Section 2. Representations.

Borrower represents and warrants that the Collateral, or any part thereof, is not subject to, and shall be kept free from, any security interest, lien or encumbrance other than permitted encumbrances as hereinafter defined in Section 8 hereof ("Permitted Encumbrances").

Section 3. Covenants of the Borrower.

For the purpose of protecting and preserving the security of this Security Agreement, the Borrower promises:

(a) (i) to care for and keep all of the Collateral in good condition and repair; (ii) not to remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or regulations) the Collateral; provided, however, that the Borrower may make such proper replacements, repairs, removals and alterations as it shall in good faith determine to be necessary or advisable to maintain or enhance the efficiency and value of the security created hereby; (iii) to comply with all laws, ordinances, regulations, conditions and restrictions now or hereafter affecting the Collateral or any part thereof; (iv) not to commit or permit any waste and not to permit any deterioration of the Collateral; and (v) not to commit, suffer or permit any act to be done in, upon, or with the Collateral in violation of any law or ordinance if such act might have consequences that would materially and adversely affect the financial condition, assets, properties or operation of the Borrower;

(b) to provide and maintain hazard insurance on the Collateral for its full replacement value; to obtain such insurance from a company of the Borrower's choice, subject to the Trustee's and the Board's approval; to name the Trustee and the Board as additional insured parties in such policies; to deliver duplicate originals or certified copies of the policies of said insurance to the Trustee upon its request;

(c) to appear in and defend any action or proceeding affecting or purporting to affect the security of this Security Agreement, and additional or other security for any of the obligations secured hereby, or the interest, rights, powers, or duties of the Trustee of the Board hereunder, it being agreed, however, that in the case of an action or proceeding against the Trustee or the Board said Trustee or Board, at their option, may appear in and defend any such action or proceeding and, in addition, it being agreed that the Trustee may commence any action or proceeding deemed necessary by it to perfect, maintain or protect such interest, rights, powers or duties, all in such manner and to such extent as it may see fit, and the Trustee is authorized to pay, purchase or compromise on behalf of the Borrower any encumbrance or claim which in its judgment appears or purports to affect the security hereof or to be superior hereto; to pay all costs and expenses, including costs of evidence of title and attorney's fees in a reasonable sum, in any above described action or proceeding in which the Board or the Trustee may appear;

(d) to pay immediately and without demand all reasonable and necessary sums that the Trustee or the Board expend to enforce the terms of this agreement, including attorneys' fees, with interest from date of expenditure at the rate of twelve percent (12%) per annum; and

(e) (i) to inform the Trustee and the Board in writing of the location of such Collateral and of any changes in the Collateral's location, to execute and deliver to the Trustee and the Board such financing statements and other documents in a form satisfactory to the Trustee and the Board, (ii) to do all acts that may be reasonably requested in order to establish and maintain a perfected interest in the Collateral, and (iii) to pay the costs of filing any notices or statements in any public office in which the Trustee deems filing or recording to be necessary or desirable.

Section 4. Acceptance Not Waiver.

By accepting payment of any sum secured hereby after its due date, neither the Trustee nor the Board shall be deemed to have waived its right either to require prompt payment when due of all other sums so secured or to declare default as herein provided for failure so to pay.

Section 5. Amendment, Additional Security.

Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Security Agreement upon any property not then or theretofore released as security for the full amount of all unpaid obligations, the Trustee may, upon written request by the Board, and without notice to the Borrower, release any person other than the Borrower so liable, extend the maturity or alter any of the terms of any such obligation, or grant other indulgences or releases or cause to be released any portion or all of the Collateral, release any other or additional security for any obligation herein mentioned, to make compositions or other arrangements with debtors in relation thereto; and if the Trustee at any time holds any additional security for any obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same at its option, either before or concurrently herewith or after a sale is made hereunder.

Section 6. Right of Entry for Inspection.

The Trustee and the Board and their employees and agents may inspect the Collateral at any reasonable time or times, regardless of where such Collateral is located.

Section 7. Entry, Possession, Operation of Equipment and Other Remedies.

If the Borrower fails or refuses to make any payment or to do any act which this agreement obligates it to make or do at the time and in the manner herein provided, then the Trustee and the Board, in their sole discretion, without notice to or demand upon the Borrower and without releasing the Borrower from any obligation hereof, are each authorized to do any of the following:

(a) make any such payment or do any such act in such manner and to such extent as they may deem necessary to protect the security hereof; or

(b) pay, contest or compromise any claim, debt, lien, charge or encumbrance which in the judgment of the Trustee or Board may affect or appear to affect the security of this Security Agreement, the interest of the Board or the rights, powers or duties of the Trustee or the Board hereunder.

In addition to any right or remedies it may have hereunder or otherwise, the Trustee or the Board shall have all the rights and remedies of a secured party under the Uniform Commercial Code of Montana, including without limitation, the right to dispose of such Collateral at public or private sale.

The Trustee and the Board are not obligated to make any of the payments or to do any of the acts mentioned above, but, upon election so to do, employment of an attorney is authorized and payment of such attorney's fees and of all other necessary expenditures is hereby secured under this Security Agreement.

Section 8. Permitted Encumbrances.

There are no Permitted Encumbrances allowed under this Agreement.

Section 9. Duration of Security Interest.

The security interest herein granted shall continue in full force and effect until all indebtedness hereby secured shall have been fully paid and satisfied and all commitments of the Board to extend credit to or for the account of the Borrower have expired.

Section 10. Additional Security.

The Trustee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Security Agreement or under any other agreement or any laws now or hereafter in force, notwithstanding that some or all of the indebtedness and obligations secured hereby are now or shall hereafter be otherwise secured, whether by mortgage, deed of trust, security agreement, lien, or otherwise. The obligation to repay the indebtedness secured hereby remains without reference to condition, disposition or location of the Collateral. Neither the Trustee's acceptance of this Security Agreement nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the Trustee's right to realize upon or enforce any other security now or hereafter held by the Trustee or the Board.

Section 11. Successors and Assigns.

This Security Agreement applies to, inures to the benefit of, and binds all parties hereto, the Board and the successors and assigns of any of them.

Section 12. Severability.

If any provision hereof should be held unenforceable or void, in whole or in part, then such unenforceable or void provision or part shall be deemed separable from the remaining provisions and shall in no way affect the validity of the remainder of this Security Agreement.

Section 13. Notice of Actions.

The Trustee shall be under no obligation to notify any party hereto of any action or proceeding of any kind in which the Borrower, the Board or the Trustee shall be a party, unless brought by the Trustee, or of any pending sale under any other deed of trust or security agreement.

Section 14. Charge for Provision of Statement.

For any statement regarding the obligations secured hereby, a charge, which the Borrower agrees to pay, may be made in an amount not exceeding the maximum allowed by law at the time any such statement is requested.

Section 15. Waiver of Statute of Limitations.

The right to plead any and all statutes of limitations as a defense to any demand secured by this Security Agreement is hereby waived.

Section 16. Substitution of Trustee.

The Board may substitute a successor Trustee from time to time by recording at the places required by law an instrument stating the election by the Board to make such substitution and identifying this Security Agreement.

Section 17. Choice of Law.

The laws of the state of Montana shall govern the construction and interpretation of this agreement.

Section 18. Notice.

Notices to the Borrower may be mailed to it at: _____, Attention: _____, or at such other address as the Borrower may file in writing with the Trustee. Notices to the Trustee hereunder may be mailed to it at: U. S. Bank National Association, Corporate Trust Services PD-WA-T7CT, 1420 Fifth Avenue, 7th Floor, Seattle, WA 98101, or at such other address as the Trustee may file in writing with the Borrower. Notices to the Board may be mailed to the Board of Investments of the State of Montana, P.O. Box 200126, Helena, Montana 59620-0126

IN WITNESS WHEREOF, the Borrower has caused this Security Agreement to be duly executed as of this 14th day of March, 2014.

CITY OF WHITEFISH

_____

By John Muhlfeld
Its Mayor

(SEAL)

ATTEST:

_____

By Necile Lorang
Its City Clerk

For value received, the undersigned hereby grants, assigns and transfers to U. S. Bank National Association (formerly known as First Trust Company of Montana National Association and as First Trust Company of Montana), as trustee under the Indenture of Trust dated March 1, 1991, between the undersigned and said trustee for the holders of the Board of Investments of the state of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program), Series 1991, all of its right, title and interest in this Security Agreement and the Collateral subject hereto.

Dated: March 14, 2014

BOARD OF INVESTMENTS OF THE
STATE OF MONTANA

By Julie Flynn
Its Bond Program Officer

DESCRIPTION OF COLLATERAL

Item	Serial and Model Number	Amount
2014 Ford F150 Pickup	1FTFW1EF6EFA38882	$16,339.00

(This page left blank intentionally to separate printed sections)

RESOLUTION NO. 14-___

A Resolution of the City Council of the City of Whitefish, Montana, approving and adopting the Montana Municipal Interlocal Authority Revised and Restated Workers' Compensation Program Agreement dated July 1, 2014.

WHEREAS, the City of Whitefish is a municipal corporation, duly organized under the laws of the State of Montana; and

WHEREAS, Article XI, Section 7 of the Montana Constitution provides that a political subdivision may a) cooperate in the exercise of any function, power, or responsibility with, b) share the services of any officer or facilities with, and c) transfer or delegate any function, power responsibility, or duty of any officer to one or more other local government units, the state or the United States; and

WHEREAS, the Interlocal Cooperation Act, Mont. Code Ann. Title 7, Chapter 11, Part 1, authorizes political subdivisions to create interlocal agreements to jointly perform any undertaking that each such political subdivision unit is authorized by law to perform; and

WHEREAS, Mont. Code Ann. §2-9-211, authorizes political subdivisions of the State to procure insurance separately or jointly with other subdivisions, and to use a deductible or self-insurance plan, wholly or in part; and

WHEREAS, Mont. Code Ann. §39-71-403, authorizes public corporations, which term includes cities and towns, to self-insure, either separately or jointly with other public corporations for workers' compensation coverage;

WHEREAS, the Montana Municipal Interlocal Authority (MMIA) is an Interlocal entity established pursuant to an Interlocal Cooperation Agreement in accordance with the provisions of the Interlocal Cooperation Act for the purpose of providing pooled risk coverage programs for the City of Whitefish and other political subdivisions executing the Interlocal Agreement; and

WHEREAS, the MMIA is authorized to exercise necessary powers to implement the purposes of MMIA as established by the Interlocal Agreement; and

WHEREAS, by executing the Revised and Restated Workers' Compensation Program Agreement, attached hereto as Exhibit "A" and incorporated herein by reference, the City signatory hereto has heretofore determined and does hereby confirm that the Assessments and other charges required by the Workers' Compensation Program have been and are just and reasonable and advantageous to the public benefit of the citizens of the City of Whitefish.

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

Section 1: The City Council of the City of Whitefish hereby approves and adopts the Revised and Restated Workers' Compensation Program Agreement attached as Exhibit "A" and incorporated herein by reference, with a delayed effective date of July 1, 2014.

Section 2: The City Manager is hereby authorized to execute the attached Revised and Restated Workers' Compensation Program Agreement.

Section 3: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

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

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

MEMORANDUM
#2014-007

To: Mayor John Muhlfeld
City Councilors

From: Chuck Stearns, City Manager

Re: Staff Report – Resolution new program agreement for MMIA Workers Compensation Program

Date: February 24, 2014

Introduction/History

The City of Whitefish has been a member of the Montana Municipal Interlocal Authority (MMIA) Workers' Compensation program for the required workers' compensation insurance since 1987. MMIA provides very good rates and very good training on avoiding accidents for this insurance program. When we approved participation in 1987, we had to approve a program agreement which defines the terms and regulations of the program.

Current Report

At their January Board meeting, the MMIA Board authorized some changes to the Workers' Compensation Program Agreement. Necile Lorang, our Administrative Services Director/City Clerk is a member of the Board of Directors of MMIA. The revised Program Agreement needs approval from each of its members, including the City of Whitefish.

As described in an attached memo from MMIA's Executive Director, these changes provide a more quantitative method for determining capital reserves and adjusting rates as compared to the current method. The program agreement also describes all of the regulations and procedures regarding the program, most of which are unchanged.

City Attorney Mary VanBuskirk and I have reviewed these documents and found them to be in order.

Financial Requirement/Impact

It is not anticipated that these changes have any direct or predictable effects on our workers' compensation rates. While rates may change because of their quantitative methods, such rates could go up or down and can't be predicted at this time.

Recommendation

Staff respectfully recommends the City Council approve Resolution No. 14-___; A Resolution of the City Council of the City of Whitefish, Montana, approving and adopting the Montana Municipal Interlocal Authority Revised and Restated Workers' Compensation Program Agreement dated July 1, 2014

MONTANA MUNICIPAL INSURANCE AUTHORITY
PO Box 6669 ▪ Helena, MT 59604-6669
Toll Free: (800) 635-3089 ▪ Tel: (406) 443-0907 ▪ Fax: (406) 449-7440

To: MMIA Workers' Compensation Program Members

From: Alan Hulse, CEO

Date: January 30, 2014

Re: MMIA Workers' Compensation Program Agreement Changes

Attached is a proposed Revised Workers' Compensation Program Agreement between the Members and the MMIA This document describes, among other things, the obligations of the MMIA and each Member, how the Program works, how assessments are calculated and adjusted, and how parties may withdraw from the Program. As explained below, the proposed revisions were authorized by the Board at its January 17, 2014 meeting. They are intended to provide additional financial tools for the Board and staff to manage more efficiently the capital adequacy of the Program. This, in turn, will allow the MMIA to more effectively provide you with stable and predictable rates over time.

The Board has established a number of ratios that will be used each year to measure the adequacy of the level of capital in the Work Comp Program. These ratios will be used by the actuary and the Board to create a target range of unencumbered surplus within which the Program would be adequately capitalized. If capital levels fall below this target range, the Board can collect additional revenues through rate increases or add a retroactive assessment to your invoice. If capital levels exceed the target range, the MMIA Board will have ability to lower capital either through rate reductions or retroactive disbursements. In either event, the goal would be to get back into the target range over a period of time rather than through a large one-time assessment which the Program Agreement currently allows.

Again, the goal of this change is to allow the MMIA to better manage program capital and to provide a more predictable and stable rate environment for our members over time. If these changes are adopted, the Work Comp Program would function like the Liability Program which has had these provisions in its Program Agreement since its inception. (Because of the capital position of the MMIA Liability Program, the Board elected to provide for a $1.5 million dollar disbursement to our membership last year.) The Work Comp Program is currently adequately capitalized within the target range established by the MMIA Board of Directors.

In order to implement these financial tools, the Members of the Work Comp Program must approve the enclosed July 1, 2014 Revised and Restated Program Agreement which is attached. The changes to the Program Agreement can be found in Section 4.5 Risk Assessment Adjustment which is a new section beginning on page 10.

Please execute two (2) original signature pages (Page 22) and return them to the MMIA by **April 15, 2014**. I have also included a draft Resolution in the event your entity would need a resolution passed in order to execute the agreement. The body of the Agreement should be retained with your records. The MMIA will return one signed signature page to you upon completion of the application process.

If you have any questions, please give me a call.

