



**CITY COUNCIL WORK SESSION
CITY COUNCIL CHAMBER CONFERENCE ROOM
MONDAY, APRIL 7, 2014
5:30 TO 7:00 PM**

1. Call to Order
2. 5:30 – 6:50 p.m. - Annual session for City Council Goals – Review, edit, add, and set priorities
3. Public Comments
4. Adjournment

Last year's goals adopted
by City Council.

ATTACHMENT A
CITY OF WHITEFISH – MAYOR AND COUNCIL GOALS
FY14
PREPARED: April 1, 2013

Mayor/Council Short Term Goals (no particular order)	Mayor/Council Longer Term Goals (no particular order)	Mayor/Council Ongoing Goals (no particular order)	Staff Goals (no particular order)
Hwy 93 South Corridor Plan	Code Enforcement improvements	Economic Development – Public-Private Partnerships and targeted business assistance	MDT – Hwy 93 west project
Downtown Parking	Maintenance plans for parks, facilities, and buildings and Riverside Park protection and improvement for erosion	BNSF – cleanup of CECRA site and river, maintain good relationship on all issues	Parks Master Plans
City Hall planning	Whitefish River waterway development and improvement	Whitefish Trail - work with Whitefish Legacy Partners	Explore extent of waivers for utility contracts
Depot Park Phase II Redevelopment – including new restrooms at O’Shaughnessy Center		Water quality improvements and projects (AIS, water rights, City Beach, Stormwater pond improvements)	Long Term Financial Planning and Sustainability
Possible Amendments to sign code		Affordable Housing	Green Initiatives
New Cemetery development			Records Management/Imaging Phase II
Address Aquatic Invasive Species problem			Redesign City website

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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, April 7, 2014, at **7:10 p.m.** at City Hall, 402 East Second Street.

Ordinance numbers start with 14-03. Resolution numbers start with 14-08.

- 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
 - a) Annual review and consideration of approval for Whitefish Convention and Visitor Bureau marketing plan and lodging tax budget for FY15 (p.20)
- 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 March 17, 2014 Council regular meeting (p. 55)
 - b) Consideration of approving application from Curt Trillium Shores LLC for Whitefish Lake Lakeshore Variance (#WLV-14-W03) to add a 100' floating walkway to the end of an existing dock.at 434 Dakota Avenue subject to 12 conditions (p. 63)
- 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) Consideration of a request from Elk Highlands, LLC for a two year extension to Wapiti Woods final plat (p. 93)
 - b) Ordinance No. 14-___; An Ordinance amending Zoning Regulations in Whitefish City Code Section 11-2K-3 to identify private postal services and shipping services as a conditional use in the Secondary Business District (WB-2) (First Reading) (p.121)
 - c) Ordinance No. 14-___; An Ordinance approving a commercial Planned Unit Development Overlay including a conditional use permit and zoning deviations on 4.156 acres of a 5.766 acre parcel at 6340 Highway 93 South to develop a hotel (First Reading) (p. 168)
 - d) City's proposed applications to the 2015 Legislature for TSEP and DNRC grants for a wastewater system project to diminish groundwater and stormwater inflow and infiltration into the wastewater system collection pipes (p. 224)

- 7) COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR
 - a) Consideration of awarding a construction contract for the East 2nd Street reconstruction and trail project (two motions) (p. 235)

- 8) COMMUNICATIONS FROM CITY MANAGER
 - a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 243)
 - b) Other items arising between April 2nd and April 7th
 - c) Resolution No. 14-___; A Resolution approving a Real Estate Purchase and Sale Agreement with respect to Lots 13, 14, 15, 16, 17, and 18, of Block 58, of Whitefish, Montana (p. 252)
 - d) Consideration of approving a revised Interlocal Agreement with the Whitefish Housing Authority to revise the Payment-In-Lieu-of-Taxes (PILT) procedures (p. 272)

- 9) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS
 - a) Resolution No. 14-___; A Resolution in support of the proposed amendment to ARM 12.11.645 pertaining to the Whitefish River before the Fish, Wildlife and Parks Commission of the State of Montana (p. 279)
 - b) Letter from Flathead Basin Commission regarding funding for Aquatic Invasive Species (AIS) (p. 321)

- 10) 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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April 2, 2014

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

Mayor Muhlfeld and City Councilors:

Monday, April 7, 2014 City Council Agenda Report

There will be a work session beginning at 5:30 p.m. for the annual City Council goals setting session. 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 March 17, 2014 Council regular meeting (p. 55)
- b) Consideration of approving application from Curt Trillium Shores LLC for Whitefish Lake Lakeshore Variance (#WLV-14-W03) to add a 100' floating walkway to the end of an existing dock at 434 Dakota Avenue subject to 12 conditions (p. 63)

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

Item a is an administrative matter and item b is a quasi-judicial matter.

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

- a) Consideration of a request from Elk Highlands, LLC for a two year extension to Wapiti Woods final plat (p. 93)

From Senior Planner Wendy Compton-Ring's staff report:

Thomas Penaluna, on behalf of Elk Highlands Inc., is requesting a 24-month extension for the Wapiti Woods at Elk Highlands preliminary plat. The Wapiti Woods at Elk Highlands preliminary plat is a 34-lot subdivision on 34.054 acres

located on Big Mountain – between Ridge Top Drive, Elk Highlands Drive and Northern Lights Drive and can be described as Tract 5 in S2 T31N R22W. Attached to this report in the packet are the conditions of approval and the preliminary plat map.

The preliminary plat was approved by the Whitefish City Council on August 17, 2009. In 2012, the Council granted an additional 24-month extension under HB 522 that provided local jurisdictions additional flexibility. The preliminary plat now expires August 17, 2014.

There is a full staff report with letters and other documents in the packet.

RECOMMENDATION: Staff respectfully recommends the Council, after considering public testimony and the staff recommendation, approve the request to extend the Wapiti Woods at Elk Highlands preliminary plat for 24 months, expiring on August 17, 2016 based on the following findings of fact:

Finding 1: The 34-lot preliminary plat was approved by the Council on August 17, 2009. In 2011, the Council granted an additional 24-month extension under HB 522 that provided local jurisdictions additional flexibility. The preliminary plat now expires August 17, 2014.

Finding 2: No other development or third party will be harmed if the preliminary plat is extended.

Finding 3: A legal notice was placed in the *Whitefish Pilot* on March 19, 2014 and public notice was mailed to property owners within 300-feet on March 14, 2014. As of the writing of this report, 11 letters have been received.

This item is a quasi-judicial matter.

- b) Ordinance No. 14-___; An Ordinance amending Zoning Regulations in Whitefish City Code Section 11-2K-3 to identify private postal services and shipping services as a conditional use in the Secondary Business District (WB-2) (First Reading) (p. 121)

From Senior Planner Wendy Compton-Ring's staff report:

The Planning Board held a public hearing on February 20, 2014 and recommended approval of a text amendment to add 'business services' to the WB-2 list of permitted uses along with a definition for 'business services'.

At the City Council meeting on March 3, 2014, the Council did not recommend approval of a new definition of 'business services' nor add it as a permitted use to the WB-2 (Secondary Business District). Instead the Council directed staff to come back

to the March 17th meeting ‘with an alternative option for shipping and packaging services as a conditional use in the WB-2 zone.’

At the City Council meeting on March 17, 2014, the Council tabled the text amendment for ‘shipping and packaging services’ as a conditional use in the WB-2. The Council directed staff to develop more robust findings in order to support the text amendment and change the use to ‘private postal services and shipping services’ to be consistent with other areas of the zoning regulations.

There is a full staff report with letters and other documents in the packet.

RECOMMENDATION: Staff respectfully recommends the City Council, after considering the public testimony and the recommendations from staff and the Planning Board, adopt an Ordinance amending Zoning Regulations in Whitefish City Code Section 11-2K-3 to identify private postal services and shipping services as a conditional use in the Secondary Business District

This item is a legislative matter.

- c) Ordinance No. 14-___; An Ordinance approving a commercial Planned Unit Development Overlay including a conditional use permit and zoning deviations on 4.156 acres of a 5.766 acre parcel at 6340 Highway 93 South to develop a hotel (First Reading) (p. 168)

From Senior Planner Wendy Compton-Ring’s transmittal memo:

Summary of Requested Action: Larry Lambert, on behalf of Lambert Hotels, is requesting a planned unit development (PUD) and a conditional use permit (CUP) in order to develop a hotel at 6340 Highway 93 S. The three-story hotel is proposed to have 76 rooms with 82 on-site parking spaces. The project consists of one parcel with two zoning designations. The eastern half is WB-2 (Secondary Business District) and western half is WLR (One-Family Limited Residential District). There are two Growth Policy designations on the project. The eastern half is General Commercial and western half is Suburban Residential.

The applicant is proposing to exceed the maximum building height, blend the zoning designations (described above) to push the WB-2 zone to the eastern edge of the Baker Avenue extension and only overlay the PUD on the portion of property between Highway 93 S and the Baker Avenue extension. In exchange for the building height zoning deviation, the applicant is proposing to dedicate right-of-way through the property to facilitate the future Baker Avenue extension. This right-of-way dedication will connect with the right-of-way recently dedicated by the Dear Tracs subdivision to the north.

Since the footprint of the building exceeds 15,000 square feet, the applicant is also required to obtain a Conditional Use Permit. These requests are being reviewed together, as the review criteria are nearly the same.

No development plans are proposed for the remainder of the property. The applicant has shown a possible future building area behind the hotel, but any future development will require an amended PUD. In addition, the applicant has no immediate plans for the residential property to the west of Baker Avenue, but the applicant doesn't want to encumber the residential property with the PUD overlay.

Planning Board Action: The Whitefish City-County Planning Board held a public hearing on March 20, 2014 to consider the request. Following the hearing, the Planning Board recommended approval of the above referenced PUD/CUP, subject to twelve conditions as contained in the staff report and adopted the staff report as findings of fact (4-1, Phillips voting in opposition; Anderson and Gunderson were absent).

Planning & Building Department Recommendation: Staff recommended approval of the above referenced PUD/CUP subject to twelve (12) conditions of approval set forth in the attached staff report.

Public Hearing: At the public hearing, the applicant spoke on behalf of the project. Also, four members of the public spoke at the hearing. One was in support of the application. The other three had concerns with the requested height of the building, the additional commercial property and the proposed Baker Avenue extension alignment. As proposed, the Baker Avenue right-of-way would cross Park Knoll Lane near the bottom of a hill out of the Park Knoll neighborhood. It was pointed out that the street crossing might be safer if the road was further to the east.

The draft minutes from the March Planning Board meeting are attached as part of this packet. Due to the public comments regarding the future alignment of Baker Avenue extension, staff has included a copy of the South Whitefish Transportation Plan map (adopted 2/2000) and Transportation Plan map (adopted 2/2010)

RECOMMENDATION: Staff respectfully recommends that the City Council, after considering public testimony and the recommendations from staff and the Planning Board, approve an Ordinance approving a commercial Planned Unit Development Overlay including a conditional use permit and zoning deviations on 4.156 acres of a 5.766 acre parcel at 6340 Highway 93 South to develop a hotel subject to 12 conditions.

This item is a quasi-judicial matter.

- d) City's proposed applications to the 2015 Legislature for TSEP and DNRC grants for a wastewater system project to diminish groundwater and stormwater inflow and infiltration into the wastewater system collection pipes (p. 224)

From Public Works Director John Wilson's staff report:

The City retained Anderson Montgomery Consulting Engineers (AMCE) in 2012 to provide planning, grant writing and engineering services for the Wastewater Facility Improvements Project. While the ultimate focus of this project is to design and construct a new wastewater treatment plant, that facility is but one part of the City's overall wastewater system. Efficient operation of the wastewater collection system is crucial to the future plans for the treatment plant and an important aspect of that efficiency is a need to reduce the infiltration and inflow of clear water.

Toward that end, AMCE and the Public Works Department have prepared a Preliminary Engineering Report (PER) and applied for grants in support of the Whitefish Wastewater Infiltration and Inflow Mitigation Project. These grant applications will be submitted to the Treasure State Endowment Program (TSEP) and the Department of Natural Resource and Conservation Renewable Resource Grant and Loan Program (RRGL) in May.

The Public Hearing on April 7th will be to present the PER findings and recommendations to the City Council and general public. Staff will be on hand to receive comments and answer any questions.

Attached please find a copy of the press release for a recent article in the Daily Interlake. This provides general information on the need and our efforts to reduce clear water entering the wastewater system. Copies of the Executive Summary, a project priority list and a proposed project budget from the PER are attached, as well. A full copy of the PER is available for review at the Public Works Department in City Hall.

There is no action required at this time. A Resolution authorizing the applications will be on the April 21st meeting agenda.

COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

- a) Consideration of awarding a construction contract for the East 2nd Street reconstruction and trail project (two motions) (p. 235)

From Public Works Director John Wilson's staff report:

Introduction/History

The Public Works Department opened construction bids for Phase II of the East 2nd Street Reconstruction Project on March 27th. This memo is to recommend the City Council approve a funding package for remaining work on the project and authorize

the City Manager to execute a construction contract with the low bidder, Knife River Construction, in the amount of \$2,020,020. A copy of the bid tabulation is attached.

Current Report

We received four bids, ranging from a low of \$2,020,020 to a high of \$2,379,379. The difference between the two lowest bids was \$2,970, or a mere 0.1%, indicating these to be reasonable values. The engineer's estimate for Phase II construction was somewhat conservative at \$2,547,622.

The scope of work on this project will provide infrastructure improvements along East 2nd Street from the alley west of Cow Creek to the BSNF railroad crossing. Those improvements will include road work with new curb and gutter; water, sewer and storm drainage improvements; a new bicycle/pedestrian path along the south edge of the right of way and new street lighting. Private utility companies will take advantage of this project to upgrade their infrastructure, as well. Overhead electric, TV cable and phone lines will be relocated underground.

Work is scheduled to begin in early June and be completed by the end of October.

Financial Requirement

Staff recommends the project be constructed with a combination of Resort Tax funds, CTEP grant money and Stormwater funds. The Resort Tax Fund has approximately \$2,170,000 available through the construction period. This is a conservative estimate based on balances in the current Resort Tax budget plus anticipated revenue in FY 2015. The CTEP grant program will contribute \$132,000 toward the trail construction, giving a potential total of \$2,302,000 from those two sources.

Outstanding obligations for this project include payment for the recently completed Phase I construction, the balance of our engineering services contract, reimbursement to CenturyLink for the relocation of their telephone infrastructure, plus the proposed contract with Knife River for Phase II construction; all for a total of \$2,330,450 without providing for contingencies.

This leaves us with obligations exceeding Resort Tax and CTEP resources by about \$28,450. To rely on only these two funds would also drain the Infrastructure portion of Resort Tax fund through June 2015, leaving no money to start design on the West 7th Street project. In any event, the status of the Resort Tax fund appears to be such that construction on West 7th Street project must wait until after 2015.