REVISED AND RESTATED

WORKERS' COMPENSATION

PROGRAM AGREEMENT

between the

MONTANA MUNICIPAL INTERLOCAL AUTHORITY
as Authority

and

The City/Town of _____

Effective: July 1, 2014

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REVISED AND RESTATED

WORKERS' COMPENSATION PROGRAM AGREEMENT

This REVISED AND RESTATED WORKERS' COMPENSATION PROGRAM AGREEMENT, by and between the MONTANA MUNICIPAL INTERLOCAL AUTHORITY, an interlocal agency duly organized and existing under the laws of the State of Montana, (the "Authority"), and the CITY (TOWN) OF _____, a political subdivision duly organized and existing under the Constitution and laws of the State of Montana, and such other political subdivisions that may hereafter become party hereto as provided herein, each a political subdivision duly organized and existing under the Constitution and laws of said State, (each a "Member Entity" and collectively the “Member Entities");

W I T N E S S E T H:

WHEREAS, Article XI, Section 7 of the Montana Constitution provides that a political subdivision may (a) cooperate in the exercise of any function, power, or responsibility with, (b) share the services of any officer or facilities with, and (c) transfer or delegate any function, power responsibility, or duty of any officer to one or more other local government units, school districts, the state or the United States;

WHEREAS, Title 7, Chapter 11, Part 1, Montana Code Annotated (Mont. Code Ann.),(the Interlocal Cooperation Act) authorizes political subdivisions to create interlocal agreements to perform jointly any undertaking that each such political subdivision unit is authorized by law to perform;

WHEREAS, Mont. Code Ann. § 2-9-211, authorizes political subdivisions of the state to procure insurance separately or jointly with other subdivisions, and to use a deductible or self-insurance plan, wholly or in part;

WHEREAS, Mont. Code Ann. § 39-71-403, authorizes public corporations, which term includes cities and towns, to self-insure, either separately or jointly with other public corporations for workers' compensation coverage;

WHEREAS, the Authority has been created pursuant to the Interlocal Cooperation Act for the purpose of providing, among other things, workers' compensation coverage pursuant to such statutes to Montana political subdivisions becoming members of the Authority and executing the necessary program documents for such coverage;

WHEREAS, the Member Entity has determined it to be in its best interest to join with other Member Entities in forming and creating the Authority through the Interlocal Cooperation Act for the purposes of:

1. developing effective risk management programs to reduce the amount and frequency of their losses;

2. sharing some portion, or all, of their losses;

3. jointly purchasing or otherwise acquiring insurance, excess insurance or reinsurance through a group program;

4. jointly issuing bonds or notes to fund a self-insurance or deductible reserve;

5. jointly purchasing administrative and other services through a group program when related to any of the other purposes;

6. jointly make deposits which may take the form of assessments to an account or surplus account and pay premiums for the purposes of participating in a group or captive insurance, excess insurance, or reinsurance programs, in whole or in part; and

WHEREAS, the Authority is a joint exercise of powers entity established pursuant to an Interlocal Cooperation Agreement in accordance with the provisions of the Interlocal Cooperation Act for the purpose of providing pooled risk coverage programs for the Member Entity and other political subdivisions executing the Interlocal Agreement; and

WHEREAS, the Authority is authorized to exercise necessary powers to implement the purposes of the Authority as established by the Interlocal Agreement;

WHEREAS, the Authority and each Member Entity, in consultation with independent professional consultants, have formulated a Workers' Compensation Program, administered by the Authority to meet the workers' compensation needs of each Member Entity, and which provides for joint and several liability of each Member Entity along with all other Member Entities for the full amount of any and all known or unknown claims of each Member Entity arising during the Member Entity's participation in the Program, and which will provide the following advantages, among others, to each Member Entity:

(a) spread and moderate the cost of claims loss to each Member Entity by paying annual Assessments on an experience-rated basis calculated actuarially;

(b) relief from the burden of paying premiums to insurers at levels reflecting the insurers' high costs of underwriting, administration and brokerage fees since the Authority's Program costs are limited to reasonable administrative costs,

(c) relief from commercial insurers' rights under excess liability policies to force claim settlements which are payable primarily in each case from the Member Entity's self-insurance funds,

(d) access to group insurance, excess insurance, reinsurance or other insurance programs which may provide such insurance at reasonable rates and on advantageous terms and conditions,

(e) actuarially determined Assessments calculated to provide amounts in each year necessary to maintain the Workers' Compensation Program at an actuarially sound level and therefore sufficient to reserve against the losses of the Member Entities;

WHEREAS, the Authority has established and offered to its members since January 1, 1986 the Program which has been approved annually as a duly authorized and existing workers' compensation program by the regulatory agency authorized by statute to review and approve such programs;

WHEREAS, by executing this Revised and Restated Workers' Compensation Program Agreement, the Member Entity signatory hereto has heretofore determined and does hereby

confirm that the Assessments and other charges required by the Workers Compensation Program have been and are just and reasonable and advantageous to the public benefit of the citizens of such Member Entity; and,

WHEREAS, it is the intent of the Member Entity that in executing this Revised and Restated Workers Compensation Program Agreement that the Workers' Compensation Program should remain in full force and effect and that continuity of the Workers' Compensation Program should be and is maintained with the execution of this Revised and Restated Workers' Compensation Program Agreement; and,

WHEREAS, the governing body of each Member Entity has authorized the execution of this Agreement for the purpose of providing Coverage for such Member Entity for the benefit of the Member Entity's employees, residents and taxpayers and for the health and safety of the public who interact with the Member Entity; and

WHEREAS, it is a matter for the governing board of the Member Entity to determine whether the amount of Assessments which the Member Entity pays for coverage is reasonable and advantageous and to the public benefit of the citizens of such Member Entity; and

WHEREAS, each Member Entity has heretofore determined and does hereby confirm that the Assessments to be required hereunder are reasonable and advantageous and to the public benefit of the citizens of such Member Entity; and

WHEREAS, each Member Entity has knowingly and willingly entered into this Agreement

NOW THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

SECTION I: DEFINITIONS

1.1 Definitions and Rules of Construction. Unless the context shall require otherwise, the terms defined below shall, for all purposes of this Revised and Restated Workers' Compensation Program Agreement, have the meanings herein specified.

Administrative Costs means those ordinary and necessary costs incurred in providing administrative services to the Program, including but not limited to, the following:

a. General administrative services
b. Loss prevention and risk assessment
c. Investment services
d. Legal services
e. Accounting services
f. Actuarial services
g. Risk management consulting
h. Brokerage services.

Agreement or **Revised Agreement** means this Revised and Restated Workers' Compensation Program Agreement, effective September 1, 2010, by and among the Authority and the political subdivisions signatory hereto, as Member Entities.

Annual Recomputed Amount means the re-computation of an Individual Member Entity's Account as provided in Section 5.2 of this Revised Agreement.

Assessment means Risk Assessments and Special Assessments payable for any Coverage Year.

Authority means the Montana Municipal Interlocal Authority, an interlocal agency, duly organized and existing under the Constitution and laws of Montana, its successors and assigns.

Board means the Board of Directors or its successor or governing body of the Authority.

Claim means a demand, action or suit against one or more Member Entity(ies) or the Authority to recover for losses or damages within or alleged to be within the scope of Coverage.

Consultant means a consultant qualified in the area of political subdivision workers' compensation coverage or actuarial science, as the Authority deems appropriate.

Coverage means the coverage, excess insurance, reinsurance, and other services provided pursuant to and in accordance with and on the terms set forth in this Agreement and in the Memorandum provided to each Member Entity, including, but not limited to, rights to payment of Settlements and Judgments from funds on deposit in the Program Operations Fund under the terms of this Agreement

Coverage Year shall mean the period beginning each July 1 and the twelve (12) consecutive months thereafter during which this Agreement and the Memorandum shall be in effect for each Member Entity, unless the Board of Directors designates such other period of twelve (12) consecutive months as the period during which this Agreement and the Memorandum may be in effect. In the case of a Member Entity which joins the Program during a Coverage Year, the Coverage Year shall be the remaining portion of the Coverage Year from the effective date of Coverage until the end of such Coverage Year.

Interlocal Agreement means that Interlocal Cooperation Agreement establishing the Montana Municipal Interlocal Authority pursuant to Title 7, Chapter 11, Part 1, Mont. Code .Ann.

J**udgment** means a final judgment entered in a court of competent jurisdiction or by an administrative tribunal after all appeals have been exhausted with respect to a Claim for which Coverage is provided under this Program. The amount of any Judgment may include any costs or expenses deemed appropriate by the Authority in connection therewith, including defense costs as defined in the Memorandum.

Loss Reserve means amounts in the Program Operations Fund required to be designated as reserves for payment of Settlements and Judgments pursuant to Section 3.3 hereof in accordance with prudent practice as determined by the Qualified Claims Administrator, including additional reserves established because of changed circumstances subsequent to the year any such Claim is filed and including the amount determined by a Qualified Consultant for loss development of claims and unallocated loss adjustment expenses.

Member Entity means that political subdivision of the State of Montana duly organized and existing under the Constitution and laws of the State of Montana and which has complied with the terms and conditions of this Revised Program Agreement for participation in the Workers' Compensation Program.

Memorandum of Coverage means the Memorandum of Workers Compensation and Occupational Disease Coverage, as the same may from time-to-time be amended, setting forth the terms and conditions for which Coverage is provided under the Workers' Compensation Program.

Program means the Workers' Compensation Program established by the Authority and in effect as of the effective date of this Revised Program Agreement.

Program Operations Fund means the fund established to carry out the operations of the Program, including but not limited to payment of Claims, payment of Administrative Costs, other insurance, excess insurance or reinsurance, loss reserves and unencumbered reserves.

Qualified Claims Administrator means an individual or an organization experienced in the handling of public entity workers' compensation claims, appointed by the Authority, or the Authority itself provided the Authority employs individuals who have such experience in the handling of public entity workers' compensation claims.

Settlement means the Settlement by the Authority or Member Entity in accordance with the Memorandum of a Claim against such Member Entity. The amount of any Settlement may include any costs or expenses deemed appropriate by the Authority in connection therewith, including defense costs as defined in the Memorandum.

Unencumbered Reserves means the amount in the Program Operations Fund in excess of the total amount that has been designated by the Authority as Loss Reserve and amounts required for operations.

1.2 Other Terms. Such other terms as may appear in this Agreement which are not defined in this Section 1 shall have such definitions as may be contained in the remainder of this Agreement.

SECTION 2: REPRESENTATIONS, COVENANTS AND WARRANTIES

2.1 Representations, Covenants and Warranties of the Member Entity. The Member Entity represents, covenants and warrants to the Authority as follows:

(a) Recitals Correct. The recitals to this Agreement are true and correct.

(b) Due Organization and Existence. Such Member Entity is a political subdivision of the State, duly organized and existing under the Constitution and laws of the State.

(c) Authorization; Enforceability. The Constitution and laws of the State authorize the Member Entity to enter into, execute, approve and issue, as the case may be, and to enter into the transactions contemplated by and to carry out its obligations under all of the Program Documents, and the Member Entity has duly authorized and executed all of the applicable Program Documents. The Program Documents constitute the legal, valid, binding and enforceable obligations of such Member Entity in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principals affecting the rights of creditors generally and except as to the limitations on remedies against public agencies generally.

(d) No Violations. Neither the execution and delivery of this Revised Agreement or the Interlocal Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which such Member Entity is now a party or by which the Member Entity is bound, or constitutes a default under any of the foregoing.

(e) Risk Management Guidelines. The Member Entity covenants to implement and follow risk management programs, guidelines and policies as adopted by the Authority for the Revised Program from time to time.

(f) Payment of Assessments and Acceptance of Coverage. The Member Entity agrees to pay when due Assessment for and accept the Coverage as described herein and the Memorandum of Coverage upon the terms and conditions set forth herein.

(g) Observance of Laws and Regulations by the Member Entity. The Member Entity agrees to keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State of Montana, or by an officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired by the Member Entity, including its right to exist and carry on business as a municipal corporation or other local government agency, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

2.2 Representations, Covenants and Warranties of the Authority. The Authority represents, covenants and warrants to each Member Entity as follows:

(a) Recitals Correct. The recitals to this Agreement are true and correct.

(b) Due Organization and Existence; Enforceability.
The Authority is a legal entity created pursuant to the Interlocal Cooperation Act, Title 7, Chapter 11, Part 1, Montana Code Annotated, duly organized, existing and in good standing under and by virtue of the laws of the State of Montana; has the power to enter into this Agreement and possesses by virtue of the Interlocal Agreement full power to provide coverage to parties signatory to the Interlocal Agreement and this Agreement. This Agreement and the other Program Documents constitute the legal, valid, binding and enforceable obligations of the Authority in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(c) No Encumbrances. The Authority will not pledge the Assessments or its rights under this Revised Agreement except as provided under the terms of this Revised Agreement.

(d) Equitable Exercise of Responsibilities. The Authority will exercise all rights and responsibilities hereunder reasonably and equitably for the benefit of all Member Entities without preference or discrimination among Member Entities.

(e) No Violations. Neither the execution and delivery of this Revised Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, conflicts with or results in a breach of the terms, conditions or provisions of the Bylaws of the Authority or any restriction on

any agreement or instrument to which the Authority is now a party or by which the Authority is bound, or constitutes a default under any of the foregoing.

(f) Covenant to Comply with Regulations. The Authority covenants that it will comply with the regulations concerning self-insurance and group self-insurance for workers' compensation coverage duly and lawfully promulgated by the Employment Relations Division of the Montana Department of Labor and Industry, and its successors.

(g) Agreement to Provide Coverage. The Authority agrees to provide the Coverage to the Member Entity described herein and in the Memorandum of Coverage and upon the terms and conditions set forth in this Revised Agreement.

SECTION 3: ESTABLISHMENT OF ACCOUNTS; COVERAGE; PAYMENT OF CLAIMS AND OTHER PROGRAM COSTS; PURCHASE OR ACQUISITION OF OTHER INSURANCE, EXCESS INSURANCE OR REINSURANCE

3.1 Program Funds and Accounts. The Authority hereby creates the following Funds and Accounts as set forth herein:

(a) Program Operations Fund. The Authority shall deposit in the Program Operations Fund all Assessments, investment income, and other funds or revenues allocated to the Program. This fund shall be used to pay all claims as well as the administrative costs of the Program. These funds may also be expended for investments, contribution or assessment for participation in a group or captive insurance program or pool as provided in Section 3.6.

(b) The Program Operations Fund shall have the following accounts:

(i) one or more Program Checking Accounts into which assessments and other revenue items shall be deposited and from which shall be paid Program costs and expenses;

(ii) Program Investment accounts. The Program shall maintain various investment accounts in compliance with MMIA's Investment Policy.

3.2 Coverage. The Authority through its Workers' Compensation Program hereby provides the Coverage to the Member Entity, and the Member Entity hereby agrees to accept the Coverage, upon the terms and conditions set forth in this Revised Agreement and the Memorandum of Coverage attached hereto as Exhibit A.

3.3 Payment of Claims, Settlements, Judgments and Administrative Costs.

(a) Settlements and Judgments which the Authority is obligated to pay under the terms of this Program Agreement and the Memorandum shall be paid on behalf of the Member Entities from the Program Operations Fund directly to the claimants or designees. An amount representing the Administrative Costs incurred by the Authority with respect to the Program shall be paid to the Authority.

(b) If the Program Operations Fund is insufficient to pay the award, the Authority shall individually assess each Member Entity to the extent necessary to pay the award, and the assessment charged each Member Entity shall be determined on a proportionate basis as may be

determined by the Board of Directors with the advice of its Consultant ("Special Assessment"). Any such Special Assessment shall be a contractual obligation of the Member Entity.

(c) Any lawful award entered against a Member Entity shall be a liability of the Program and a joint and several liability of each Member Entity as provided in this Revised Agreement.

3.4 Subrogation. Each Member Entity agrees that in the event of the payment of any loss by the Program under this Agreement, the Program shall be subrogated to the extent of such payment to all the rights of the Member Entity against any person or other entity legally responsible for damages for said loss, and in such event the Member Entity hereby agrees to render all reasonable assistance, other than pecuniary, to effect recovery.

3.5 Loss Reserves. The Authority shall employ or retain a Qualified Claims Administrator for the purpose of adjusting Claims and submitting a report to the Authority and each Member Entity setting forth (a) the amount of Loss Reserves necessary to be established with respect to each Claim arising during the preceding full Coverage Year(s), and (b) any adjustments (whether increases or decreases) necessary to be made in the amount of each Loss Reserve previously established pursuant to this Section and to make supplemental reports from time to time throughout each year as needed in accordance with prudent practice. In determining the amount of Loss Reserves necessary to be established or adjusted as described above, the Qualified Claims Administrator shall consider such facts and circumstances occurring during the period covered by such report as it, in its independent judgment, deems necessary in accordance with prudent practice. Notwithstanding the foregoing, the Qualified Claims Administrator shall take into account Settlements of Claims in accordance with the criteria set forth in this Section.

The Authority shall adjust Loss Reserves in the Program Operations Fund annually, and additionally from time to time throughout each year as needed in accordance with prudent practice. In the event that any such adjustment to Loss Reserves results in the Unencumbered Reserves being reduced to zero, the Authority shall provide prompt written notice of such fact to the Member Entities and the Authority shall have the discretion to impose, and the Member Entities shall be obligated to pay, any Special Assessment which the Board of Directors may determine is necessary in order to fund the Unencumbered Reserves at a prudent level with the advice of a qualified actuary or other person knowledgeable about public entity workers' compensation programs.

3.6 Other Insurance, Excess Insurance or Reinsurance. The Authority may provide Coverage, or a portion of Coverage, to the Member Entities by purchase of specific and/or aggregate workers' compensation insurance, excess insurance, or reinsurance with such self-insurance attachment points as at the time are in the best interests of the Program and the Member Entities as determined by the Board; by purchase of workers' compensation insurance, excess insurance or reinsurance from a group or captive insurance program or pool; or by participation in a group or captive insurance program or pool for the purposes of acquiring workers' compensation insurance, excess insurance or reinsurance. The Authority may use Unencumbered Reserves to purchase or make payments to acquire such insurance, excess insurance or reinsurance, or participate in such pool or program; provided, however, that the Authority may use Loss Reserves to purchase or otherwise acquire such insurance, excess insurance or reinsurance if the policy of commercial insurance, excess insurance or reinsurance to be purchased or otherwise acquired covers the claim for which such Loss Reserves were established. In the event of a dispute between the Authority and any Member Entity and any insurer, excess insurer or reinsurer as to payment of a Claim, the failure by either to pay such Claim shall not result in a default by the Authority under the terms of this Agreement.