We reviewed Knife River's low bid on the East 2nd Street project to fund stormwater improvements totaling \$364,800. In addition to immediate funding needs, the desire to move forward with design for the West 7th Street project leads staff to propose the Council approve up to \$350,000 from the Stormwater Fund for East 2nd Street.

The Stormwater Fund cash balance is expected to be over \$750,000 at the end of this fiscal year, without this allocation, and \$55,000 in additional revenue is predicted for FY 2015.

Public Works therefore recommends the following funding package for remaining payments to be made on the East 2nd Street Reconstruction Project, including Phase I and Phase II construction contracts, engineering services, and reimbursement to private utility companies for relocating their infrastructure. These obligations total \$2,330,450 plus contingencies.

That recommendation includes \$1,850,000 from the Resort Tax Fund, \$350,000 from the Stormwater Fund and \$132,000 from the CTEP grant program, with contingencies to be covered by the Resort Tax Fund. These resources total \$2,332,000 without providing for contingencies. This proposal includes revenue from the FY 2015 Resort Tax Fund Budget which has not been approved. A summary of this information is attached in spreadsheet form.

RECOMMENDATION: Staff respectfully recommends the City Council approve a funding package for the remaining work on the East 2nd Street Reconstruction project to include \$1,850,000 from the Resort Tax Fund, \$350,000 from the Stormwater Fund and \$132,000 from the CTEP grant program, with contingencies to be covered by the Resort Tax Fund.

Staff also respectfully recommends the City Council approve a construction contract for Phase II of the East 2nd Street Reconstruction Project to Knife River Construction in the amount of \$2,020,020, contingent upon approval by the CTEP grant program.

This item is a legislative matter.

COMMUNICATIONS FROM CITY MANAGER

- a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 243)
- b) Other items arising between April 2nd and April 7th
- c) Resolution No. 14-___; A Resolution approving a Real Estate Purchase and Sale Agreement with respect to Lots 13, 14, 15, 16, 17, and 18, of Block 58, of Whitefish, Montana (p. 252)

Introduction/History

Several years ago, when we budgeted for the possible dredging of Riverside Pond in Riverside Park, the Mayor and City Council members had more concerns about Riverside Pond beyond just dredging. There were concerns about algae in the pond and possible aeration options, possible ways to improve the storm drainage outflow from the pond to the river, noxious weeds around the pond, and ownership of the pond because it was known that BNSF owned some land under the pond. Since that

time, we have worked on a number of these areas and most recently we have had discussions with BNSF about the possible purchase of their land under part of Riverside Pond.

Riverside Pond (see attached maps) is not really an original pond, but a storm drainage detention pond which takes much of the street runoff from downtown and the east side and lets stormwater accumulate there and sediment settle out before flowing into the Whitefish River. As I understand it, the pond was constructed a number of years, possibly by the Montana Department of Highways, for the storm drainage runoff of Hwy 93 South.

Over the past year, the Real Estate advisors of Mayor Muhlfeld, Frank Sweeney, Rich Knapp, and I have discussed the acquisition of the lots from BNSF as we knew it was property that BNSF did not really want. The history of their ownership of six lots under part of the pond (see attached two maps) is uncertain, but it may even have dated back to the checkerboard ownership of lands the railroads got from the federal government in the mid-1800's. Anyway, we had heard from local BNSF representatives that they didn't really know they owned it and they really weren't interested in the six lots.

So I contacted BNSF's Montana administrators in Billings and they had me contact their real estate brokerage company, Jones Lang LaSalle about these six lots. At first we thought BNSF might just give us the lots in order to rid themselves of the lots, much of which are under water or encumbered by Riverside Pond and to rid themselves of possible liability concerns. However, when we contacted them and they investigated the six lots, they felt that the two northernmost lots had enough value to sell them. After some discussions and negotiations, they responded with the following offer for all six lots:

2 Lots = 6,500 SF @ \$8.00/SF = \$52,000
Remaining 4 Lots = \$2,500 (under water or the slope to the water)
Administrative Fee = \$2,000
Total = \$56,500

We felt that this proposal was a very good deal given that most people think that this land is already part of Riverside Park. If you look at the attached LIDAR map, you can see that our existing trail goes through lots 16 and 17 and we currently do not have an easement or lease with BNSF for that trail. The six lots are 19,500 square feet or .45 acres, so the purchase price is \$2.90 per square foot or \$9,416.66 per lot overall.

Current Report

The Mayor and Frank Sweeney, as Real Estate advisors to me, felt that we should go ahead with this purchase and recommend it to the City Council. I have worked with

BNSF's real estate broker at Jones Lang LaSalle on a purchase agreement. A few aspects of this purchase are:

1. We would only be getting a quitclaim deed. While not as good as a warranty deed, the broker from Jones Lang LaSalle (JLL) said that BNSF only sells property by quitclaim deed. In talking with Mary VanBuskirk, I don't feel that there is much risk that a quitclaim deed could or would be challenged by anyone else. Mary and I reviewed an Ownership and Encumbrance (O&E) report from First American Title Company and it did not reveal any problems we might have in accepting a quitclaim deed.
2. For tax purposes, BNSF wants to do an IRS 1033 Tax Exchange with other property, so they would also want from us an offer letter on Whitefish letterhead stating something to the effect: The City of Whitefish is attempting to acquire land across BNSF Railway Company property in Whitefish, MT. Whitefish may use its powers of eminent domain to condemn your property if we are unable to reach a voluntary agreement with you. The offer letter allows BNSF to take the consideration in under the IRS 1033 Tax Exchange program.
3. BNSF would not agree to include mineral rights under the land in the transaction, even though we asked several times. However, we did get some mitigating language in the purchase agreement that they won't extract sand and gravel from the site and they won't disturb the top 100 feet of surface. See paragraph 8 (b) in the Purchase Agreement.
4. We have to retain all six lots as land for municipal or public purposes – we tried to get them to eliminate this restriction, but they would not agree to do so. Therefore, we diminished their restrictions as far as we could. See paragraph 8 (d) in the Purchase Agreement.

Financial Requirement/Impact

The money would have to come from the Tax Increment Fund as parkland acquisition and development is an eligible activity for TIF expenditures and we really don't have funding anywhere else for this acquisition.

RECOMMENDATION: Staff respectfully recommends the City Council adopt a Resolution approving a Real Estate Purchase and Sale Agreement with respect to Lots 13, 14, 15, 16, 17, and 18, of Block 58, of Whitefish, Montana.

This item is a legislative matter.

- d) Consideration of approving a revised Interlocal Agreement with the Whitefish Housing Authority to revise the Payment-In-Lieu-of-Taxes (PILT) procedures (p. 272)

Last November, the City Council approved a request from the Whitefish Housing Authority (WHA) regarding appropriating an amount equal to the Payment-In-Lieu-of-Taxes (PILT) which the WHA pays to the City for Mountain View Manor. WHA requested that, given the federal cutbacks in their funding, they would continue to pay the City the PILT money, but asked that the City appropriate an equal amount in their annual appropriations and return that amount to the WHA for use in their programs. The City Council approved that request last November 18th and a copy of the minutes from that meeting are in the packet.

Since that meeting, I have drafted, Mary VanBuskirk has reviewed, and the WHA Board has approved a revised Interlocal Agreement which is contained in the packet. The only changes made to the agreement were to revise the PILT provisions in Section 4 and to change the name of WHA's Executive Director.

The City would be returning approximately \$6,900.00 per year to the WHA in addition to the one-time payment of their amount in arrears of \$38,717.30 as of January 1. The \$6,900 per year formerly went into the General Fund.

RECOMMENDATION: Staff respectfully recommends the City Council approve a revised Interlocal Agreement with the Whitefish Housing Authority to revise the Payment-In-Lieu-of-Taxes (PILT) procedures.