In a Coverage Year for which the Authority has purchased or otherwise acquired insurance, excess insurance or reinsurance on behalf of a Member Entity, each such Member Entity shall be obligated to pay a proportion of the costs of such insurance, excess insurance or reinsurance, and Risk Assessment Adjustments.

Section 4: TERM OF AGREEMENT; ASSESSMENT; COMMINGLING OF FUNDS PROHIBITED

4.1 Term of Agreement; Termination of a Participant's Obligations to Pay Assessment. The Term of this Agreement shall commence on the date of its execution and shall continue until the Member Entity terminates the agreement as provided in Section 6 of this Agreement.

The obligation of any Member Entity to pay Assessments under this Agreement will terminate upon the terms and conditions set forth in Section 6 herein.

4.2 Budget and Appropriation of Assessment Payments. The Authority shall calculate the class code rates for Assessments to be paid by each Member Entity for the next succeeding Coverage Year as provided in Section 4.4 herein and provide preliminary class code rate information no later than April 15th of each year. During the term of the Agreement, Assessment invoices will be sent to Member Entities quarterly in arrears with payment being due by the 15th of the month following the end of the quarter being assessed. Each Member Entity covenants to take such action as may be necessary to include Assessment payments payable hereunder in its annual budget, to levy ad valorem taxes outside its permitted mill levy limitation, if necessary, on all property within its jurisdiction to fund such Assessment payments and to make the necessary annual appropriations for all such Assessment payments. The covenants on the part of the Member Entity herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the Member Entity to take such action and do such things as are required by law in the performance of the official duty of such officials to enable each Member Entity to carry out and perform the covenants and agreements in this Agreement agreed to be carried out and performed by such Member Entity.

4.3 Obligation to Pay Assessments.

(a) No Withholding. Notwithstanding any dispute between the Authority and a Member Entity, including a dispute as to the scope or nature of Coverage provided by the Authority or the availability of amounts in the Program Operations Fund to pay Claims made against any Member Entity, or for any other reason (other than the termination of the obligation to pay Assessment pursuant to Section 4.1 hereof), the Member Entity shall appropriate funds sufficient to pay and shall make all Assessment payments when due and shall not withhold any Assessment payments pending the final resolution of such dispute.

(b) Rate on overdue Payments. In the event a Member Entity fails to make any of the payments required in this Section, the payment in default shall continue as an obligation of the Member Entity until the amount in default shall have been fully paid, and in addition to any remedies available with respect to such default, the Member Entity agrees to pay the same with interest or penalty thereon, at a rate or rates to be established by the Authority, from the date such amount was originally payable.

(c) Abatement. There shall be no abatement of Assessment payments.

4.4 Assessments

(a) Total Risk Assessments. With respect to each Coverage Year, the Authority shall retain a Consultant to determine and prepare a report by March 1 preceding the beginning of such Coverage Year setting forth the total amount of Risk Assessments payable in the aggregate by all Member Entities for such Coverage Year ("Total Risk Assessment"). The Total Risk Assessment shall be that amount which the Consultant estimates is required to be deposited into the Program Operations Fund at a confidence level of no less than fifty percent (50%), to maintain sufficient Loss Reserves to pay all Settlements and Judgments for all Member Entities, all Administrative Costs incurred during the Coverage Year, costs of other insurance, excess insurance, or reinsurance, and such other reasonable and necessary costs as may be incurred in the operation of the Program as may be determined by the Board of Directors of the Authority. The Total Risk Assessment may be increased by the Authority if, upon advice of the Consultant, the Board of Directors determines that a higher confidence level should be maintained. The Consultant shall utilize such methodology as adopted from time to time by the Authority upon notice to the Member Entities and shall certify that such methodology was used. The Authority shall collect from all Member Entities an amount equal to the Total Risk Assessment determined by the Consultant to maintain the designated confidence level in the Program. The amount collected from all Members may include funds obtained from Assessments, investment income and Unencumbered Reserves, as the Board of Directors may in the exercise of its discretion deem appropriate with respect to each Coverage Year.

(b) Calculation of Individual Member Entity Risk Assessment. The Risk Assessment rates established as provided in Section 4.4(a) shall then be applied to each Member Entity's estimated payroll by rating classification and further adjusted by an experience rating modification which shall be determined by the Board of Directors on the advice of an actuarial consultant utilizing commonly accepted actuarial principles. The amount so allocated to each Member Entity shall be the Risk Assessment due and owing by the Member Entity to the Program for such period.

(c) The aggregate Assessment and the Risk Assessment due and owing by each Member Entity shall be computed and adopted by the Board of Directors on a Coverage Year basis to be effective July 1, provided that the Board of Directors may make such mid-term adjustments to Risk Assessment rates as appropriate and in the best interests of the Program and the Member Entities to accomplish the goals of the Program in accordance with the Workers' Compensation and Occupational Disease Acts of Montana.

4.5. Risk Assessment Adjustment;

(a) For purposes of the Risk Assessment Adjustment Computation, "Incurred Losses" for each Member Entity shall mean the amount by which Loss Reserves for all Claims of each Member Entity are to be established or increased during each Coverage Year covered by the annual report which is submitted by the Qualified Claims Administrator pursuant to Section 3.5 hereof, exclusive of the most recently completed preceding full Coverage Year, netting out any decrease in Loss Reserves for Claims of each such Member Entity during such period.

(b) Risk Assessment Adjustment Computation. On or before March 31 of each year, the Authority shall compute the Risk Assessment Adjustment for each Member Entity. The Risk Assessment Adjustment, which may be an additional Assessment or a refund of a previous Assessment, shall be the sum of Incurred Losses, loss expenses, and administrative costs less Risk Assessments, inclusive of prior Risk Assessment Adjustments. The methodology and

limitations of additional assessment or refund shall be determined by the Authority based on the recommendation of the Consultant.

Notwithstanding the foregoing, the Authority is authorized to compute the Risk Assessment Adjustment more frequently than annually and/or inclusive of the most recently completed preceding full Coverage Year when the Board of Directors with due regard for the financial condition of the Program deems it prudent and necessary to do so.

(c) Overriding Clause. In the event Section 4.5(a) conflicts with any other section, provision, or definition in the Workers' Compensation Coverage Program Agreement, this section shall govern and supersede the same.

(d) Prompt Notice of Risk Assessment Adjustments. The Authority shall give each Member Entity prompt notice of the determination of Risk Assessment Adjustments.

(e) Obligation to Pay Risk Assessment Adjustments. The obligation of Member Entities to pay Risk Assessment Adjustments with respect to Coverage Years in which they were Member Entities determined subsequent to the date of withdrawal shall in no event be discharged by expulsion or withdrawal from the Program.

4.6 Assessments In The Event of Losses and Expenses In Excess of the Program Funds. In the event the Program losses and expenses for the Coverage Year exceed Risk Assessments, Loss Reserves, and interest income for that Coverage Year, the difference shall be charged to the Unencumbered Reserves, if funds are available. If funds are not available, the Board of Directors, in the exercise of its discretion and upon the advice of a qualified actuary may impose a Special Assessment.

Should funds be obtained by the Program from borrowing or from any other appropriate source in lieu of a Special Assessment, then such funds shall be used to pay Claims. In the event of such borrowing of funds by the Program, the Authority shall advise the Employment Relations Division of the Montana Department of Labor and Industry, or its successor responsible for the regulation of the Program.

Any sums expended by the Member Entity in the interim to pay Claims covered by the Program shall be reimbursed, if they would otherwise be covered by the Program.

Provided that nothing in this Section 4.6 shall be construed to limit the joint and several liability of individual Member Entities.

4.7 Commingling of Funds Prohibited. Assessments, Special Assessments, Loss Reserves, Unencumbered Reserves, investment income, or other income paid to or derived from the Program shall not be commingled with the funds of any other program which is or may be sponsored, operated, or controlled by the Authority. Nothing in this Revised Agreement shall be construed to permit any Member Entity or any other person to attach, assign, transfer, or otherwise have any right or title to or interest in the assets of the Program for any purpose other than as set forth in this Revised Agreement. Nothing in this Revised Agreement shall be construed to permit any Member Entity or any other person to attach, assign, transfer, or otherwise have any right or title to or interest in the assets of any other risk retention or other program which is or may be sponsored, operated, or controlled by the Authority for purposes of satisfying any obligation, debt, or covenant arising from or related to this Revised Agreement.

This prohibition on commingling of funds does not apply to the Montana Municipal

Interlocal Authority Workers' Compensation Program's proportionate share of the total amounts of any Assessment Deposits or Assessments received by Government Entities Mutual (GEM) from all participants of GEM, or held in any account or surplus account by GEM.

4.8 Assessment Audits. The Authority may at its discretion audit each Member Entity to determine the accuracy of the basis used for the Assessment calculations. An audit will be limited to the two Coverage Years prior to the Coverage Year during which the audit takes place. Refunds for overpayment or billing for underpayment will be limited to the same period.

4.9 Member Identified Errors. If an individual Member Entity finds errors in the amount of Assessments paid for prior periods, and submits documentation deemed adequate by the Authority (e.g. an independent audit or authorized change to reports submitted to some other government entity), a refund may be requested or additional Assessments paid in accordance with the time limits identified above for Assessment audits.

SECTION 5: INDIVIDUAL MEMBER ENTITY ACCOUNTS; ACCOUNT SETTLEMENT UPON WITHDRAWAL OR TERMINATION

5.1 Individual Member Entity Accounts. An Individual Member Entity Account in the name of each Member Entity will be established; and in the case of Member Entities who are Member Entities in the Program as of the effective date of this Agreement, the balance in their respective Individual Member Entity Accounts will be continued. Such Individual Member Entity Account will be used to identify the current financial condition of each Member Entity's participation in the Program. The Individual Member Entity Accounts will represent each Member Entity's share of Assessments less Claims, Judgments, Administrative Costs and other expenses which have been made against the Program.

The Individual Member Entity Accounts are for the purpose of determining each Member Entity's share of funds which:

(a) may be credited against future Assessments or payable as dividends;

(b) may be payable to each Member Entity who withdraws from the Program;

(c) may be payable to each Member Entity on termination of the Program.

5.2 Annual Computation. Within 180 days of the end of each Coverage Year, the Individual Member Account of each Member Entity shall be computed by computing for the Program as a whole and by allocating to each Member Entity its proportionate share of the Assessments collected plus the investment income and other revenues of the Program at the end of the Coverage Year less the Claims (including claims paid, claims incurred, and claims incurred-but-not-reported), Judgments, loss development, Administrative Costs, and other operating costs for such Coverage Year.

Provided, however, that no Member Entity shall be entitled to receive any money or credit on account of having a positive balance in its Individual Member Entity Account unless the Unencumbered Reserves of the Program Operations Fund has an adequate fund balance, as determined by the Board in consultation with the programs actuary, and in such event the individual Member Entity shall be entitled to a proportionate share of the assets in the Unencumbered Reserves in satisfaction of its Individual Member Entity Account as provided in

this Agreement.

5.3 Settlement of Individual Member Entity Account upon Withdrawal. In the event a Member Entity withdraws from the Program in good standing as provided in Section 6.5, the withdrawing Member Entity's Individual Member Entity Account will be calculated as of that date and 10% of the amount due the withdrawing Member Entity based upon the status of its Individual Member Entity Account and subject to the provisions contained in Sections 5.1 and 5.2 will be paid to the Member Entity at that time. At the end of each of the next three years, the Individual Member Entity's Account will be recomputed based upon changes in incurred losses and investment income during the year and the amount then due and payable the withdrawing Member Entity shall be determined as provided in Section 5.2. At the end of the first year, twenty-five percent (25%) of the Annual Recomputed Amount due and payable based upon the Individual Member Entity's Account will be paid to the Member Entity plus interest on that amount for one year and computed at the then rate of one-year U.S. Treasury Notes. At the end of the second year, the Member Entity shall be paid fifty percent (50%) of the Annual Recomputed Amount due and payable based upon the Individual Member Entity's Account plus interest on that amount for two years and computed for each of those two years at the rate of one-year U.S. Treasury Notes at the end of each such year. At the end of the third year, the Member Entity shall be paid fifteen percent (15%) of the Annual Recomputed Amount due and payable based upon the Individual Member's Account plus interest on that balance for three years computed for each of those three years at the rate of one-year U.S. Treasury Notes at the end of such year. During the three-year period, the right of a withdrawing Member Entity to receive a settlement of its Individual Member Entity's Account is subject to the availability of funds in the Unencumbered Reserves as provided in Section 5.2, provided however, that this schedule for disbursements is subject to the limitation imposed by Section 6.5(c) of this Agreement.

5.4 Settlement of Individual Member Entity Account upon Termination. In connection with expulsion or suspension of a Member Entity pursuant to Section 6.5 herein, the Authority shall determine the Individual Member Entity Account of such Member Entity. The amount of the Individual Member Entity Account otherwise due to the Member Entity being expelled or suspended shall be applied to the obligations due from such Member Entity under the terms of this Agreement. Any remaining balance in the terminated Member's Individual Member Entity Account ("the Excess Individual Member Entity Account Balance") shall be held by the Authority and any interest thereon in a segregated account for the benefit of such Member Entity. The Authority will transfer to such Member Entity its Excess Individual Member Entity Account Balance, if any, on the earliest practicable date when the Member is no longer subject to any Assessments for any obligations under the terms of this Agreement, which will be the date when all Claims, including claims incurred during any Coverage Period prior to expulsion or suspension of such Member Entity, and Judgments have been finally determined and/or paid, and then pursuant to the schedule of payments set forth in Section 5.3 herein applicable to a Member Entity who withdraws in good standing, subject to the availability of funds in the Unencumbered Reserves as provided in Sections 5.2 and 5.3 and subject further to the limitation as provided in Section 6.5 (c).

SECTION 6: ADMISSION TO, WITHDRAWAL FROM AND EXPULSION FROM THE WORKERS' COMPENSATION RISK RETENTION PROGRAM

6.1 Transition Period. This Revised Agreement shall be effective September 1, 2010. Members of the Workers' Compensation Program who execute this Revised Agreement prior to the effective date shall continue to be covered under the terms and conditions of the Program

Agreement then in existence until the effective date of this Agreement. The effective date for those Member Entities of the Workers' Compensation Program who execute this Revised Agreement after September 1, 2010, will be retroactive to September 1, 2010.

6.2 Conditions for Providing Coverage to a New Member Entity. Applications for memberships in the Revised Program shall be submitted on an approved form to the Chief Executive Officer. The Board of Directors will consider and act upon each application. Concurrence by a majority of the Board and the Authority's excess insurance carrier is required in order for an applicant to be admitted as a Member Entity. The Authority may provide Coverage to a new Member Entity of the Program that is not currently a Member Entity under this Agreement, subject to the following conditions:

(a) such new Member shall be a political subdivision of the state;

(b) at least 30 days prior to the commencement of coverage under the Revised Program, such new Member Entity shall be signatory to the Interlocal Agreement and a member of the Authority;

(c) at least 30 days prior to the commencement of coverage under the Revised Program, such new Member Entity shall have submitted a completed application for admission to the Revised Program as may be required by the Board of Directors; and

The minimum time requirements for execution and submission of documents as provided in subparagraphs (b) and (c) hereinabove may be waived by the Board of Directors at their discretion.

Coverage of such new Member Entity shall be effective on the first day of the quarter next succeeding the approval of the new Member's application by the Authority, unless determined otherwise by the Board of Directors, and the execution of the documents as provided herein.

6.3 Requirements for Participation in the Program.

Each Member Entity who participates in the Program shall execute this Agreement. Each Member Entity hereby acknowledges and agrees that, commencing with the effective date of its participation in the Program, the Member shall be obligated to pay Assessments as computed pursuant to this Agreement

6.4 Capital Assessment of New Member Entity to Program Operations Fund.

(a) If the Program Operations Fund is not adequately funded, the new Member Entity may be assessed a non-refundable amount to be deposited into the Program Operations Fund as determined by the Authority ("Capital Assessment"). Such new Member Entity shall pay all components of the Risk Assessment in addition to this Capital Assessment.

(b) If the Program Operations Fund is adequately funded as determined by a Consultant, no initial capital assessment will be required of the Member Entity.

6.5 Conditions for Permitting Withdrawal of a Member Entity from Coverage. The Authority shall permit a Member Entity to withdraw from Coverage under this Agreement, provided that the following are satisfied:

(a) such Member Entity shall not be in default as to payment of any Assessments then

or theretofore due;

(b) at least 60 days preceding the effective date of such withdrawal, such Member Entity shall have provided written notice to the Authority of its intent to withdraw;

(c) Provided, however, if the Authority shall have received a certificate from a Consultant that such withdrawal will materially reduce the actuarial soundness of the Program, the Authority may, in its sole discretion and upon the advice of the Consultant, in order to minimize the financial, actuarial and economic impacts on the Program, extend the terms of the repayment of amounts due the withdrawing Member of the Member's Individual Member Entity Account as otherwise provided in Sections 5.2 and 5.3 of this Agreement.