This item is a legislative matter.

COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

- a) Resolution No. 14-___; A Resolution in support of the proposed amendment to ARM 12.11.645 pertaining to the Whitefish River before the Fish, Wildlife and Parks Commission of the State of Montana (p. 279)
- b) Letter from Flathead Basin Commission regarding funding for Aquatic Invasive Species (AIS) (p. 321)

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

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

• MONTANA •

CONVENTION & VISITORS BUREAU

April 1, 2014

Whitefish City Council
P.O. Box 158
Whitefish, Montana 59937

Dear Mayor Muhlfeld and City Council,

I am pleased to present the Whitefish Convention and Visitors Bureau (WCVB) Fiscal Year 2015 Marketing Plan and Budget. This document must be presented to the Montana Office of Tourism by May 1, 2014 for approval by the Tourism Advisory Council. In order to receive vital Lodging Facility Use Tax Funds (Bed Tax), **the WCVB Board requests that City Council approve the WCVB FY 15 Marketing Plan and Public portion of the budget at the April 7, 2014 council meeting.**

The tourism industry in Whitefish has had a very successful year. Resort Tax collections are up over 10% from last year while 2013 Whitefish Bed Tax Collections increased 16% over last year.

The WCVB Board of Directors will be in attendance at the April 7th meeting. At that time, we will present some of the advertising and public relations highlights from the past year so you can see the types of smart and creative campaigns we have produced to bring those high-value, low-impact visitors to our town.

For your edification, we have also included information on our projected FY 15 Private Membership Funds Budget. With the increased collections we are receiving, we may adjust that portion of the budget upward prior to the July 1st starting date.

Thank you for your consideration of this important issue. I will be available to answer questions during the council meeting. If you have questions in advance of the meeting, please contact our Executive Director, Dylan Boyle, at 406-862-3390.

Sincerely,



Erica Coffman
Chair, WCVB

WHITEFISH MONTANA

WHITEFISH CONVENTION & VISITORS BUREAU

FY 15 MARKETING PLAN

July 1, 2014 to June 30, 2015

PO Box 4232

Whitefish, Montana 59937

www.EXPLOREWHITEFISH.com

phone 1.406.862.3390

contact: Dylan Boyle, *Executive Director*

dylan@explorewhitefish.com

FY 15 MARKETING PLAN EXECUTIVE SUMMARY

Whitefish, Montana is an authentic mountain town located in the northern Rockies, home to some of the world's most beautiful mountains and spectacular, unspoiled nature. Just 25 miles from Glacier National Park, Whitefish offers close access to the hanging valleys and emerald peaks of this World Heritage Site. More than 75% of our visitors come during the summer months of late June, July, August and early September. This seasonality presents problems for the many small businesses dependent upon non-resident travelers. As a result, we spend a large majority of our marketing budget on promoting the winter and shoulder seasons. The big influx of over 2 million Glacier National Park visitors annually allows Whitefish to offer excellent dining, expansive lodging options, and exceptional recreational opportunities. Having a viable, robust Main Street is very attractive to our visitors. We are also home to Whitefish Mountain Resort, offering 3,000 acres of great skiing, abundant snow and incredible views of Glacier National Park.

Whitefish aligns perfectly with the Montana Brand pillars. In all our ads and collateral we serve up beautiful high resolution photos of the scenic beauty, our pristine lake and the incredible nature that surrounds us. Photos of our iconic downtown are an important part of all our collateral. Visitors are very attracted to our downtown and it is a primary economic driver for the town. In addition, we try to counter the preconceived notions that Montana is remote and does not have adequate facilities by showcasing the beautiful lodging and incredible dining that can be found here. Exhilaration by day and comfort by night truly defines us.

We have fully embraced the geotraveler concept and feel that the 55 million potential visitors who fit this profile are our customers. They enjoy our authentic town and immerse themselves in the local culture, including events, professional equity theatre, and arts festivals. These visitors are tech-savvy, active, spend more money and stay longer. They have flexibility in planning their travel dates and can travel during the shoulder seasons when we have capacity and need visitors. Research from the Institute for Tourism and Recreation Research (ITRR) substantiates this investment in attracting the geotraveler.

Whitefish is the busiest Amtrak stop on the Empire Builder between Minneapolis and Seattle. As a result, we do a great deal of cooperative marketing with Amtrak. Seattle and Minneapolis are our primary domestic markets and these markets are supported by direct flights and Amtrak connections. Portland, Oregon and Chicago, Illinois are important emerging markets. Alberta, Canada continues to be a key regional market, however this market can be subject to the vagaries of international currency rates and as a result we are cautious to become overly reliant on this single market.

Whitefish Mountain Resort is our most important marketing partner. In summer, if the town does well, the ski resort gets the overflow. In winter, if the ski resort does well, the town benefits. The recent addition of attractions at the resort has increased their summer offerings.

Last year we put about 61% of our total public budget and 14% of our private funds into Montana Office of Tourism cooperative marketing offerings. They have performed very well for us. We use private funds for our Website, Meetings, Groups, Public Relations programs and Visitor Information Fulfillment.

We measure our effectiveness in several ways. The Whitefish Resort Tax is a great indicator of how businesses are performing. A total of 2% is levied on hotel rooms, restaurants and many retail items. We also compare the WCVB Tourism Promotion Assessment year to year. This is a voluntary 1% fee that local restaurants, rental car agencies, and lodging facilities place on each guest check. If the visitor does not want to pay, they can decline. The TPA accounts for

most of our private funding. We also offer memberships to businesses located in town. We track the effectiveness of our campaigns through various metrics: click through rates, unique visits and subscribers to our website, travel guide requests, page views, etc. Digital media buys are also tracked.

Our Public Relations Program has been incredibly effective. Travel writers, press trips, social media and various promotions bring a very desirable return on investment. Because we have an experienced, talented PR team, we are able to host many A-List writers, TV shows and radio personalities.

We utilize many sources for our research that validates our marketing plan. The non-resident data collected by ITRR is an invaluable tool for determining where our customers come from, what they do, how much they spend, what they like and do not like. We also use data from the US Travel Association for broad industry indicators. In addition, the information provided by MTOT regarding the effectiveness of campaigns, ad awareness, likelihood to travel, etc also determines the co-op advertising opportunities in which we participate.

The WCVB is very pleased with the progress we have made in the past few years. Our 2013 Resort Tax collections were up 10% over the previous year and 16% from 2011. The Resort Tax is a good indicator of the state of the economy because the 2% tax is collected on lodging, restaurants, bars and retail sales. Our shoulder season efforts are also showing great success. The January – March 2013 Resort Tax collections were up 13% over the previous year. During the same period, State Bed Tax collections for Whitefish increased 29%. Overall, 2013 State Bed Tax collections for Whitefish increased 16% over the previous year. In 2013, approximately 558,105 nonresident travelers spent at least one night in Whitefish (See Appendix).

1 NARRATIVE

1.1 PURPOSE OF THIS MARKETING PLAN

The purpose of the Whitefish CVB Marketing Plan is to enhance the economy of Whitefish by emphasizing its desirability as a travel and recreation destination to visitors who appreciate and respect the character of the place. Our mission is to build a high level of visibility and increase our name recognition as a premier year-round mountain town. Established by the City of Whitefish, the WCVB is the officially designated organization charged with tourism promotion and marketing of Whitefish. The organization also provides critical support for visitor information services, travel infrastructure development, market research and public relations.