(d) In no event shall withdrawal from Coverage or termination of a Member Entity's participation in the Program release a Member Entity from its obligation to pay damages resulting from default under the terms of this Revised Agreement, nor shall such withdrawal or termination release a Member Entity from its obligation to pay Assessments as provided herein. The Authority shall continue to pay covered Claims relating to the withdrawn Member Entity which arose prior to withdrawal as provided herein, unless the Member Entity defaults in the payment of its continuing obligations described in the preceding sentence. Notice of withdrawal shall be revocable by the Member Entity only with the consent of the Authority.

6.6 Conditions of Membership Review, Suspension and Termination Procedure.

(a) The Authority may suspend or expel a Member Entity from the Revised Program (i) if the Member Entity is in default under the terms of this Revised Agreement or (ii) when, in the determination of the Chief Executive Officer, a Member Entity has engaged in conduct, other than a default under this Revised Agreement, that warrants expulsion from membership in the Program. Suspension, termination or expulsion is subject to the conditions provided in Section 6.6 herein.

(b) The following shall be "events of default" under this Agreement and the terms "events of default' and "default" shall have the same meaning whenever they are used in this Agreement with respect to a Member Entity:

(i) failure by such Member Entity to observe and perform any covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to such Member Entity by the Authority, provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Authority, as the case may be, shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Member Entity within the applicable period and diligently pursued until the default is corrected; or

(ii) the filing by such Member Entity of a case in bankruptcy, or the subject of any right or interest of such Member Entity under this Agreement to any execution, garnishment or attachment, or, adjudication of such Member Entity as a bankrupt, or assignment by such Member Entity for the benefit of creditors, or the entry by such Member Entity into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Member Entity in any proceedings instituted under the provisions of the federal bankruptcy code, as amended,

or under any similar act which may hereafter be enacted.

(c) When a Member Entity has been determined by the Authority to be in default under the terms of the Revised Agreement, the Member Entity shall be given written notice of such default and shall be required to cure such default within ten (10) calendar days of receipt of such notice. If such default is not cured within the time prescribed herein, said Member Entity will be suspended from the Program and Coverage of Claims under the Program shall be terminated during the period of suspension, which shall be effective, without the need for a meeting of the Board of the Authority, at 12:01 a.m. on the 30th day after notice of termination has been received by the Member Entity. Such period of suspension shall continue until the conditions of termination or expulsion stated in Section 5.4 of this Program Agreement have been met, at which time the defaulting Member Entity's participation in the Program shall be immediately terminated without a meeting.

(d) In the event the Chief Executive Officer has determined that the Member Entity has engaged in conduct that warrants expulsion other than a default under this Revised Agreement, the Chief Executive Officer shall file a written report with the Board of Directors. Said report shall contain a summary of the facts and the recommendations regarding continued membership status. A copy of the report shall be served by mail to the Member Entity along with a Notice of Meeting of the Board of Directors. Said Notice of Meeting shall include the place, date and time of the meeting. At its discretion, the Board of Directors may submit written questions to the Member Entity, written answers to which must be mailed to the Chief Executive Officer no later than seven (7) calendar days prior to the date of the meeting. A Member Entity objecting to the report and recommendations of the Chief Executive Officer shall submit a written statement to the Board of Directors setting out in detail the basis for the objection and any other information the Member Entity desires to submit. Said statement must be mailed to the Chief Executive Officer no later than seven (7) calendar days prior to the meeting. The Board of Directors shall meet at the time and place designated in the Notice of Meeting. The Member Entity shall be entitled to be represented at the meeting and present an oral statement and other information. Following the meeting, the Board of Directors shall affirm, modify, or reject the recommendation of the Chief Executive Officer. The Board of Directors shall have the authority: (i) to place a Member Entity on probation, the terms and duration of which it shall determine; (ii) to suspend a Member Entity from Coverage of Claims; or (iii) to expel a Member Entity from the Program. A copy of the Board of Directors' decision shall be served by mail on the Member Entity. In the event that the Board of Directors votes to suspend or terminate membership, such suspension or termination shall not take place for at least thirty (30) days after the Member Entity has received notice of the suspension or termination. The duration of the notice period shall be determined by the Board.

6.7 In no event shall involuntary termination or expulsion from the Revised Program release a Member Entity from its obligation to pay Assessments or comply with the other terms or conditions of this Revised Agreement, nor shall involuntary termination or expulsion release a Member from its obligation to pay damages resulting from a default under the terms of this Revised Agreement.

6.8 Obligation to Notify Employment Relations Division upon Withdrawal or Termination. Upon withdrawal or termination of a Member Entity, the Authority and the Member Entity shall promptly notify the Employment Relations Division of the Montana Department of Labor and Industry or its successor.

6.9. No Remedy Exclusive. No remedy conferred herein upon or reserved to the Authority is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or

in equity, including, but not limited to the right by mandamus or other suit or proceeding at law or in equity to enforce his rights against the Member Entity and to compel the Member Entity to perform and carry out its duties under this Agreement. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Section, it shall not be necessary to give any notice, other than such notice as may be required in this Section or by law.

6.10 Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Agreement should default under any of the provisions hereof and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party contained herein, the defaulting party agrees that it will on demand pay to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party awarded to the nondefaulting party by a court of competent jurisdiction.

6.11 No Additional Waiver Implied by One Waiver. In the event any covenant contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 7: JOINT AND SEVERAL LIABILITY

7.1 Guarantee to Pay Claims. The Member Entity agrees to assume and guarantee to pay, or otherwise discharge promptly, any and all the liabilities and obligations which the Program may incur for Claims for which Coverage has been provided pursuant to the terms of this Revised Agreement and the Workers' Compensation and Occupational Disease Acts of the State of Montana.

7.2 Joint and Several Liability. This Revised Agreement represents a direct financial guarantee to the employees of all Member Entities of the Program and dependents of the deceased employees of all Member Entities of the Program for the full amount of any and all liabilities or obligations for which Coverage has been provided pursuant to the terms of this Revised Agreement and any predecessor Agreement with respect to this Program in amounts not limited to this Member Entity's "pro rata" share. The Member Entity understands and agrees that it shall be jointly and severally liable with the other Member Entities for the full amount of any and all known and unknown Claims incurred and incurred-but-not-reported during the Member Entity's participation in the Original Program and for the full amount of any and all known and unknown claims incurred and incurred-but-not-reported during the membership of the Member Entity in the Program.

7.3 Other Insurance Excluded. This Revised Agreement shall not cover or extend to any workers' compensation or occupational disease liabilities which are expressly insured by a carrier duly authorized to write Montana workers' compensation and occupational disease insurance, provided that the liabilities assumed by an excess insurance or reinsurance provider shall also remain the primary liabilities of the Program and its Member Entities.

7.4 Enforcement of Guarantee. In the event the Program shall fail to pay compensation, as compensation is defined in the Montana Workers' Compensation and

Occupational Disease Acts, when due, the Member Entity will pay the same, and the payment may be enforced against the Member Entity to the same extent as if said payment was its sole liability. The Member Entity understands and agrees that it shall be jointly and severally liable with the other Member Entities for the full amounts of any and all known or unknown Claims of the Program arising during the membership of the Member Entity in the Program.

SECTION 8: INSPECTION OF FACILITIES AND EQUIPMENT; SAFETY CONSIDERATIONS AND NOTIFICATION OF ACCIDENT

8.1 Inspection of Facilities, Equipment and Records. The Board of Directors and any of their agents, employees or attorneys shall be permitted at all reasonable times to inspect the work places, plants, works, machinery and appliances covered by this Revised Agreement and shall be permitted at all reasonable times to examine Member Entity's payroll, personnel, injury and accident records, and Member Entity's books, vouchers, contracts, documents and records of any and every kind which show or tend to show or verify the Assessments which are payable under the terms hereof. This right to inspect or examine shall continue after termination of membership with respect to all claims or matters arising during or relating to membership status.

8.2 Safety Considerations. Each Member Entity must follow the safety recommendations of the Board of Directors and the service company or any other agent of the Authority in order to provide safe and sanitary working conditions.

8.3 Notification of Accident and Reimbursement to Authority for Penalty. Each Member Entity must give immediate notification to the Qualified Claims Administrator on the prescribed forms of any accident and reported Claim for any benefits whatsoever payable under the Workers' Compensation and Occupational Disease Acts.

Any penalty levied for failure to pay compensation benefits, medical expenses or travel allowances resulting from a Member Entity's failure to give timely notice to the claims adjuster of an accident or claim for any benefits as heretofore described may, by a vote of a majority of the Board of Directors, be assessed against the Member Entity.

SECTION 9: PROHIBITION OF UNAUTHORIZED PAYMENTS; PENALTY FOR EMPLOYMENT WITHOUT WORKERS' COMPENSATION COVERAGE

9.1 Prohibition of Unauthorized Payments by Member Entities. No Member Entity shall make voluntary payment of weekly benefits or medical expenses or enter into any agreement with any employee or his agent committing payment or admitting liability for any workers' compensation benefits as provided in the Workers' Compensation and Occupational Disease Acts without the prior approval of the Board of Directors or the Qualified Claims Administrator. Any Member Entity making such voluntary payments or entering into such an agreement may, by a vote of a majority of the Board of Directors, be held individually and separately liable for reimbursement to the Program for all benefits and medical expenses paid or committed.

9.2 Penalty for Employment of Persons without Workers' Compensation Coverage. No Member Entity shall contract with any person, including contractors, or subcontractors, who has not produced evidence of current workers' compensation insurance according to the

provisions of the Workers' Compensation and Occupational Disease Acts. Any Member Entity who contracts with any person who does not have current workers' compensation insurance will be charged an additional non-discounted Assessment based upon the full amount of the contract.

SECTION 10: AGREEMENT WITH SERVICE PROVIDERS

10.1 Agreements with Service Providers. The Board of Directors may enter into agreements with various service companies or employ individuals to provide the following services:

(a) Assist the Authority in securing specific and aggregate excess insurance or reinsurance.

(b) Inspect the work places, operations, machinery and equipment owned or operated by the participating Member Entities of the Program.

(c) Compile and file notices and reports required under the Workers' Compensation and Occupational Disease Acts upon receipt of initial report from either the Authority or any participating Member Entity; conduct any necessary investigation in order to determine the liability of the participating Member Entity under the Workers' Compensation and Occupational Disease Acts; and, process any and all lawful claims under rules established pursuant to applicable law and by such additional rules as may be promulgated.

(d) Furnish the Authority and participating Member Entities in the Program with periodic reports of all accidents and occupational disease, and of all payments made and reserves set up for benefits and expenses on account of liability and/or reasonably anticipated liability for accidental injuries and occupational diseases sustained by employees.

(e) Adjust the Assessments payable by participating Member Entities in the Revised Program by allowing for favorable or unfavorable experience so as to determine and assign Assessment modifications for each Member Entity in the Program annually in accordance with policies established by the Board of Directors.

(f) Bill for and maintain records of all Assessment payments to the Program in accordance with such rules as the Board of Directors adopt.

(g) Make payroll audits of participating Member Entities in the Program.

(h) Prepare on behalf of the Authority and the participating Member Entities in the Program for all scheduled hearings and generally administer all other details pertaining to each participating Member Entity’s obligations to its employees under the Workers' Compensation and Occupational Disease Acts.

(i) Perform such other related services as may be reasonably necessary for the operation of the Program.

SECTION 11: INDEMNIFICATION AND RELEASE; DISCLAIMER

11.1 Release and Indemnification Covenants. Each Member Entity shall and hereby agrees to indemnify and save the Authority and all other Member Entities harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (i) its breach or default in the performance of any of its obligations under this Agreement or (ii) its act or negligence or that of any of its agents, contractors, servants, employees or licensees with respect to the Coverage. No indemnification is made under this Section or elsewhere in this Agreement for claims, losses or damages, including legal fees and expenses arising out of the willful misconduct, negligence, or breach of duty under this Agreement by the Authority, its officers, agents, employees, successors or assigns.

11.2 Disclaimer. THE AUTHORITY MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE ADEQUACY OF THE COVERAGE FOR THE NEEDS OF THE MEMBER ENTITIES.

11.3 Savings Clause for Joint and Several Liability. Nothing herein in this Section 11 shall be construed to limit or eliminate the obligation of the Member Entities with respect to their joint and several liability for Claims as provided in Section 7 of this Agreement.

SECTION 12: ASSIGNMENT AND AMENDMENT

12.1 No Assignment by the Member Entities. This Revised Agreement may not be assigned by any Member Entity.

12.2 Amendment. This Agreement may be amended by a written instrument duly authorized and executed by the Authority and a majority of the Member Entities. It is expressly agreed and understood that approval of any amendment by a majority of the Member Entities who are signatories to this Agreement at the time of such amendment shall operate to bind each Member Entity to such amendment. All costs and expenses incurred in connection with any amendment to this Agreement shall be borne pro rata by the Member Entities.

SECTION 13: MISCELLANEOUS

13.1 Notices. All notices, bonds or other communications hereunder shall be sufficiently given and shall be deemed to have been received five (5) business days after deposit in the United States mail, certified, postage prepaid, to the Member Entities, the Authority at the following addresses:

If to the Member Entity	To the City or Town Clerk At the address of the City or Town as maintained in the official records of the Authority
If to the Authority:	Montana Municipal Interlocal Authority Attn: Workers' Compensation Program PO Box 6669 Helena, Montana 59604-6669

The Authority and Member Entity, by notice given hereunder, may designate different addresses to which subsequent notices, bonds or other communications will be sent.

13.2 Binding Effect. This Revised Agreement shall inure to the benefit of and shall be binding upon the Authority and the Member Entities and their respective successors and assigns.

13.3 Enforceability. This Revised Agreement is enforceable by the Authority, Member Entities of the Revised Program, the employees of such Member Entities, and/or the Employment Relations Division of the Montana Department of Labor and Industry or its successor. The parties to this Revised Agreement are held and firmly bound for the payment of all legal fees and costs incurred by the State of Montana in any actions taken to enforce this Revised Agreement.

13.4 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

13.5 Further Assurances and Corrective Instruments. The Authority and the Member Entities agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Coverage hereby provided or intended so to be or for carrying out the expressed intention of this Revised Agreement.

13.6 Waiver of Notice as to Current Condition of Authority. The Member Entity waives any notices as to the current condition of said Authority, the Program, any changes therein, and the manner of conducting the Program. The Undersigned also waives, in the event of non-compliance by the Authority, any demand or notice in respect thereof and any requirement of legal or equitable proceedings or otherwise on the part of the Employment Relations Division of the Montana Department of Labor and Industry or its successor against the Authority as a condition precedent to enforcing the obligations of the Member Entities hereunder.

13.7 Execution in Counterparts. This Revised and Restated Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.8 Applicable Law. This Revised and Restated Agreement shall be governed by and interpreted in accordance with the laws of the State of Montana.

13.9 Effect of Revised Agreement. This Revised Agreement amends and supersedes each prior Workers Compensation Program Agreement, and this Revised Agreement shall effect a continuation of the Program for all purposes with respect to the continuity of Coverage, expenses, accounts, contracts, and other agreements related to the operation of the Program.

MONTANA MUNICIPAL INTERLOCAL AUTHORITY
REVISED AND RESTATED
WORKERS' COMPENSATION
PROGRAM AGREEMENT
July 1, 2014
Signature Page

IN WITNESS WHEREOF, The Authority has caused this Revised and Restated Workers' Compensation Risk Retention Program Agreement to be executed in its name by its duly authorized officers;

MONTANA MUNICIPAL INTERLOCAL UTHORITY,
as Authority

By_____
Chief Executive Officer

Date Signed_____

and the Member Entity has caused this Revised Agreement to be executed in its name by its duly authorized officers, as of the date first above written.

City of _____
As Member

Address _____

_____

By _____

Its _____

Date Signed _____

ATTEST:

_____
City Clerk

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Staff Memorandum

To: Mayor John Muhlfeld and City Councilors
Chuck Stearns, City Manager

From: Corey Swisher, Assistant City Manager/Finance Director

Date: February 6, 2013

Re: Fiscal Year 2014 Mid-Year Financial Report

This first page is a summary of FY 2014 mid-year financial status, the rest of the report is for more detail.

An analysis of available cash in property tax supported funds provides a quick and simple review of the city's financial health. The following table provides a history actual mid-year cash balances.

Property Tax Supported Funds Change in Cash					
	% Change	Year over year change	Actual Dec 31, 2013 Cash	Actual Dec 31, 2012 Cash	Actual Dec 31, 2011 Cash
		(a-b)	a	b	c
General	22%	$219,637	$1,239,540	$1,019,903	$673,002
Parks/Rec	-45%	$84,232	($104,639)	($188,871)	($94,370)
Police	-59%	($42,539)	$29,614	$72,153	$41,543
Library	835%	$20,663	$23,138	$2,475	($14,945)
Fire & Amb	-40%	($200,339)	$300,829	$501,168	$457,380
Building	310%	$128,664	$170,213	$41,549	$49,088
Total	15%	$210,318	$1,658,695	$1,448,377	$1,111,698

The total property tax supported funds' cash increase from December 2012, was $210,318 or 15% which are very good financial results.

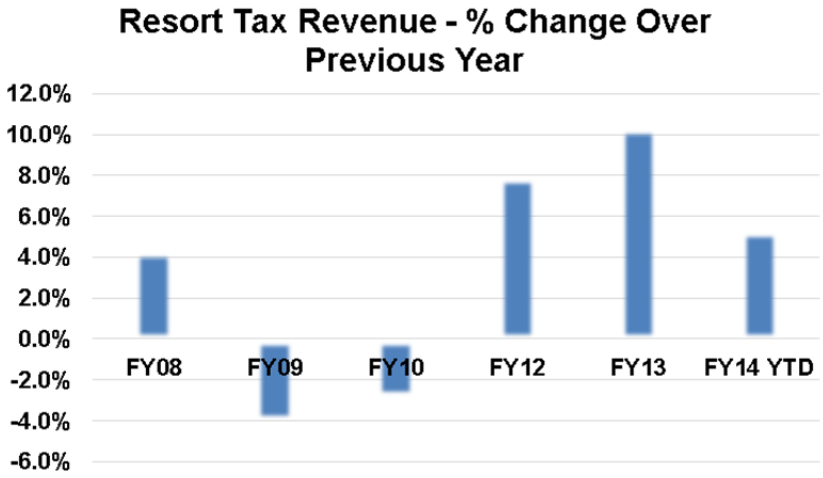
Financial Highlights:

The City of Whitefish at mid-year, found itself with Property tax supported Funds in an increasingly stronger financial position. As compared to the previous year at the same period the City's General Fund cash balance has increased by 22%. Building License and Permit revenue is continuing to follow a strong trend which began in 2012. Building plan review fees for the year have already exceeded the entire year's revenue estimates by 12% while permit fees are at 98% of the entire year's estimates because of the large high school permit which was received in July. Due to construction activity Impact Fee collections are strong and will exceed budget projections. Economic activity in the City continues to be robust as Resort Tax collections are approximately 5% ahead of last year which was a very successful year (up 10%). Water and Wastewater charges are trending positively due to a combination of increased consumption, additional customers and modest rate increases. The City's interest earnings show a large increase throughout all Funds which is due to the distribution of interest earnings from a large, multi-year certificate of deposit.

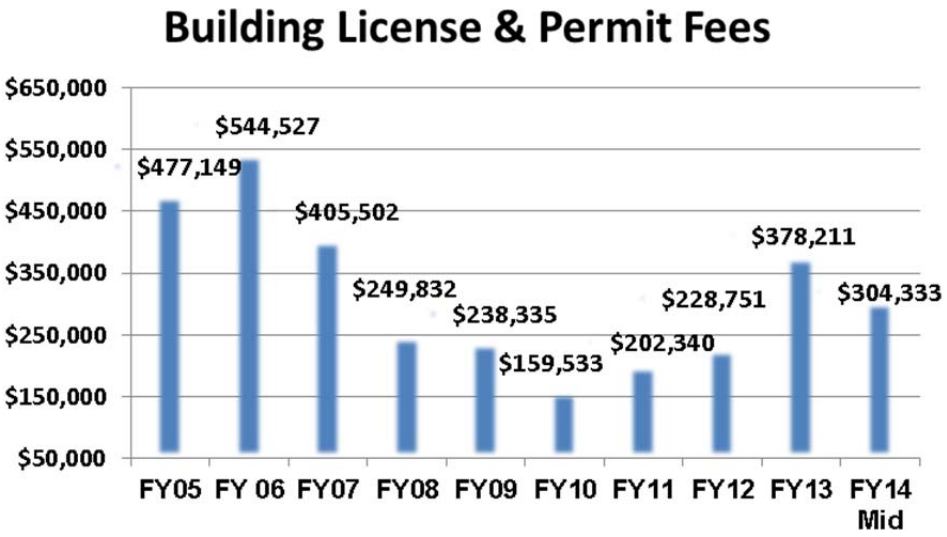
Economic Trends:

Resort Tax

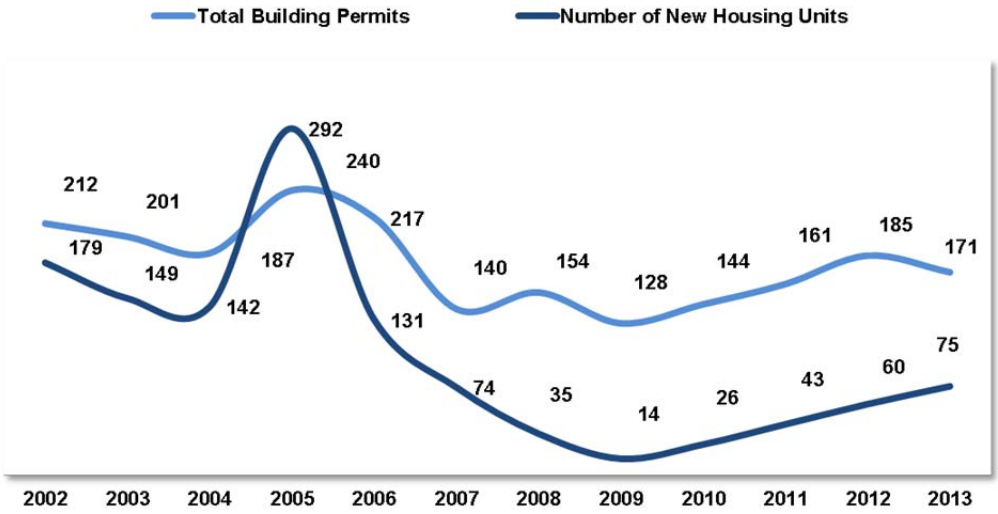
The graph below illustrates the trend of retail sales within the city over the last five plus years.

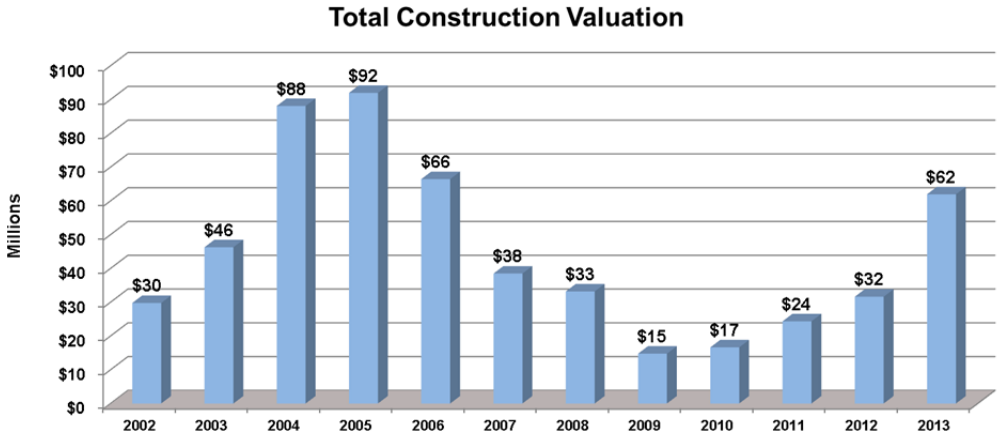


Building Activity-



The following charts captures new construction and building permit activity along with the associated value of those permits within the calendar year:





Long Term Debt:

It is important to note the City has no General Obligation debt. Additional short term debt was approved in the FY14 budget which primarily includes $875k for Fire & EMS vehicles and $1.6M in water & sewer proceeds which are related to the Whitefish West Highway 93 Phase and I and II projects:

Outstanding Debt							
	Rate/TIC	Annual % Reduction	Amount Due w/n Year	June 30 2013	June 30 2012	June 30 2011	June 30 2010
Revenue Bonds							
TIF ESC	4.23%	-10.86%	$1,305,000	$12,020,000	$13,285,000	$14,510,000	$15,695,000
SID166	4.18%	-8.09%	$70,000	$865,000	$935,000	$1,005,000	$1,080,000
Loans							
Water	~2.1%	-12.01%	$449,000	$3,740,000	$4,261,000	$4,676,000	$5,076,000
Sewer	~2.3%	-5.63%	$131,000	$2,328,000	$2,788,000	$2,171,000	$2,217,911
Intercap-Ice Rink		-5.00%	$7,000	$140,000			
Total		-10.28%	$1,962,000	$19,093,000	$21,269,000	$22,362,000	$24,068,911

Fund Notes:

The General Fund at mid-year is tracking as anticipated. The Cemetery expenditure line item exhibits a large increase due to improvements made on the grounds.

The Parks and Recreation Fund shows a negative fund balance. This has been a reoccurring trend due to the timing of when program revenues are received. Growth in programming continues and the Recreation Department strives to make these programs self-supporting.

The Law Enforcement Fund in both revenue and expenditures is tracking normally. The Fund's cash balance exhibits a reduction however due to the timing when grants are received. One note is that Police overtime is at 67% of budget through mid-year. Staff will continue to monitor that line item.

The financial health of the Library Fund continues to improve. Revenues are expenditures are trending as projected.

The Fire and Ambulance Fund cash balance exhibits a large decrease. This is primarily due to the recent purchase of a new ambulance. This cash balance will be restored however when the City receives INTERCAP loan funds for the purchase of this vehicle. Revenues and expenditures within this Fund are trending normally. Ambulance revenue through mid-year exhibits a decrease although this is due to the timing of reporting. Another note is that Fire Department overtime is at 62% of budget through mid-year. Staff will continue to monitor that this item.

The Building Codes Fund is performing exceptionally. The Fund's Cash balance has increased by 310%. License and permit fee collections are up 98% over the previous year, primarily due to the high school permit which was received in July. This is excellent news for the City as the previous year had also exhibited strong growth. Impact fee collections are also continuing to trend upward as they are 102% higher than the previous year which was also a good year for collections.

The Tax Increment Financing Fund cash balance at mid-year shows a 24% increase with collections continuing as projected.

As mentioned earlier in the memorandum Resort Tax collections remain robust and the Fund finds itself with a strong balance.

Street lighting revenues and expenditures are tracking normally and as projected.

The City's water and wastewater treatment Funds are on firm financial footing. As mentioned earlier Water and Wastewater charges are trending positively due to a combination of increased consumption, additional customers and modest rate increases.

	A	B	C	D	E	F	G	H	I	J	K
1	**Mid-Year Financial Review**										
2	**City of Whitefish**				**50% of Fiscal Year Complete**						
3											
4		YTD		YTD		YTD		YTD			
5	**General Fund Revenues**	Dec 31, 2010		Dec 31, 2011		Dec 31, 2012		31-Dec-13			
6		**Dollars**	**% of Budget**	**Dollars**	**% of Budget**	**Dollars**	**% of Budget**	**Dollars**	**% of Budget**	**Chng Prev YR**	**% Chng Prev Yr**
7											
8	Property Taxes	$1,033,333	52%	$1,058,907	58%	$1,027,863	54%	$1,044,349	54%	$16,486	2%
9	Total Licenses and Permits	$29,907	53%	$28,909	51%	$31,243	53%	$32,150	53%	$907	3%
10	Intergovernmental Revenue	$370,942	51%	$370,217	50%	$394,376	52%	$391,595	51%	-$2,781	-1%
11	Charges for Services	$76,352	54%	$53,486	37%	$98,769	79%	$147,915	71%	$49,146	50%
12	Fines and Forfeitures	$100,743	38%	$119,068	55%	$127,624	53%	$111,112	43%	-$16,512	-13%
13	Miscellaneous	$6,503	28%	$9,610	30%	$12,707	35%	$47,736	118%	$35,028	276%
14	Investment Earnings	$45,936	115%	$26,635	76%	$7,266	29%	$75,208	376%	$67,942	935%
15	Resort Tax & SID RevolvingTransfer In	$500,574	93%	$553,708	100%	$598,007	100%	$693,432	100%	$95,425	16%
16	**Total General Fund Revenues**	$2,164,289	57%	$2,236,296	61%	$2,297,857	61%	$2,543,497	55%	$245,641	3%
17	**General Fund Expenditures**										
18											
20	Municipal Court	$126,033	49%	$134,391	47%	$132,229	45%	$132,188	47%	-$41	0%
21	Prosecution Services	$68,406	62%	$40,935	43%	$43,153	44%	$52,100	53%	$8,946	21%
22	Administrative Services	$35,019	51%	$33,453	50%	$32,798	46%	$36,171	44%	$3,373	10%
24	Legal Services	$9,482	53%	$16,526	48%	$16,411	45%	$17,835	45%	$1,424	9%
25	Community Planning	$118,379	48%	$122,641	49%	$133,352	44%	$171,602	49%	$38,250	29%
26	Budgeted Interfund Loan (Building & Drug F)	$51,245	50%	$31,513	50%	$0	0%	$0	0%	$0	0%
28	Transfer to Park Fund	$203,692	50%	$232,185	50%	$236,000	50%	$301,500	50%	$65,500	28%
29	Transfer to Law Enforcement Fund	$865,113	50%	$855,000	50%	$897,500	50%	$922,500	50%	$25,000	3%
30	Transfer to Fire Fund	$171,751	50%	$217,007	50%	$247,297	50%	$287,500	50%	$40,203	16%
31	Transfer to Library Fund	$0		$16,685	50%	$17,186	50%	$17,185	50%	-$1	0%
32	Cemetary/Other	$39,056		$33,654		$31,075		$93,445	50%	$62,370	201%
33	**Total General Fund Expenditures**	$1,704,311	51%	$1,734,120	50%	$1,787,131	49%	$2,032,025	51%	$244,894	14%
34											
35	**General Fund Revenues Less Expenditures**	$459,978		$502,176		$510,726		$511,473		$747	0%
36	**General Fund Operating Cash Balance**	$105,630		$673,002		$1,019,903		$1,239,540		$219,638	22%
37											
38	**Prop Tax Supported Funds (no General) Net**	$94,186		($127,113)		($11,329)		$86,316		$97,644	
39	**Prop Tax Supported Funds (no General) Cash**	$418,901		$438,697		$428,475		$422,723		($5,752)	
40											
41	**Total General & Prop Tax Supported Funds Net**	$554,164		$375,063		$499,397		$597,788		$124,334	
42	**Total General & Prop Tax Supported Funds Cash**	$524,531		$1,111,699		$1,448,378		$1,662,264		$213,886	
43											

	A	B	C	D	E	F	G	H	I	J	K
44	**Property Tax Supported Funds**	Dec 31, 2010		Dec 31, 2011		Dec 31, 2012		Dec 31, 2013			
45		**Dollars**	**% of Budget**	**Dollars**	**% of Budget**	**Dollars**	**% of Budget**		**% of Budget**	**Chng Prev YR**	**% Chng Prev Yr**
46											
47	Parks and Rec Operating Cash Balance	($79,817)		($94,370)		($188,871)		($104,639)		$84,232	-45%
48	Parks, Rec & Community Services Revenues	$581,714	48%	$576,494	44%	$639,059	43%	$778,653	47%	$139,594	22%
49	Parks, Rec & Community Services Exp.	$661,569	55%	$671,234	46%	$811,170	55%	$770,487	49%	($40,683)	-5%
50	Revenues less Expenditures	($79,855)		($94,740)		($213,059)		$8,167		$221,226	-104%
51											
52	Law Enforcement Operating Cash Balance	$70,254		$41,543		$72,153		$33,182		($38,971)	-54%
53	Law Enforcement Revenues	$961,441	49%	$923,534	49%	$1,053,306	47%	$973,518	44%	($79,788)	-8%
54	Law Enforcement Expenditures	$891,874	47%	$973,269	52%	$1,050,883	21%	$1,011,258	45%	($39,625)	-4%
55	Revenues less Expenditures	$69,567		($49,735)		$2,422		($37,740)		($40,162)	-1658%
56											
57	Library Operating Cash Balance			($14,945)		$2,475		$23,138		$20,663	835%
58	Library Revenues			$87,406	46%	$91,682	44%	$106,999	49%	$15,317	17%
59	Library Expenditures	$8,336	25%	$117,483	68%	$94,234	47%	$102,029	49%	$7,795	8%
60	Revenues less Expenditures			($30,077)		($2,552)		$4,970		$7,522	-295%
61											
62	Fire & Ambulance Cash Balance	$459,327		$457,380		$501,168		$300,829		($200,338)	-40%
63	Fire & Ambulance Taxes, Penalty and Interest	$199,079	50%	$262,495	52%	$280,986	54%	$283,843		$2,857	1%
64	Ambulance Services Revenue	$410,190	52%	$441,893	53%	$575,645	52%	$480,509	51%	($95,136)	-17%
65	Fire & Ambulance Revenue	$1,458,911	60%	$1,180,585	53%	$1,370,205	38%	$1,331,118	36%	($39,087)	-3%
66	Fire & Ambulance Expenditures	$1,316,968	54%	$1,181,213	50%	$1,254,131	33%	$1,389,475	36%	$135,344	11%
67	Revenues less Expenditures	$141,943		($628)		$116,074		($58,357)		($174,431)	-150%
68											
69	Building Codes Operating Cash Balance	($30,863)		$49,088		$41,549		$170,213		$128,664	310%
70	Payable to the General Fund	($431,572)		($460,977)		($460,977)		($460,977)			
71	Budgeted Loan from General Fund	$6,006	25%	$31,513	50%	$0	0%	$0			
74	License and Permits Revenues	$98,582	49%	$128,406	74%	$178,142	57%	$304,334	98%	$126,192	71%
75	Building Codes Expenditures without C. Falls	$122,248	54%	$116,734	49%	$134,334	47%	$153,140	49%	$18,806	14%
76	*Columbia Falls Contract Revenues*	*$12,454*	*26%*	*$28,297*	*81%*	*$20,175*	78%	$32,414	108%	$12,239	61%
77	*Columbia Falls Contract Expenditures*	*$25,942*	*56%*	*$23,434*	*65%*	*$19,406*	51%	*$14,332*	49%	($5,075)	-26%
78	Revenues less Expenditures	($29,133)		$48,068		$44,838		$169,276		$124,438	278%
79											
80	**Total Property Tax Supported Funds (not including General Fund)**										
81	Total Property Tax Supported Cash	$418,901		$438,697		$428,475		$422,723		($5,752)	-1%
82	Total Property Tax Supported Revenue	$3,121,123		$2,956,255		$3,352,830		$3,527,036		$174,206	5%
83	Total Property Tax Supported Expenditures	$3,026,937		$3,083,368		$3,364,159		$3,440,721		$76,562	2%
84	Revenues less Expenditures	$94,186		($127,113)		($11,329)		$86,316		$97,644	
85											