1.2 ABOUT WHITEFISH, MONTANA

Whitefish, Montana is an authentic mountain town located in the northern Rockies, home to some of the world's most beautiful mountains and spectacular, unspoiled nature. Just 25 miles from Glacier National Park, Whitefish offers close access to the hanging valleys and emerald peaks of this World Heritage Site. Summer season has historically been the busy (high season) for Whitefish, with the nearby world-famous Glacier National Park as a key draw. Whitefish Lake, sitting at the edge of town, has also been a popular warm season draw. Research also indicates that visitors are attracted to Whitefish because of the distinctive and inviting qualities of the town's downtown and Central Avenue district. Increasingly, visitation includes those who come to Whitefish without any particular activity as a prime motivation, other than to spend time enjoying the various shops, restaurants and gallery options of the town's eminently walkable downtown core.

The world-class slopes and facilities of Whitefish Mountain Resort serve as a key driver for winter visitation to Whitefish. The relationship between the mountain resort and the town of Whitefish is symbiotic, especially as skiing-centric vacations have evolved increasingly into winter vacations where some in the traveling party are not skiing or snowboarding participants—rather, they enjoy the many other winter amenities in and around Whitefish. As a result, improving and enhancing the connectivity of the mountain and the town experience helps improve the economic outcomes of both and improves the overall visitor experience as well. Whitefish Mountain Resort summer activities have expanded considerably over the last several years, improving the summertime vitality of the mountain resort experience as well as enhancing the overall attraction of Whitefish as the preferred place to base a northwest Montana and Glacier National Park region vacation.

1.3 WHITEFISH, MONTANA AND THE MONTANA BRAND

Whitefish aligns perfectly with the Montana Brand pillars. In all our ads and collateral we serve up beautiful high resolution photos of the scenic beauty, our pristine lake and the incredible nature that surrounds us. Photos of our iconic downtown are an important part of all our collateral. Visitors are very attracted to our downtown and it is a primary economic driver for the town. In addition, we try to counter the preconceived notions that Montana is remote and does not have adequate facilities by showcasing the beautiful lodging and incredible dining that can be found here. Exhilaration by day and comfort by night truly defines us.

While the incredible scenic and wild landscapes that surround Whitefish are a key and compelling inspiration to travel to Whitefish, these landscapes are placed in the context of hospitality. The broad majority of travelers are intimidated by wildness without the tempering possibility of civilization. Beyond the adventure of wilderness by day, they want a good place to eat and comfortable place to sleep. This context is central to the Whitefish experience and also communicated in our marketing efforts.

1.4 STRENGTHS AND CHALLENGES OF WHITEFISH RELATIVE TO OTHER DESTINATION MOUNTAIN TOWNS

STRENGTHS

- Whitefish aligns perfectly with the three Montana Brand platform statements
 - More spectacular unspoiled nature than anywhere else in the lower 48
 - Vibrant and charming small towns that serve as gateways to our natural wonders
 - Breathtaking experiences by day and relaxing hospitality at night
- Proximity to Glacier National Park — Travel forecasts have predicted an increase in U.S. travelers expressing an interest in visiting a U.S. national park. In addition, the significant name recognition that Glacier National Park holds among North American and international travelers provides an advantage to “putting Whitefish on the map” for potential visitors.
- Central Avenue Whitefish and the alluring character of the town’s built structures — Research indicates that visitors are attracted to the character and scale of Whitefish, especially the town’s Central Avenue district. These are attributes that form the foundation of the town’s appeal to visitors who stay in, or around the community, eat at the town’s various restaurants, and shop at local stores. Additional amenities such as pedestrian friendly sidewalks, miles of trails and ability to see the night’s sky all add to the Whitefish character.
- Access to recreational activities — A wide variety of recreational opportunities in and around Whitefish is a major draw for visitors. These include Whitefish Lake, Whitefish Mountain Resort, as well as the trails, rivers and scenic roadways in and around Glacier National Park.

CHALLENGES

- Limited Transportation Infrastructure — Public transportation options and visitor infrastructure services in and around Whitefish are fewer than those provided at competitor destinations.
- Uncertain Weather — Fire, low snow levels and other natural crises affect travel patterns and willingness to travel.
- Market Perception — Research performed by the Montana Office of Tourism in key destination markets reveals that Montana is perceived to offer lower quality amenities and services to visitors. While Montanans are perceived as being friendly, it should be distinguished that this friendliness does not automatically translate into a guest’s perception of a high level of service.
- Lack of Competitive Pricing for Air Access and Limited Seats — When compared to mountain communities with which Whitefish competes for destination visitors, airline seats to Whitefish are limited, with fewer flights, limited markets and are priced considerably higher. Within the state, nonresident arrivals at Glacier Park International Airport (140,000 in 2012) trail Missoula and are far behind those of Billings and Bozeman (See Appendix).
- Highly Seasonal Visitation Patterns — Visitation patterns to Whitefish are highly seasonal with the majority of visitation occurring during the high demand months of July and August. This seasonality impacts the operating effectiveness of Whitefish businesses that must accommodate highly volatile demand swings.

- The Going-to-the-Sun Road – Both the snowpack and budget cuts in recent years have delayed the opening of the Going-to-the-Sun Road, which is the most popular attraction in Glacier National Park. The Going-to-the-Sun Road has also been forced to close early in recent years due to road construction. The Whitefish summer tourism season is directly tied to the opening and closing dates and has been hurt by the delayed openings and early closures.
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1.5 KEY TRAVEL BUYER MOTIVATIONS FOR WHITEFISH, MONTANA

Whitefish experiences an uneven cycle of visitation with a high summer season that operates at capacity with little occupancy available. Very deep shoulder seasons include early spring and late autumn, with moderate visitor and business activity during the winter season. Higher winter activity and occupancy exists during the Christmas holiday period and also during select spring holiday periods.

Summer occupancy is primarily driven by the town's proximity to Glacier National Park. The quality lodging opportunities, dining and nightlife possibilities coupled with the town's distinctive downtown environment have made Whitefish a preferred location to base a vacation to the Glacier National Park region. Summer visitation is also supported by the attractions of Whitefish Lake and the expanding attractions in addition to Glacier National Park including the Whitefish Trail and other mountain biking opportunities in and around town. The activities available at Whitefish Mountain Resort enhance the downtown shops, restaurants and galleries of the town itself. Many warm season festivals and events support the active and vibrant social environment of the town's core, which serves as a key visitor attraction.

Winter travel is primarily driven by the skiing and snowboarding opportunities at Whitefish Mountain Resort. However, this relationship has become increasingly symbiotic as winter visitors increasingly seek off-slope activities as part of their vacation. Travel groups may include those who do not ski or snowboard. The average ski or snowboard guest will spend approximately four hours each day on the slope. That means they need something to do with the other 20 hours. Good places to eat, active nightlife, shopping, arts and other winter sport activities, attractions, and events have become and increasingly important component of the overall winter vacation product mix. Improving the flow of visitors between town and mountain helps support and enhance this symbiotic relationship.

Specific motivations for spring and fall season travel are less centralized than summer or winter travel. Additional research should be focused around travel motivations for these time periods. Currently the WCVB has focused its marketing efforts around extending the summer season (building early autumn visitation), building late spring/early summer visitation and growing winter visitation during select periods of time with historically lower business levels. Central to this effort is to communicate specific reasons for travel in these time periods. This means communicating activities, features and events worth experiencing during these time periods that can't be experienced at other times of the year and are unique to our area.

1.6 THE TRAVEL DECISION FUNNEL: INSPIRATION, ORIENTATION, FACILITATION

The overall vision for Whitefish is to have integrated communication throughout the travel planning funnel:

INSPIRATION > ORIENTATION > FACILITATION

Inspiration. At the highest levels of communication, the Whitefish CVB leverages the State branding guidelines in its selection of imagery and development of creative content, while applying its own Whitefish spin on things. We want to foster an emotional connection with this combination of imagery and creative content so that the viewer will move forward with the primary call to action, which is to visit ExploreWhitefish.com.

Orientation. Orientation to new opportunities is facilitated through interactive maps within the Explore Whitefish site, as well as companion maps within the Travel Guide and a printed map available for visitors at kiosks, travel shows or visitor centers. There is a consistent look between the maps available online, through the Travel Guide and on the Visitor Information Kiosks. Depending on the method of communication, the location of Whitefish within the state, or its proximity to other points of interest in the region is detailed.

Facilitation. Facilitation (connecting users with stakeholder businesses) is achieved by empowering individual businesses with the capacity to create and maintain business information, specials, packages, video and events that are displayed at www.ExploreWhitefish.com and a companion mobile app that visitors can download for either Android or iPhone. The app is promoted to visitors via the website, at QR codes on printed materials and also at visitor information kiosks. In addition, a printed town locator map is made available at local visitor information kiosks, visitor information centers and business locations throughout the town and key distributions points together with a local travel guide.

1.7 KEY MARKETS FOR WHITEFISH, MONTANA

Our potential visitors are targeted by geographic location, demographic characteristics, and values that distinguish a potential visitor as a “geotraveler” (as defined by research conducted by ITRR, the Travel Industry Association of America (TIA) and the National Geographic Society). The following section provides information on the distinguishing characteristics of our geotraveler along with our core and emerging geographic markets.

GEOTRAVELERS

Geotourism is defined as tourism that sustains or enhances the geographic character of the place being visited including its environment, culture, heritage, landmarks and the well-being of its residents. According to the ITRR study, *Statewide Vacationers to Montana: Are They Geotravelers*, the strong geotraveler spent the most money per day while traveling in Montana (\$141.79) followed by the moderate geotraveler (\$134.10) and the non geotraveler vacationer spent (\$133.27). Visitors who agreed with the principles of geotourism spend more money per day while traveling in Montana than non-geotravelers.

Geotravelers are high-value, low impact visitors who appreciate the unique characteristics, eccentricities, and natural values of the places they visit. They place high value on authentic travel experiences that respect and support the local character of place and its environment, and are less likely to become discouraged in their travel experiences by travel distances, difficulties and vagaries of weather.

Income — HHI of \$50,000+ Education: Bachelors' degree+ Age: 25-64

Values — Creative, curious, connected, engaged, adventurous, independent, mindful.

Source: Geotraveler Exploratory, December 2008.

Attitudes — Immerse yourself in the culture, go off the beaten trail, get out of your comfort zone, allow for spontaneity, take a risk, pay attention, go now.

Source: Geotraveler Exploratory 2008.

- A segment of the U.S. total travel market estimated to include over 55 million people.
- They seek authenticity in travel experiences.
- They seek out opportunities to experience businesses and activities that are locally unique.
- Travel is an important part of their “lifestyle” and they often combine learning with travel.
- They are more likely to be aware of their own impact, both environmental and community, on the places they are visiting.

NON-RESIDENT VISITOR CHARACTERISTICS

Sources: 2013 ITRR: Flathead County-specific interviews, Non Resident Visitor Info

- Over 84% visited Glacier National Park
- 58% traveled as a pair (2 persons)
- Average group size was 2.5
- 41% have HHI (Household Income) above \$100,000
- 41% were Female
- 19% were first time visitors
- 45% were 55-64

WHERE OUT-OF-STATE VISITORS TO WHITEFISH PRIMARILY COME FROM

Source: 2013 ITRR: Flathead County-specific interviews, Non Resident Visitor Info

- 21% Alberta (predominately southern Alberta and Calgary region)
- 11% Washington State (predominately west coast Puget Sound region)
- 6% Minnesota (predominately Minneapolis region)
- 6% British Columbia, Canada
- 4% Colorado
- 3% California (no singular concentration)
- 55% Everywhere else in the U.S. and the world (without any regular pattern, who live further away in urban areas including Portland, Los Angeles, Phoenix, New York/ New Jersey, Chicago, Washington DC and have an interest in national parks and wilderness).

CORE GEOGRAPHIC MARKETS FOR FOCUS

The WCVB will focus its attention during this fiscal period on potential visitors who match the Geotourism profile in the following geographic markets. It is possible that opportunities will arise in additional markets in partnership with other tourism organizations, such as the Montana Office of Tourism. In these instances, the WCVB may extend its efforts beyond these core focus markets.

- Seattle, Washington (Puget Sound Area)
- Minneapolis, Minnesota
- Alberta including Calgary and other provinces
- Regional Drive-To

EMERGING MARKETS

- Portland, Oregon — Whitefish began marketing efforts in this area three years ago and now a new direct flight is being introduced.
- San Francisco/Oakland – due to competitive airfares
- Chicagoland (Chicago core and northern suburbs to Madison, Wisconsin)

1.8 MARKETING PLAN GOALS

- Establish our identity and presence of Whitefish, Montana in the marketplace as a destination for active experience-seeking travelers.
- Encourage destination visitation from the core and emerging markets.
- Aggressively showcase Whitefish’s varied winter sports opportunities.
- Showcase special events to encourage visitation from regional drive markets during shoulder seasons.
- Entice Glacier National Park visitors to spend a few extra days in Whitefish because of all of Whitefish’s “natural,” cultural, and culinary advantages.
- Improve shoulder seasons with golf, fly fishing, bicycling, water sports, performing arts, culinary experiences, community events, fall foliage, birding, wildlife viewing, and horseback riding.
- Stimulate the publication of feature stories in national and regional magazines, major metropolitan newspapers, broadcast media, and news media.
- Encourage corporate retreats, medical tourism and sporting events. Improve meeting and convention market year-round.
- Assist in the pursuit of new airline market to improve access, ease and affordability travel.
- Increase occupancy for lodging facilities.
- Sustainably grow the economy of Whitefish.

1.9 COOPERATIVE MARKETING OPPORTUNITIES

MTOT COOPERATIVE MARKETING

The WCVB has actively participated in the past and anticipated participating in the future in a variety of cooperative marketing programs with the Montana Office of Tourism (MTOT). WCVB participation in MTOT marketing programs in the past have primarily centered around spring, fall or winter campaigns. Winter MTOT cooperative campaigns that focused on the destination ski market have been of particular interest to the WCVB. Spring and Autumn cooperative campaigns that are focused on the active outdoors traveler within our core geographic markets have also been of particular interest.

OTHER COOPERATIVE MARKETING EFFORTS (AIRLINE, AMTRAK, REGIONAL SKI HILLS)

The WCVB actively cooperates with the Whitefish Mountain Resort and Amtrak on many specific marketing initiatives or campaigns. We are interested in exploring expanded cooperative marketing opportunities with airlines, local and regional ski hill operators in the Midwest, and Glacier Country media events.

PAST COOPERATIVE MARKETING EFFORTS (SUCCESSFUL AND NOT SUCCESSFUL, WHY?)

The WCVB has engaged in many cooperative marketing initiatives with the Montana Office of Tourism in the past. These initiatives have been measured separately by the WCVB through independent ad tracking. We have made adjustments to future participation based on previous tracking. We have found the most success in MTOT cooperative efforts that are aligned with our primary seasonal and geographic targets, and include the opportunity to provide fulfillment on responses.