	A	B	C	D	E	F	G	H	I	J	K
86	**Other Tax, Fee & Assessment Supported Funds**										
87		Dec 31, 2010		Dec 31, 2011		Dec 31, 2012		Dec 31, 2013			
88		**Dollars**	**% of Budget**	**Dollars**	**% of Budget**	**Dollars**	**% of Budget**			**Chng Prev YR**	**% Chng Prev Yr**
89											
90	Resort Tax Operating Cash Balance	$2,237,048		$2,001,263		$1,631,167		$1,652,653		$21,486	1%
91	Resort Tax Collections	$1,026,032	67%	$1,089,524	65%	$1,165,473	68%	$1,243,209	64%	$77,737	7%
92	Resort Tax Investment Earnings	$29,617	99%	$11,760	69%	$3,060	20%	$6,000	471%	$2,940	96%
93	Resort Tax Expenditures and Transfers	$1,345,980	51%	$1,515,928	53%	$1,960,347	67%	$1,414,296	47%	($546,050)	-28%
94	Revenues less Expenditures	($290,331)		($414,645)		($791,814)		($165,087)		$626,727	-79%
95											
96	Street and Alley Operating Cash Balance	$611,863		$936,962		$941,800		$1,166,929		$225,129	24%
97	Street and Alley Revenues	$690,966	63%	$674,900	51%	$763,201	58%	$669,123	50%	($94,078)	-12%
98	Street and Alley Expenditures	$671,675	47%	$559,363	33%	$701,244	43%	$529,597	31%	($171,647)	-24%
99	Revenues less Expenditures	$19,291		$115,537		$61,957		$139,526		$77,569	125%
100											
101	Tax Increment Operating Cash Balance	$1,009,310		$1,305,330		$2,552,913		$3,154,942		$602,029	24%
102	Tax Increment Property Taxes, Penalty & Interest	$2,268,651	62%	$2,110,298	53%	$2,393,926	57%	$2,182,338	49%	($211,588)	-9%
103	Tax Increment Revenues	$2,374,852	62%	$2,201,435	53%	$2,494,866	57%	$2,282,484	49%	($212,382)	-9%
104	Tax Increment Expenditures & Transfers	$1,616,750	51%	$2,818,793	58%	$2,015,734	32%	$2,535,660	46%	$519,926	26%
105	Revenues less Expenditures	$758,102		($617,358)		$479,132		($253,176)		($732,308)	-153%
106											
107	Impact Fees Cash Balance	$159,978		$248,124		$343,348		$614,688		$271,340	79%
108	Impact Fee Collections - Revenues	$38,640	79%	$68,624	141%	$93,149	75%	$188,254	147%	$95,105	102%
109	Impact Fee Collections - Expenditures	$0	0%	$228,410	0%	$375,200	100%	$0	0%	($375,200)	-100%
110											
111	Street Lighting #1 Operating Cash Balance	$56,612		$48,709		$61,899		$54,121		($7,779)	-13%
112	Street Lighting District #1 (Rsdntl) Revenues	$41,761	63%	$37,219	56%	$41,281	62%	$39,306	51%	($1,975)	-5%
113	Street Lighting District #1 (Rsdntl) Exp.	$30,805	36%	$35,793	41%	$22,010	21%	$48,559	51%	$26,549	121%
114	Revenues less Expenditures	$10,956		$1,426		$19,271		($9,253)		($28,524)	-148%
115											
116	Street Lighting #4 Operating Cash Balance	$62,800		$70,519		$69,863		$43,956		($25,907)	-37%
117	Street Lighting District #4 (Cmmrcial) Revenues	$34,957	61%	$32,343	56%	$30,637	54%	$32,453	53%	$1,816	6%
118	Street Lighting District #4 (Cmmrcial) Exp.	$16,873	25%	$23,184	34%	$31,210	35%	$54,289	42%	$23,079	74%
119	Revenues less Expenditures	$18,083		$9,159		($573)		($21,836)		($21,263)	3709%
120											

	A	B	C	D	E	F	G	H	I	J	K
125	Enterprise Funds	Dec 31, 2010		Dec 31, 2011		Dec 31, 2012		Dec 31, 2013			
126		**Dollars**	**% of Budget**	**Dollars**	**% of Budget**	**Dollars**	**% of Budget**			**Chng Prev YR**	**% Chng Prev Yr**
127											
128	Water Operating Cash Balance	$895,748		$1,548,518		$1,413,131		$1,329,755		($83,376)	-6%
129	Water - Metered Water Sales	$1,183,352	55%	$1,282,902	60%	$1,364,754	58%	$1,465,487	61%	$100,733	7%
130	Water - Operating Revenues	$1,289,326	56%	$1,415,317	62%	$1,520,311	60%	$1,480,987	89%	($39,324)	-3%
131	Water - Operating Expenditures	$656,957	42%	$701,830	48%	$676,272	43%	$209,735	30%	($466,537)	-69%
132	Operating Revenues less Expenditures	$632,369		$713,487		$844,039		$1,271,252		$427,214	51%
134											
135	Non Operating Revenue	$0	0%	$400,000	0%	$204,937	20%	$121,554	0%	($195,063)	-41%
136	Water Capital Expenditures	$38,648	1%	$39,726	3%	$724,704	27%	$144,320	14%	$684,978	-80%
137	Water Debt Service	$295,709	0%	$294,895	50%	$304,360	45%	$543,450	50%	$9,465	79%
138											
139											
140	Wastewater Operating Cash Balance	$162,644		$382,319		$392,484		$645,269		$252,785	67%
141	Wastewater - Sewer Service Charges	$920,333	56%	$964,639	54%	$1,040,047	55%	$1,092,436	53%	$52,389	12%
142	Wastewater - Operating Revenues	$981,840	55%	$1,042,778	55%	$1,161,195	58%	$1,241,917	56%	$80,721	17%
143	Wastewater - Operating Expenditures	$735,085	49%	$720,098	48%	$735,355	46%	$613,586	36%	($121,769)	-14%
144	Operating Revenues less Expenditures	$246,755		$322,679		$425,840		$628,331		$202,491	72%
145	*Net Opr. Rev Required by Year End*	*$279,000*		*$279,914*		*$304,000*					
146											
147	Non Operating Revenue	$198,753	10%	$1,354,611	76%	$52,441	9%	$11,245		($41,196)	-79%
148	Wastewater Capital Expenditures	$136,660	3%	$1,203,561	70%	$103,265	8%	$186,533	10%	$83,268	81%
149	Wastewater Debt Service	$69,586	0%	$103,894	53%	$110,954	50%	$200,380	33%	$89,426	81%
150											
151											
152	Solid Waste Operating Cash Balance	($20,655)		$21,113		$62,429		$140,450		$78,021	125%
153	Solid Waste Revenues	$352,066	51%	$366,166	51%	$374,233	50%	$387,701	52%	$13,468	4%
154	Solid Waste Expenditures	$341,618	50%	$346,618	50%	$351,432	47%	$320,905	43%	($30,527)	-9%
155	Revenues less Expenditures	$10,447		$19,548		$22,801		$66,796		$43,996	193%

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JOHNNA J. PREBLE

FRANK B. MORRISON, JR. (1937-2006)
FORMER MONTANA SUPREME COURT JUSTICE

* Licensed also in State of Louisiana
** Licensed also in States of Washington and California

February 18, 2014

VIA E-MAIL

Hon. John Muhlfeld, Mayor
John Anderson, Council Member
Pam Barberis, Council Member
Andy Feury, Council Member
Jen Frandsen, Council Member
Richard Hildner, Council Member
Frank Sweeney, Council Member

City of Whitefish
PO Box 158
Whitefish, MT 59937

RE: Annexation

Dear Mayor Muhlfeld and Whitefish Council Members:

I represent both the Houston Lake Shore Property Owners Against Annexation and the Stocking Addition Property Owners Against Annexation, each of which is comprised of the majority of owners in those respective platted tracts. As the names of their associations state, they are opposed to the City annexing them. This letter is a statement of their position.

The City attempted to annex these tracts on two previous occasions. The first attempt was in 1983 and another failed attempt occurred around 2000.

The City is attempting to annex these and other tracts under Part 45 of Title 7, Chapter 2, which allows a city to annex property that is "wholly surrounded" by other city property. As you are aware, the City must follow the specific procedures proscribed in Part 45. (MCA § 7-2-4505)

Annexation under Part 45 is not available to the City because the proposed parcels of land are not wholly surrounded. The statutes provide that a city "may include as part of the city any platted or unplatted tract or parcel that is wholly surrounded by the city." (MCA § 7-2-4501) Note that "tract or parcel" is written in the singular and only references one tract or one parcel, as compared to Part 43 that allows a city to annex two or more parcels or tracts. (*Cf.* MCA § 7-2-4311) Enclosed herewith is a map of the city limits with the following separate tracts and parcels of record highlighted in a different color: Houston Lake Shore platted tracts, Stocking Addition B platted tracts, Stocking Addition C platted tracts, and unplatted tracts 1AB, 1ABB,

1ABC, 1ABA, and 1G. As the map clearly shows, each tract is not wholly surrounded by City property, which is highlighted in yellow.

Other language in Part 45 specifically prohibits the City from attempting to annex two or more tracts at the same time. It is true that the legislature allowed a city to include two or more tracts as a whole in one resolution in Part 43 (Annexation of Contiguous Land), but it specifically omitted this language from Part 45. (See MCA § 7-2-4325) The City must follow the statutory scheme set forth in Part 45, which does not authorize annexing two or more tracts under one resolution. The City has been well aware of this limitation since attorney Leo Tracy pointed it out in his letter to the City of October 1, 1983.

In addition to separate tracts precluding annexation, the areas under consideration are not wholly surrounded because Whitefish Lake is on one side. The City cannot use its annexation of the Whitefish Lake bed for purposes of annexation because the City Council, in adopting Ordinance 05-25 in 2005, expressly stated therein that it "assure[s] the public that Whitefish Lake is not being annexed for the purpose of facilitating future annexations." The Ordinance then "establishe[d] a policy that it will not use the annexation of Whitefish Lake . . . to create contiguity with other private parcels bordering Whitefish Lake, for the purpose of involuntary annexation of such private parcels."

My clients also dispute the basis under which the City is proceeding with annexation. The City has stated as its purpose in annexing my clients' properties to protect water quality, and specifically the recent Septic Leachate report lists East Lakeshore Drive (Gaines Point to Big Mountain Road) as Tier One (which includes Houston Lakeshore). However, the water quality testing found no *E. coli* bacteria in the water off the shores of Houston Lake Shore Tracts whereas it found high concentrations of the bacteria in other places on the lake. It remains clear, then, that based on the results of the City's own study, protecting water quality is not the basis upon which you seek to annex my clients' properties. Rather, the real reason for annexation is as Mr. Stearns was quoted as saying in the Whitefish Pilot on August 14, 2013, "those who are wholly surrounded are using city services every day . . . [and] should pay for them."

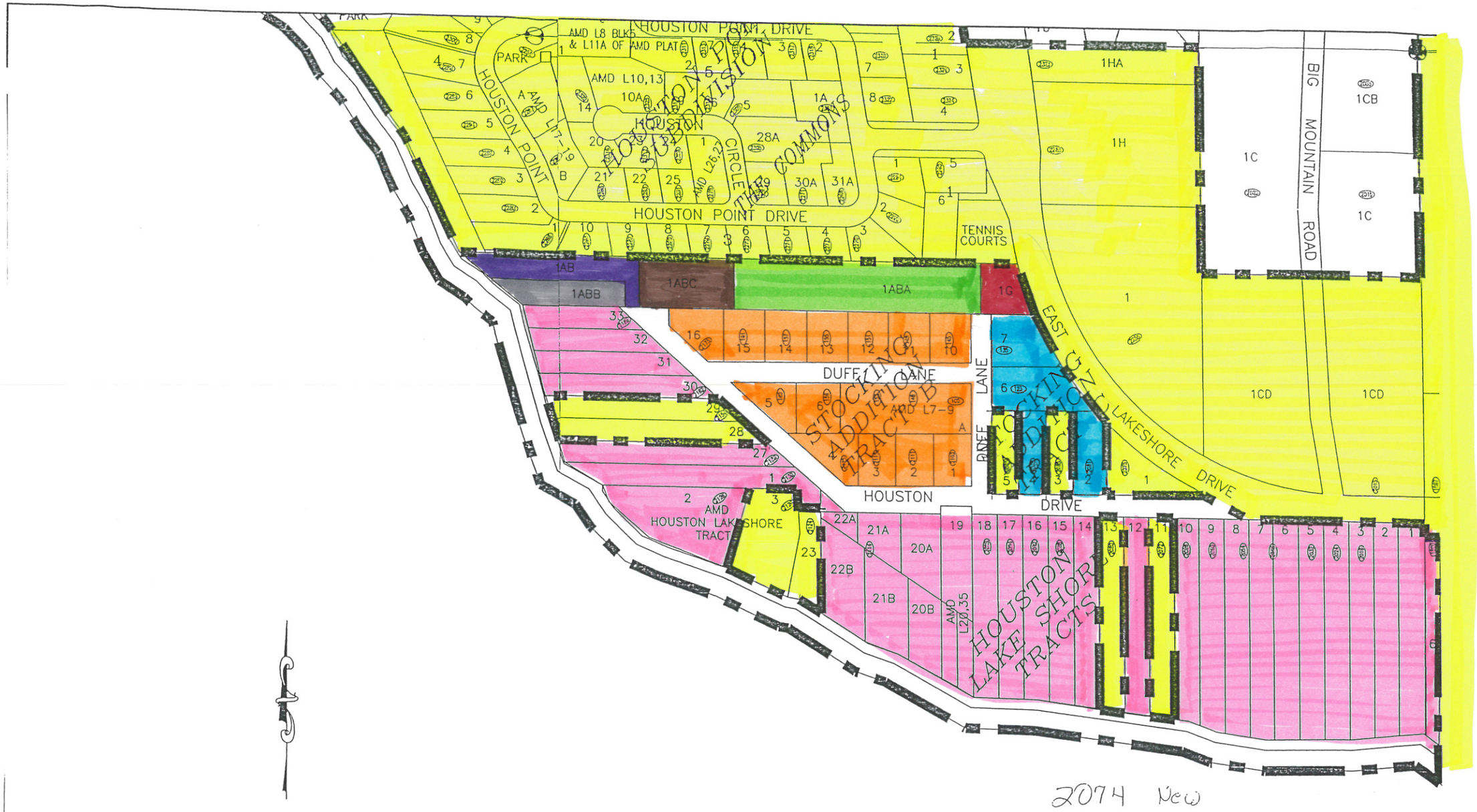
Legally, you cannot proceed with annexation of my clients' properties under Part 45. My clients therefore request that you direct the City staff to immediately cease any efforts to annex their properties. My clients are resolute in their position and are committed to contesting any further efforts by the city to annex their property. Thank you for your anticipated cooperation.

Very truly yours,

Sean S. Frampton
Morrison & Frampton, PLLP

SSF/ww
Enclosure

c: Clients
City Manager
City Attorney



2074 New

ADDRESSES FOR
NE QUARTER, SECTION 23, TOWNSHIP 31, RANGE 22
NOT TO SCALE
DATE: JANUARY 29, 2009
SHEET 11

Chuck Stearns

From: Necile Lorang <nlorang@cityofwhitefish.org>
Sent: Monday, February 24, 2014 12:16 PM
To: cstearns@cityofwhitefish.org
Subject: Fwd: Street Reconstruction Priorities Comments

-------- Original Message --------
Subject: Street Reconstruction Priorities Comments
Date: Mon, 24 Feb 2014 11:36:37 -0700
From: Mary Ciganek <Mary.Ciganek@fib.com>
To:nlorang@cityofwhitefish.org <nlorang@cityofwhitefish.org>
CC:maryciganek@gmail.com <maryciganek@gmail.com>

(Necile- would you please distribute this to council members, resort tax committee members and John Wilson? Thank you.)

2/24/2014

Dear City Council Members, Resort Tax Committee Members and Public Works Employees,

I'm writing regarding Whitefish's street reconstruction priorities. I've reviewed the list and would like to suggest some changes to the order due to safety concerns.

It is my understanding that West 7th is next in line for reconstruction and that the city has heard from many residents of that area who are not in favor of this project.

I would like you to consider moving Texas Avenue to the top of your list and moving Waverly Place (Texas to Colorado) up as well. I live at 814 Waverly Place, a street that is congested due to the apartment buildings and condos that occupy half of our street. Waverly Place was formerly a street with a cul-de-sac that was opened as a throughway by the city, yet no sidewalks or lighting were installed at that time. Furthermore, we are not able to receive mail in our homes and are subject to cluster boxes. Walking to get our mail can often be dangerous due to the lack of sidewalks, lighting and general business of our street.

As for Texas Avenue, this is a high speed through- way most of the time, with little to no area to safely walk when there are cars on the road. The street has culverts on both sides, no lighting, no sidewalks and many deer as well as other wildlife from time to time. Furthermore, with the future development on Texas as well as the Aspen Grove subdivision which has multiple townhouses in the works, the road will get even more busy and will not be a safe place to walk at all without a sidewalk.

As a resident of Waverly Place, and a mother to two small children, I find it very frustrating to try to teach my children how to ride their bikes or go for a walk, due to the lack of safety on both roads adjacent to my home. I would like to have one of these streets provide a safe walking environment for my family and neighbors.

Please drive through this area again, review the congestion of Waverly Place and the placement of our mailboxes, review the construction that is being planned for Texas Avenue and the Aspen Grove subdivision and consider moving one or both of these streets to the top of your list. It should come before the streets where residents are uninterested or streets that already have sidewalks in place. It would be a wonderful show of foresight to add lighting and sidewalks to Texas Avenue.

Thank you for your consideration,

Respectfully,

Mary Ciganek,
814 Waverly Place
Whitefish MT, 59937
406-270-7214

Chuck Stearns

From: John Muhlfeld <jmuhlfeld@riverdesigngroup.net>
Sent: Friday, February 21, 2014 4:18 PM
To: Chuck Stearns (cstearns@cityofwhitefish.org)
Cc: Mike Koopal (mike@whitefishlake.org)
Subject: 2014 AIS Plan and Budget
Attachments: City_AIS_Plan_2014.docx

Chuck

Attached is the proposed 2014 Aquatic Invasive Species plan and budget. The plan was prepared by the Whitefish Lake Institute. The total budget is the same as 2013, but line item changes have been made and are summarized below.

- $5,000 reduction for the Coram Station since other project partners are involved, and project money from 2013 has been carried over;
- $5,000 reduction and elimination of supporting FBC consultant as he is funded;
- $2,500 increase in AIS plant detection and survey as scope has increased for 2014;
- $2,500 increase in eDNA analysis for a few more sites, and WLI staff time and materials which were not covered in 2013;
- $5,000 increase for new line item for WLI to staff City Beach on Saturdays from May-September for a risk assessment survey and abbreviated boat inspection

I will email you a more detailed budget breakdown for the meeting in the event the Council wants more information on number of personnel hours, laboratory fees and other direct costs.

Thanks, John

John M. Muhlfeld, Mayor
City of Whitefish
418 East Second Street
PO Box 158
Whitefish, Montana 59937
jmuhlfeld@cityofwhitefish.org
(406) 250-9301

Memo
To: John Muhlfeld, Mayor, City of Whitefish
Fr: Mike Koopal, Executive Director, Whitefish Lake Institute
2-20-14

Proposed City of Whitefish
Aquatic Invasive Species (AIS) Management Plan- 2014

TASKS

1) Highway 2 (near Coram) Boat Inspection Station
In 2013, the City of Whitefish partnered with the Flathead Basin Commission, United States Bureau of Reclamation (BOR), Trout Unlimited and DRNC to operate a watercraft inspection station on MT Highway 2 near Coram from May 24 to September 3, 2013. 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. FWP has agreed to provide mandatory authority for the station in 2014 but no funding commitment.
Funds would be dispersed to the Flathead Basin Commission which is the lead agency for the boat inspection station.
Cost: $15,000

2) Beaver Lake Eurasion Watermilfoil (EWM) Monitoring/Control
Results of the 2012-13 Beaver Lake EWM monitoring and control/eradication effort yielded positive results. Work is needed for at least the next five years to monitor and eradicate any additional plants. Two site visits per year are required. The Beaver Lake EWM infestation currently presents the greatest AIS risk to Whitefish Lake. WLI is partnering in the project by deploying a sediment curtain owned by the Flathead Lakers near the lake outlet to Beaver Creek.
Funds would be dispersed to WLI to contract a diver dredge operation.
Cost: $5,000

3) Early AIS Plant Detection Monitoring of Nearby Lakes
In 2013, WLI completed a 395 point shoreline survey on Whitefish Lake for AIS. Fortunately, no AIS were found. Early AIS detection of nearby lakes is vital to identify and manage any new AIS infestation. Early detection monitoring includes EWM, curley leaf pondweed, flowering rush, yellow flag iris and fragrant water lilly. In addition, native plant community assemblage and distribution is determined during the survey. In 2014, the following local lakes will be sampled; Blanchard, Beaver, Dollar, Lost Coon, Murray, Skyles, and Spencer.
Funds would be dispersed to WLI to conduct the survey, map, and report findings.
Cost: $7,500

4) <u>*e*DNA Analysis</u>

The Northwest Montana Lakes Volunteer Monitoring Network which is coordinated by WLI currently collects zebra mussel veliger (larvae) samples at 40+ program lakes in Northwest Montana for early detection monitoring. Samples are sent to Montana FWP for microscopy (looking for veligers under a microscope). Whereas this technique is a valued mechanism for early detection monitoring, it generally represents a small sample size compared to the large volume of a lake. Environmental DNA analysis offers a complimentary detection technique without the need to identify an actual individual mussel veliger. *e*DNA is also conducted for early detection of EWM. Samples will be collected from 17 local lakes with a total of 35 samples.

Funds would be dispersed to WLI to collect samples and contract with the Flathead Biological Station for laboratory analysis.

Cost: $7,500

5) <u>City Beach Boat Launch Risk Assessment</u>

A City Beach Boat Launch Risk Assessment would include WLI's Environmental Scientist staffing City Beach each Saturday from May through September to collect user information via a survey to assess the level of AIS risk. In addition, a brief walk around boat inspection will occur to rule out any obvious AIS risk prior to the boat launching. Hours for May and September are from noon until 5pm. From June through August, hours would be 9am-5pm. The WLI Environmental Scientist would provide oversight to City employees to collect user information in his absence and then collect and enter information into a database. Services include City staff training, oversight, and a risk assessment/findings report.

Funds would be dispersed to WLI to train City staff, staff the station on Saturdays, and report findings.

Cost: $5,000

Total AIS Budget= $40,000

City of Whitefish 2014 AIS Plan Budget Detail

2. Beaver Lake Eurasion Watermilfoil (EWM) Monitoring/Control

- 2 trips by contracted suction dredge & report $4,000
- Deploy/remove outlet curtain $400
- Boat/gas/mileage $100
- Contact Administration/Reporting (10%) $500

$5,000

3. Early AIS Plant Monitoring of Nearby Lakes

Lake
Blanchard
Beaver
Dollar
Lost Coon
Murray
Skyles
Spencer

- Staff time- project prep and field (160 hours) $4,000
- Staff time-reporting (40 hours) $1,000
- Grid mapping prep and product as GIS $1,000
- Boat/gas/mileage $725
- Supplies (bottles, preservatives, equip) $400
- Contact Administration/Reporting (5%) $375

$7,500

4. *e*DNA Samples

Lake	Site	Number of Samples
Ashley	Public Boat Ramp	1
Beaver	Public Boat Ramp	1
Beaver	Near Turbidity Curtain	1
Blanchard	Public Access	2
Blanchard	Mid lake	2
Dollar	Public Access	1
Lake Five	Public Boat Ramp	1
Lower Stillwater	Public Boat Ramp	1
Mary Ronan	Public Boat Ramp	1
Murray	Public Boat Ramp	1
Rogers	Public Boat Ramp	1
Skyles	Public Access	1
Spencer	Public Access	1
Swan	Public Boat Ramp	1
Tally	Public Boat Ramp	3
Upper Stillwater	Public Boat Ramp	1
Whitefish	City Beach	3
Whitefish	State Park	3
Whitefish	Beaver Bay	3
Whitefish	Monks Bay	3
Whitefish	Lazy Bay	3

- 35 total samples at $150/sample $5,250
- Staff time- project prep and field (50 hours) $1,250
- Mapping of collection points as GIS $175
- Boat/gas/mileage (cost share with NWMTLVMN) $400
- Supplies (bottles, preservatives) $50
- Contact Administration/Reporting (5%) $375

$7,500

5. City Beach Boat Launch Risk Assessment

- May and September-
  (Staff time 5hr day x 8weeks) $1,000
- June-August-
  (Staff time 8hr day x 13weeks) $2,600
- Staff time- Survey development & prep (16hrs) $400
- Staff time- data input and reporting (30 hrs) $750
- Contact Administration/Reporting (5%) $250

$5,000

Note: Each line item will be summarized in a brief project report to council in addition to in-depth reporting of each line item in the upcoming Whitefish Area Water Quality Status Report.

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.

received
3-3-14

Subject: consumption junction in whitefish?
From: Diane Carter <diane@dancehammer.com>
Date: 3/2/2014 7:19 PM
To: nlorang@cityofwhitefish.org

Please follow the Zoning Compliance Permit System that IS in place.
The people elected this and expect it to be followed.

Do we want the entrance to Whitefish to look like the north entrance to Kalispell?

Where did common sense go? I'm also wondering if our plow guys resigned due to the bulbed out street corners?

Diane Carter

Subject: Zoning Compliance Permit system
From: Linda Katsuda <l.katsuda@bresnan.net>
Date: 3/2/2014 10:16 PM
To: nlorang@cityofwhitefish.org

received
3 - 3 - 14

City Clerk Lorang

It has come to my attention that violations to Whitefish Zoning Compliance Permit system regarding Highway 93 S. corridor are not being dealt with. Now the city planning office and planning board is asking the City Council to change the existing WB-2 zone to accommodate these violations. It has only been 3 years ago that this system was put in place to maintain the unique small town feel of Whitefish and to keep the health and vitality of our downtown area. Let's keep and enforce our city rules as is.

Respectfully,
Linda Katsuda
420 Geddes Ave.

Subject: comments on Whitefish zoning
From: Amanda Lanier <amandalanier@me.com>
Date: 3/3/2014 10:06 AM
To: nlorang@cityofwhitefish.org

received
3-3-14

Dear City Council,

I am writing regarding the zone change proposal that would allow more commercial businesses on the highway corridor to Whitefish. I hope that you will enforce the Zoning Compliance Permit System, deny the zone change in order to improve the character of Whitefish, and attempt to stop sprawl on Highway 93 south of town.

I understand that it is very expensive to start a business and find places to rent in downtown Whitefish. I hope you will look at other ways to encourage local residents to find and afford space besides turning Highway 93 into a sprawling and unattractive strip shopping mall.

Sincerely,

Amanda Lanier
25-B Iowa Ave.
Whitefish, MT

received
3-3-14

Subject: zoning compliance
From: "Susan Schnee" <schnee@aboutmontana.net>
Date: 3/3/2014 11:46 AM
To: <nlorang@cityofwhitefish.org>

City Council Members:

I would like to address the topic of the city planning dept. attempting to change the zoning for the Hwy South Corridor.

I would like you to follow the rules and enforce the Zoning Compliance Permits. Deny this zone change to create a new Business Services Zone, for yet another illegal use, as it will erode the strength and character of the WF downtown core. Hold the line on continued attempts to allow more uses and a sprawling pattern of development along the Hwy 93 South entrance.

Thank you,
Susan Schnee
1405 East Second St
Whitefish, MT 59937
406-863-9856

Subject: Allowing small retail on 93 South
From: "Imagination Station" <whitefishtoys@montanasky.com>
Date: 3/3/2014 11:54 AM
To: <nlorang@cityofwhitefish.org>

received
3-3-14

Unfortunately, I will be unable to attend tonight's meeting, but would like to express my feelings about expanding small retail along 93 South.

As part of the process to come to a consensus on growth for 93 South, I feel that if you allow spot zoning changes, you will basically be saying that that whole process was a waste of time for all those involved. This was not just an afternoon, or two, it took a considerable amount of time, energy and emotion to come to a consensus two years ago. Allowing spot changes basically says to those business and community participants that they should've spent their time in more productive ways that to try to help shape the growth of Whitefish. During that process, everyone had to make compromises to come up with a usable document, please don't belittle those compromises by disregarding the hard choices that we had to make just two years ago.

Thank you, Mary Witbrod Imagination Station

Subject: Whitefish Zoning Text Changes Regarding Business Services
From: Patrick Malone <communitybydesign@hotmail.com>
Date: 3/3/2014 7:23 AM
To: "nlorang@cityofwhitefish.org" <nlorang@cityofwhitefish.org>
CC: Patrick Malone <communitybydesign@hotmail.com>

received
3 - 3 - 14

To whom it may concern.

Having reviewed the staff report and public hearing comments, I understand the need to add and/or clarify the category of "business services" within the City's zoning code. An obvious omission from the beginning.

As these changes pertain to the development pattern, appearance and functionality along Highway 93 however, I am concerned at the long-term build out implications of allowing more and more uses to proceed south in a strip development pattern. The overall development along 93 between Whitefish and Kalispell is already undermining the character of the corridor and is a regrettable trend which can not be reversed once allowed.

I request that you NOT adopt this text change until further study as to the long-term impacts of development along Highway 93 can receive further study. It would be nice to see the result of such changes in a possible built-out scenario 20 years into the future and an environmental review of such impacts.

Sincerely,
Patrick Malone.

Patrick Malone, Co-Principal
COMMUNITY-BY-DESIGN
"Facilitating Sustainable Communities and Organizations Since 1987"
PO Box 113, Spokane WA 99210 or 6 Iris Court, Kalispell MT 59901
509.279.5107
"We must learn to invest as if food, farms and fertility mattered. We must connect investors to the places where they live, creating vital relationships and new sources of capital for small food enterprises." – *Slow Money Principle IV*

received
3-3-14

Subject: Request For Zone Change
From: "sherman" <sherman@montanasky.net>
Date: 3/3/2014 10:34 AM
To: <nlorang@cityofwhitefish.org>

Dear Whitefish City Council:

For three years of intense consideration of the appropriate business uses for the Highway 93 S. corridor, in 2011 the Whitefish City Council adopted a Zoning Compliance Permit system to put an end to growing zoning violations in the south corridor area. The council rejected suggestions to allow many new uses in this corridor and agreed only to make minor changes to the WB-2 zoning in the area to "... mitigate the negative effects of city oversight when it comes to allowing illegal uses to proliferate..."

I am requesting that the City Council deny any requests for a zone change and that Council follow their rules as well as enforce the Zone Compliance Permit System. Do not allow any illegal use that would have negative effects on the character of downtown Whitefish.

Thank you,

Roger Sherman
280 Brimstone Dr.
Whitefish MT

received
3-3-14

Subject: zoning change
From: Andrew Zimet <azimet@icloud.com>
Date: 3/2/2014 6:05 PM
To: nlorang@cityofwhitefish.org

Dear Council members,

We are writing to strongly protest the proposed zoning change. Downtown Whitefish should be the center of commercial activity, and continued sprawl along 93 S should be minimized. Lets preserve the wonderful character of our town.

SIncerely,

Andrew and Linda Zimet
2646 SNowghost Dr
Whitefish MT

PO Box 771 • 35 4th Street West
citizens@flatheadcitizens.org

www.flatheadcitizens.org

received
3-3-14

Kalispell, Montana 59903
T: 406.756.8993 • F: 406.756.8991

To: Whitefish City Council

Re: Amending Zoning Regulations in Whitefish City Code Section 11-2K-2 to identify Business Services as a permitted use in the Secondary Business District (WB-2) and adding the definition of Business Services and amending the definitions of Personal Services and Professional Services in Section 11-9-2.