2 BUDGET OVERVIEW

2.1 PROVIDE A BUDGET AMOUNT FOR ADMINISTRATION, EACH MARKETING SEGMENT, AND EACH SEGMENT'S METHOD WHEN PROVIDING OVERALL BUDGET

FY15 PUBLIC & PRIVATE BUDGET	PUBLIC BED TAX FUNDS	PRIVATE MEMBER FUNDS	PUBLIC & PRIVATE COMBINED
MARKETING SEGMENT: CONSUMER	\$76,550	\$193,170	\$269,720
CONSUMER ADVERTISING PRODUCTION		\$9,500	\$9,500
CONSUMER MEDIA PLANNING		\$4,500	\$4,500
CONSUMER SHOWS		\$22,500	\$22,500
CONTENT GENERATION		\$11,860	\$11,860
Content Planning, Reporting, Meeting & Communications		\$2,160	\$2,160
Collateral Copywriting & Editing		\$900	\$900
Consumer Advertising Copywriting & Editing		\$1,800	\$1,800
Website Content Development		\$7,000	\$7,000
E-NEWSLETTER		\$2,160	\$2,160
FACILITATION COLLATERAL		\$20,500	\$20,500
Collateral Design & Production		\$7,500	\$7,500
Travel Guide		\$5,500	\$5,500
Response Cards, Brochures, Posters		\$1,500	\$1,500
Visitor Maps		\$6,000	\$6,000
MOBILE WAYFINDING APP		\$2,000	\$2,000
ONLINE & DIGITAL ADVERTISING	\$39,500	\$41,550	\$81,050
Coop Opportunities	\$35,550	\$12,465	\$48,015
Online & Digital Placement	\$3,950	\$29,085	\$33,035
OUT OF HOME		\$2,500	\$2,500
PHOTOGRAPHY & VIDEO	\$5,000	\$13,100	\$18,100
Photography	\$5,000	\$7,100	\$12,100
Video		\$6,000	\$6,000
PRINT ADVERTISING	\$32,050	\$27,700	\$59,750
PROMOTIONS		\$2,000	\$2,000
RADIO & TELEVISION ADVERTISING			
VISITOR INFORMATION SERVICES		\$14,300	\$14,300
Airport Rack Maintenance		\$800	\$800
Chamber VIC & Fulfillment		\$13,000	\$13,000
Kiosks/Wayfinding		\$500	\$500
WEBSITE		\$19,000	\$19,000
Development		\$15,000	\$15,000
Hosting, Maintenance & Support		\$4,000	\$4,000

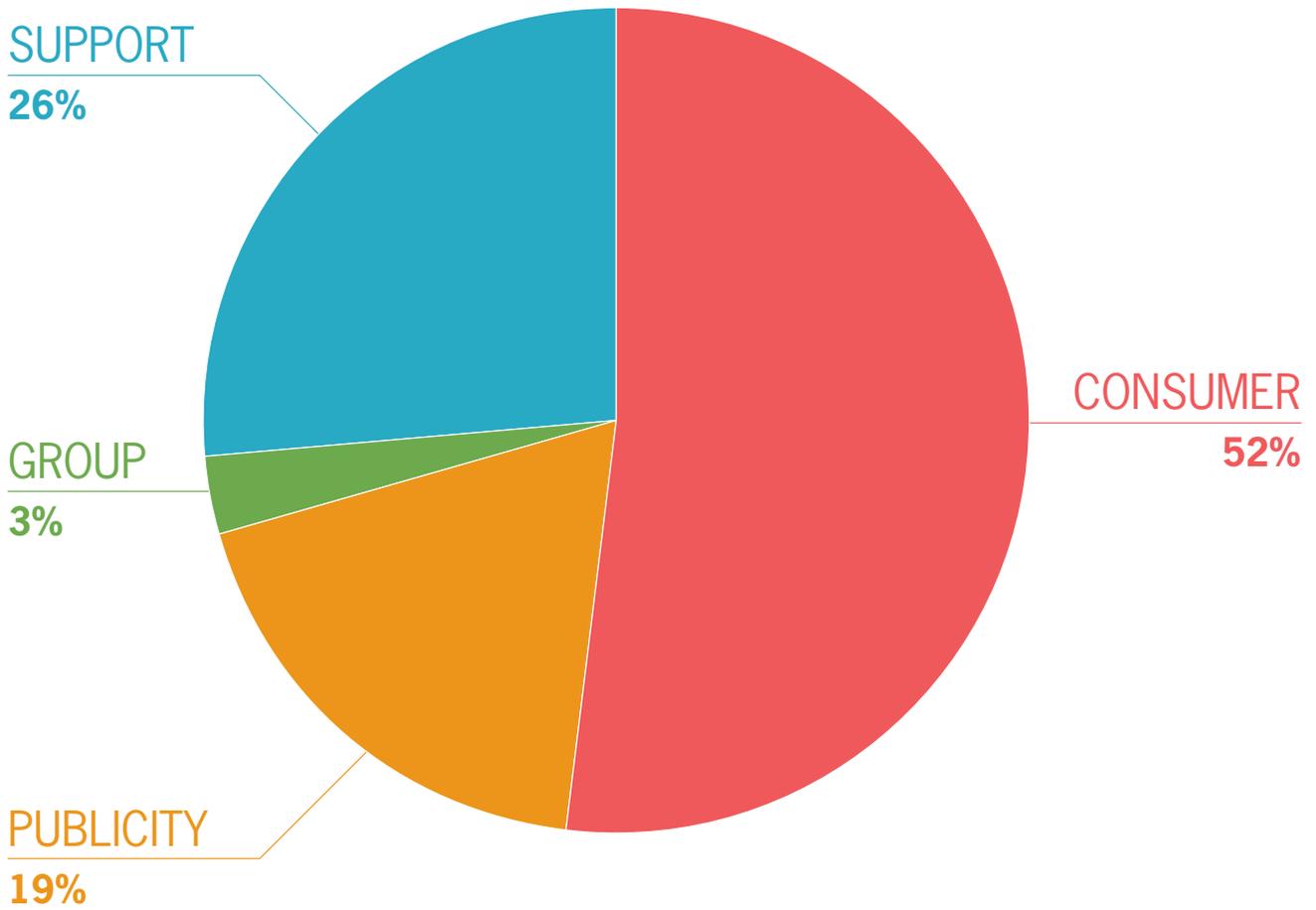
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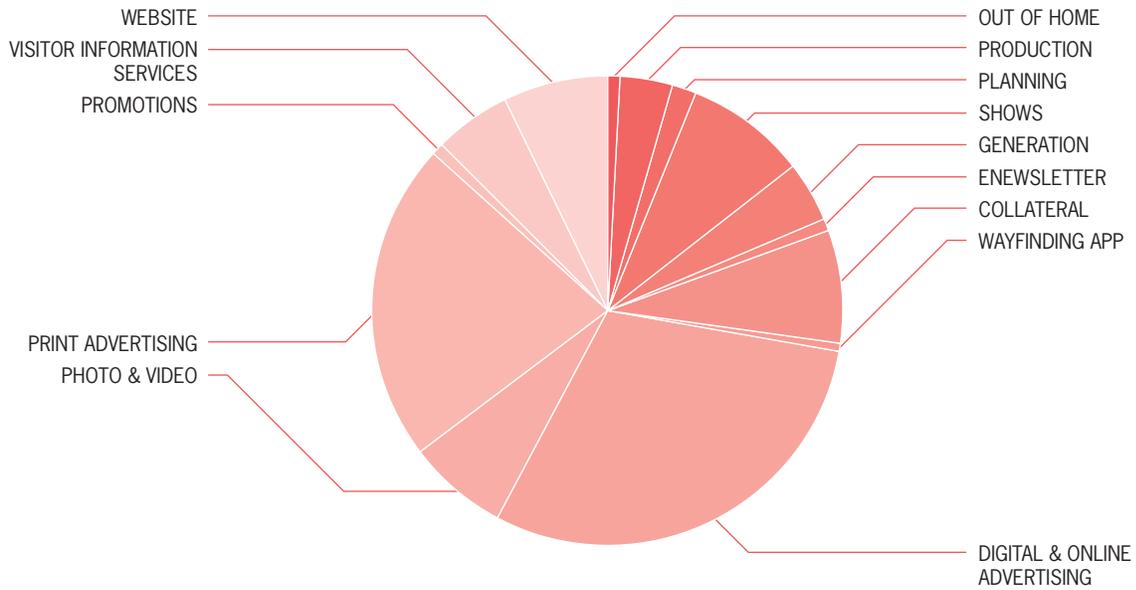
	PUBLIC BED TAX FUNDS	PRIVATE MEMBER FUNDS	PUBLIC & PRIVATE COMBINED
MARKETING SEGMENT: PUBLICITY		\$96,949	\$96,949
DATABASE & CLIPS		\$4,120	\$4,120
GLACIER COUNTRY MEDIA EVENTS		\$3,480	\$3,480
MEDIA RELATIONS		\$18,200	\$18,200
NEWS RELEASES		\$2,880	\$2,880
ONLINE MEDIA KIT		\$7,849	\$7,849
PR EXPENSES & TRAVEL		\$11,600	\$11,600
PR OPPORTUNITY		\$2,440	\$2,440
PR PHOTOGRAPHY		\$3,440	\$3,440
PR PROMOTIONS		\$8,340	\$8,340
Athlete Sponsorships		\$4,500	\$4,500
Promotion Coordination		\$3,840	\$3,840
PRESS TRIPS		\$23,640	\$23,640
SOCIAL MEDIA		\$10,960	\$10,960
MARKETING SEGMENT: GROUP MARKETING		\$16,060	\$16,060
E MINT			
FAM TRIPS		\$8,360	\$8,360
Winter FAM Trip		\$2,360	\$2,360
Annual FAM		\$5,000	\$5,000
FAM Events		\$1,000	\$1,000
ONLINE & DIGITAL ADVERTISING			
PRINT ADVERTISING		\$500	\$500
TRADE SHOWS		\$7,200	\$7,200
Trade Shows		\$5,000	\$5,000
Spring Ski Group Shows		\$2,200	\$2,200
MARKETING SEGMENT: MARKETING SUPPORT	\$23,450	\$111,830	\$135,280
ADMINISTRATION	\$20,000	\$70,000	\$90,000
AIR SERVICE SUPPORT			
MARKETING & PUBLICITY PERSONNEL		\$20,000	\$20,000
MARKETING PLAN DEVELOPMENT		\$1,500	\$1,500
OPPORTUNITY MARKETING	\$1,600	\$1,000	\$2,600
PLANNING, REPORTING, & MEETINGS		\$13,080	\$13,080
Planning, Reporting, Meetings (PR Program)		\$9,080	\$9,080
Reporting, Meetings (OTC)		\$4,000	\$4,000
RESEARCH		\$5,000	\$5,000
SUPERHOST	\$350		\$350
TAC & GOVERNOR'S CONFERENCE MEETINGS	\$1,500		\$1,500
TOURISM EDUCATION & TRAINING		\$1,250	\$1,250
Voices of Tourism		\$1,250	\$1,250
BUDGET TOTALS	\$100,000	\$418,009	\$518,009