Date: March 2, 2014

Citizens for a Better Flathead appreciates this opportunity to comment on the zone text change before you tonight. Our organization was founded in 1992 and we represent some 1500 supporters throughout the county. Our mission is to foster informed and active citizen participation in the decisions shaping the Flathead's future, and to champion the democratic principles, sustainable solutions, and shared vision necessary to keep the Flathead *Special Forever*. We believe that thoughtfully planned growth can and should occur without diminishing the very special characteristics of the Flathead Valley that play such an important role in attracting and retaining investments that grow the Flathead's economy.

We are asking that you to deny this proposed text amendment for the following reasons:

1. **This zone text amendment, proposed by the Whitefish Planning Director and Zoning Administrator, violates required procedures and regulations under Whitefish City statutes and, therefore, should be denied on this basis alone.**

   A. While the ordinance before you states that the City of Whitefish initiated this zone text change, this is misleading as it was more specifically drafted and submitted by the Whitefish Planning Director without the direction or authorization that should have first been given by the city council under Whitefish Zoning regulations. (see citations to these regulations below)

   B. Furthermore, this zone change was initiated by the Whitefish Planning Director in direct response to the fact that a UPS Store had already occupied a new commercial building, next to Walgreens. The UPS store is not a permitted use in the WB-2 zone. The Whitefish Zoning Regulations clearly require the Planning Director/ Zoning Administrator to report findings to the city council and file a complaint when a violation like this occurs. **Instead of enforcing compliance with Whitefish Zoning Regulations requiring a Zoning Compliance Permit and notification of the city council of any violation of this permit process,**

the Planning Director / Zoning Administrator drafted this zone change, which is clearly an attempt to accommodate this illegal use and a violation of the city's duty to follow its own regulations.

11-7-3: ZONING ADMINISTRATOR:

10. Receive and investigate allegations of noncompliance or violation of these regulations, ***report findings to the city council, and file a complaint*** *where such allegations are based in apparent fact.*

11-7-3: ZONING ADMINISTRATOR:

B. Powers And Duties: The zoning administrator, his assistant or designee will:

5. Update these regulations and the official zoning map ***as directed by the city council.***

8. Report to the city council any recommendations for changes *and improvements in these regulations and the procedures therein.*

C. Restrictions: The zoning administrator shall not:

1. Make any changes in the uses categorically permitted in any zoning classification or zoning district, or make any changes in the terms of these zoning regulations, or make any changes in the terms, classifications or their boundaries on the official zoning map ***without the prior specific direction of the city council requesting that he do so.***

2. **Failure to follow Whitefish City procedures and regulations make this requested zone text amendment before you de facto spot zoning** as it was initiated by the zoning administrator on behalf of an individual or small group of individuals who will benefit directly as a result of this change at the expense of the larger community, if this change is approved.

   The Whitefish zoning regulations provide for how these zoning regulations are to be amended. These regulations do not allow for a zoning administrator to recommend amendments as a way to address a zoning violation. The Whitefish Zoning Regulations do not allow for a zoning administrator to propose a zone change for another party who has failed to meet their legally required duty, under your regulations, to pay a fee and apply for a zoning compliance permit prior to building or establishing a new use within the Whitefish City limits.

11-7-9: ZONING COMPLIANCE PERMIT:

A. Purpose: The purpose of the zoning compliance permit is to ensure that proposed development complies with the standards of these zoning regulations.

B. Zoning Compliance Permit Required: A zoning compliance permit is required prior to a change in use, prior to any new or expanded permitted or accessory use or structure within the city limits or Whitefish planning jurisdictional area excluding any single-family residential development.

C. Zoning Compliance Permit Optional: A zoning compliance permit is not required prior to any single-family residential development within the Whitefish planning jurisdictional area, but is offered as an optional service of the city of Whitefish. Full compliance with all provisions of the applicable codes and zoning regulations is required regardless of whether or not a zoning compliance permit is applied for. The city will not charge a fee for a single-family residential zoning compliance permit.

Should construction, development, or expansion of a permitted or accessory use be undertaken without first obtaining a zoning compliance permit, and said activity is subsequently found to be not in compliance with applicable codes and regulations, an after the fact zoning compliance permit must be obtained as set forth in subsection I of this section and a review fee will be charged.

11-7-1: ENFORCEMENT

These regulations shall be enforced by the zoning administrator duly appointed by the city council, or by his assistant or designee, who shall have the authority to request entry to any building, structure, or premises, or any part thereof, at any and all reasonable times, for the purpose of performing his official duties. Any reference herein to the zoning administrator shall include his assistant or designee. (Ord. 01-04, 2-20-2001)

11-7-2: COMPLIANCE REQUIRED:

No building permit shall be issued for any proposed use, construction or action, which is not in compliance with the ordinances of the city. (Ord. 01-04, 2-20-2001)

11-7-12: AMENDMENTS:

A. Amendments Allowed: The provisions of these regulations may, from time to time, and for the furtherance of public necessity, convenience and welfare and in recognition that circumstances and conditions may be altered substantially as time passes, be amended, supplemented, changed, modified or replaced.

B. Procedures:
1. Requests to amend the text of these regulations may be initiated by any affected party or entity on a form provided by the zoning administrator.

11-7-13: VIOLATIONS AND PENALTIES:

A. Any person, partnership, association, company, corporation or individual who violates, disobeys, omits, neglects or refuses to comply with the provisions of these regulations shall be deemed guilty of a misdemeanor offense, and upon conviction

thereof, shall be punished as prescribed by this code4. Each day a violation of these regulations remains after notice to the offending party, as described below, shall constitute a separate misdemeanor offense.

B. Any person, partnership, association, company, corporation or individual who violates, disobeys, omits, neglects or refuses to comply with the provisions of these regulations shall be deemed to have committed a municipal infraction and, upon proof of violation, shall be assessed a civil penalty as prescribed by this code5. Each day a violation of these regulations remains after notice to the offending party, as described below, shall constitute a separate municipal infraction.

F. Any person applying for a permit or other land use approval under these regulations, or who is otherwise required to comply with these regulations, shall be responsible for becoming familiar with these regulations and for complying fully with such regulations. The failure of city officials to identify a violation of these regulations in an application or proposal, or the failure of city officials to notify a person submitting an application or proposal of a particular requirement or restriction contained in these regulations, shall not excuse the applicant or the person making the proposal from the obligation to comply fully with such regulations. Any permit or land use approval issued in violation of these regulations, or which includes terms or omits terms in violation of these regulations, shall be deemed to be invalid. (Ord. 09-18, 10-19-2009; amd. Ord. 11-04, 4-18-2011; Ord. 12-04, 2-6-2012)

3. **The proposed zone text change to add a new definition of Business Services and to amend the definition of Personal Services and Professional Service is not supported by the 2011 findings of fact and the record of decision the city council made in 2011 in amending the WB-2 zone text.** The council rejected similar zone text changes at that time.

A. Staff Report #WZTA 14-03 is deficient and misleading in not including, discussing and considering the need for consistency with the extensive review and adoption of text changes and findings for the WB-2 zone in 2011. This zone change was the subject of three years of discussion by the city and the community. Packed public hearings during this review showed overwhelming support for limiting additional uses in the WB-2 zone and for keeping the WB-3 zone the central strong commercial retail district of the city by not allowing additional or similar uses to the WB-2 zone. A Stakeholder Committee appointed by the City Council to find consensus on changes to the WB-2 zone made similar recommendations. These recommendations became the basis of the minor changes made to the WB-2 zone in 2011.

B. The findings adopted by the city council for the 2011 zone change to the WB-2 district cited the Whitefish Growth Policy guidance on the need to protect the unique WB-3 zoning in part by citing the growth policy;

"The 2007 Whitefish City-County Growth Policy has several pertinent references to this particular zoning text amendment in the Land Use section. Future Land Use

goals include:
1. Preserve and enhance the character, qualities, and small town feel and ambience of the Whitefish Community. The proposed changes conform to that goal by limiting the size of buildings and requiring a public review process for approval of uses that compete with downtown.
2. Strengthen the role of Downtown Whitefish as the commercial, financial, and administrative center of the community. By minimizing changes to the WB-2 zone, the proposed amendments do their best to continue to support downtown Whitefish.
3. Under Recommended Actions, 7. The City shall develop special regulations for "big box" commercial structures to ensure that the scale and character of the community are maintained. The Committee has recommended a Corridor Study to address that issue. "

The report concluded that *"The proposed text changes attached from the Stakeholder Committee are a reasonable attempt to update the code and mitigate the negative effects of city oversight when it comes to allowing illegal uses to proliferate.. The majority of changes proposed are consistent with the "intent" of the WB-2 zone, and consistent with the adopted 2007 Growth Policy."*

C. The 2011 zone text review did not recommend the future need to adopt a " Business Service District." Rather, it recommended that a zoning compliance ordinance be put in place –and this was adopted on the same evening of the WB-2 zoning text amendments. Additionally the 2011 zone text review identified the need for a corridor study to precede further changes to the zoning in the area now covered by WB-2 zoning.

4. The staff report assertion and finding that a new definition for Business Services is needed or is legitimate because similar uses are found in other business districts in Whitefish is not supported by Montana statutes nor does the staff report establish a factual basis to support such a finding.

A. The staff report asserts that "The zoning has been silent on the use of Business Services in the WB-2 and the zoning has not clearly defined the term Business Services. " The staff report also argues that Business Services are already permitted within other Whitefish zones including WB-1 and WBSD. These arguments, however, are without merit. Montana zoning statutes are very clear that zoning districts can limit the uses and distinguish the uses permitted in one district from another:

*" **76-2-302. Zoning districts.** (1) For the purposes of 76-2-301, the local city or town council or other legislative body may divide the municipality into districts of the number, shape, and area as are considered best suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.*
(2) All regulations must be uniform for each class or kind of buildings throughout

each district, but ***the regulations in one district may differ from those in other districts.****"*

B. Furthermore, the Whitefish Growth Policy supports the existing WB-3 zoning. The Whitefish Growth Policy provides the clear basis for limiting additional uses and thus for denying this proposed zone change for the addition of Business Services in the WB-2 zone. The Whitefish Growth Policy includes policies that establish the following goals:

1. Preserve and enhance the character, qualities, and small town feel and ambience of the Whitefish Community.
2. Strengthen the role of Downtown Whitefish as the commercial, financial, and administrative center of the community.

The Whitefish Growth Policy also recognizes that the development capacity of the downtown area means that additional development does not need to be encouraged in the Highway 93 South corridor:

"From a physical standpoint, the plan recognizes a market-supported build-out scenario that includes 140,000 SF of new retail, existing and/or renovated retail totaling 175,000 SF, over 330 new residential units, and 740 structured parking spaces. How that space could be distributed throughout the downtown area is shown in a Capacity Diagram on page 5 of the plan. Growth potential of this magnitude would present the community with the opportunity to keep the business focus on downtown as opposed to continued development of the Hwy. 93 South corridor, or allowing additional commercial stripping farther south along Hwy. 93 or along Montana Hwy. 40."

C. The 2011 findings that supported very limited changes to the WB-2 zone, stated that the limited changes adopted were to primarily "*mitigate the negative effects of city oversight when it comes to allowing illegal uses to proliferate.*" The findings also stated:

"By minimizing changes to the WB-2 zone, the proposed amendments do their best to continue to support downtown Whitefish."

D. The Staff Report notes that the UPS store has been in the WB-2 zone since 1980, but it fails to state that the UPS store was located in the Whitefish Mall as a grandfathered use in that location. As noted earlier the move of the UPS store from the Whitefish Mall to the building next to Walgreens was done in violation of Whitefish zoning regulations that have been in place or were additionally put in place by the City of Whitefish with adoption of the Zoning Compliance Permit requirement in 2011.

5. The Text Amendment as proposed is neither consistent with the council's findings regarding Whitefish Growth Policy in its 2011 amendments to the WB-2 zone nor is it supported by other standards of review for a zone change.

A. Finding #1 for this zone amendment (see below) is not consistent with the growth policy findings for the 2011 limited changes to the WB-2 zoning district.

*"**Finding 1[of this zone request]:** The Growth Policy promotes a diversification of the economy. Providing opportunities for a variety of uses supports this diversification; therefore, the proposed amendment is in accordance with the Growth Policy."*

*"**Findings [of the 2011 zone request]** The 2007 Whitefish City-County Growth Policy has a several pertinent references to this particular zoning text amendment in the Land Use section. Future Land Use goals include:*
1. Preserve and enhance the character, qualities, and small town feel and ambience of the Whitefish Community. The proposed changes conform to that goal by limiting the size of buildings and requiring a public review process for approval of uses that compete with downtown.
2. Strengthen the role of Downtown Whitefish as the commercial, financial, and administrative center of the community. By minimizing changes to the WB-2 zone, the proposed amendments do their best to continue to support downtown Whitefish."

B. Finding #3 and finding #9 respectively of this proposed zone text change provides no supporting evidence but state:

"Finding 3: The proposed amendments promote public health, public safety and general welfare by providing additional compatible uses within the zoning district."

Finding 9: The proposed code amendments do not affect the value of buildings."

Yet the zone text amendment to add Business Services to the WB-2 zone proposes to add multiple additional uses including "advertising, bookkeeping, building service, credit reporting, collection of claims, computer services, data processing, graphic design, mailing, photocopying, publishing, reproduction, security, and shipping" to the WB-2 zone most of which are small scale uses that are currently active in the WB-3 district. To add these specific uses to the WB-2 District would allow these uses to move out of the WB-3 district and this can negatively impact the general welfare and vitality of the downtown core and those invested in this area. The proposed zone change would facilitate not only the moving of the UPS store from a legally grandfathered location in the Whitefish Mall, but it could allow for other such grandfathered uses in the mall to relocate, thus creating undesirable vacancies at that location.

C. Finding #7 states with no supporting evidence:

"Finding 7: The proposed code amendment has no impact on compatible urban growth.

Yet as noted above, to add these uses to the WB-2 District would allow these uses to move from out of the WB-3 district and negatively impact the general welfare of the downtown core and those invested in this area. Additionally, finding # 7 fails to consider that the distinct zones such as WB-3 and WB-2 and the intent of these zones that define the appropriate location for specific uses such as small scale retail are essential to defining compatible urban growth in the Whitefish zoning jurisdictions where there has been strong opposition to allowing strip commercial develop to define the entrance corridors to Whitefish.

"The WB-3 district is a broad commercial district intended to accommodate financial, retail, governmental, professional, institutional and cultural activities. The WB-3 district also encompasses two (2) unique commercial areas, which require special considerations: the Old Town central district (Railway to Third, Baker to Spokane), and the Old Town railway district (Railway to Second, Miles to Lupfer). This zoning classification is not intended for general application throughout the Whitefish area. (Ord. 08-23, 11-17-2008)"

"The WB-2 district is intended to provide for those retail sales and services the operations of which are typically characterized by the need for large display or parking areas, large storage areas and by outdoor commercial amusement or recreational activities. This district depends on proximity to highways or arterial streets and may be located in business corridors or islands. (Ord. 11-05, 5-2-2011)"

D. Finding 8 states and dismisses the significance of the particular "suitability of the property for the particular use," as not an applicable criteria for review of this zoning text amendment:

Finding 8: The character of the district and its particular suitability of the property for the particular use is not applicable to this code amendment as it pertains more to site development than community wide zoning regulations. However, the district is characterized by larger lots with large parking areas suitable to the ***'Business Services'*** *use. In addition, the Purpose and Intent of the zoning chapter describes the WB-****2 as a district intended for 'services'****.*

Yet the character of the WB-3 District as the downtown center of commerce for Whitefish is dependent on having a particular community of uses in a concentrated geographic location. This concentration provides the necessary density of compatible uses, which in turn attracts the active public, tourist, and employee base who use and make the downtown core area vibrant and successful. This success in turn attracts quality development investment. The success of the Whitefish downtown area can be directly attributed to the careful planning that has gone into the type and pattern of uses to be encouraged in the downtown area that is governed by WB-3 zoning and supported by the downtown master plan.

Additionally to suggest as Finding #8 does that the mere use of the word services in the wording of the purpose and intent of the WB-2 District is a rationale for adding a Business Services category is without supporting evidence. It is a far stretch to suggest that the word service as used in the intent of the WB-2 zoning is a direct reference to a need for business services as proposed in this zone text change.

In conclusion we urge you to deny this zone change proposal and to:

- Comply with your own regulations that call for enforcing and requiring all new or changing uses in a district to first obtain a zoning compliance permit.

- Recognize that your own regulations require that those changing a use or proposing a new use are responsible for becoming familiar with the City Zoning Regulations and for complying fully with such regulations. The failure of city officials to identify a violation of these regulations in an application or proposal, or the failure of city officials to notify a person submitting an application or proposal of a particular requirement or restriction contained in these regulations, shall not excuse the applicant or the person making the proposal from the obligation to comply fully with such regulations.

- Reject attempts by a few business interests to use the planning office to propose changes to existing zoning regulations for their benefit as a form of de facto spot zoning.

- Reject the proposed findings of fact as inadequate and unsupportable.

- Be consistent with your 2011 decision of zone changes to the WB-2 zone, by not allowing piecemeal changes, as represented in the proposed zone text changes before you, that dilute the character and economic stability of the downtown core area.