2.2 USE A PIE CHART TO ILLUSTRATE WHAT PERCENTAGE OF YOUR BUDGET IS BEING USED IN EACH MARKETING SEGMENT AND METHOD.

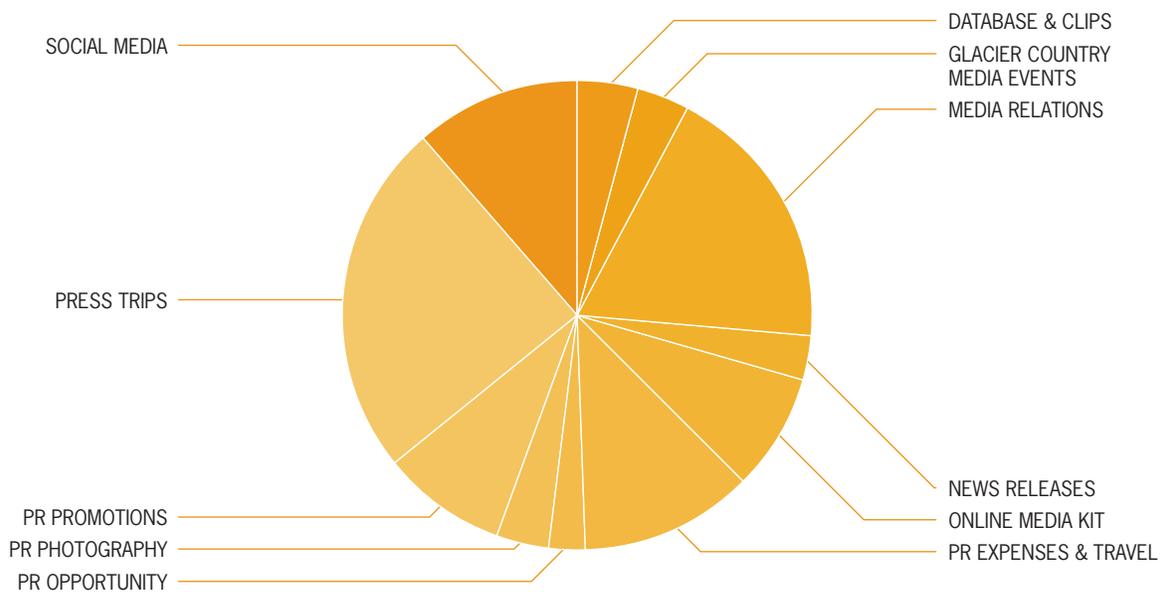
Budget Total: \$518,009



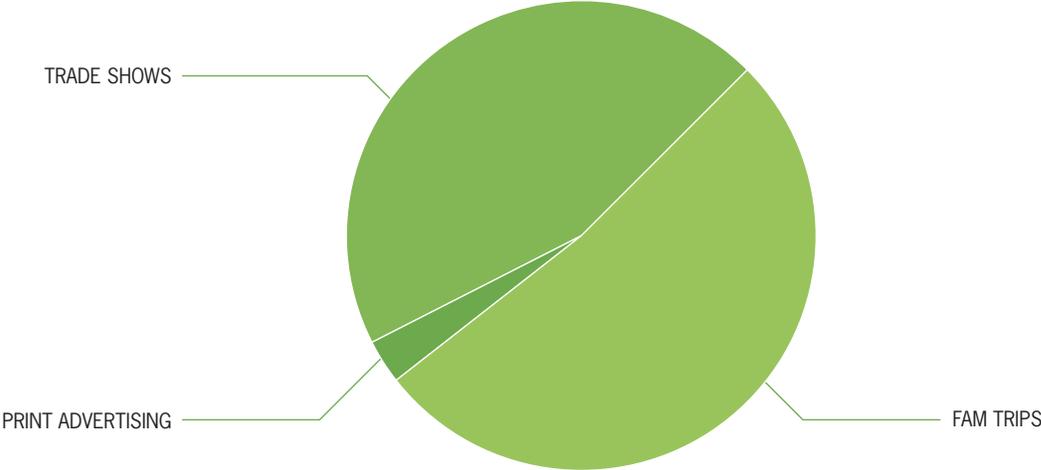
Consumer \$269,720



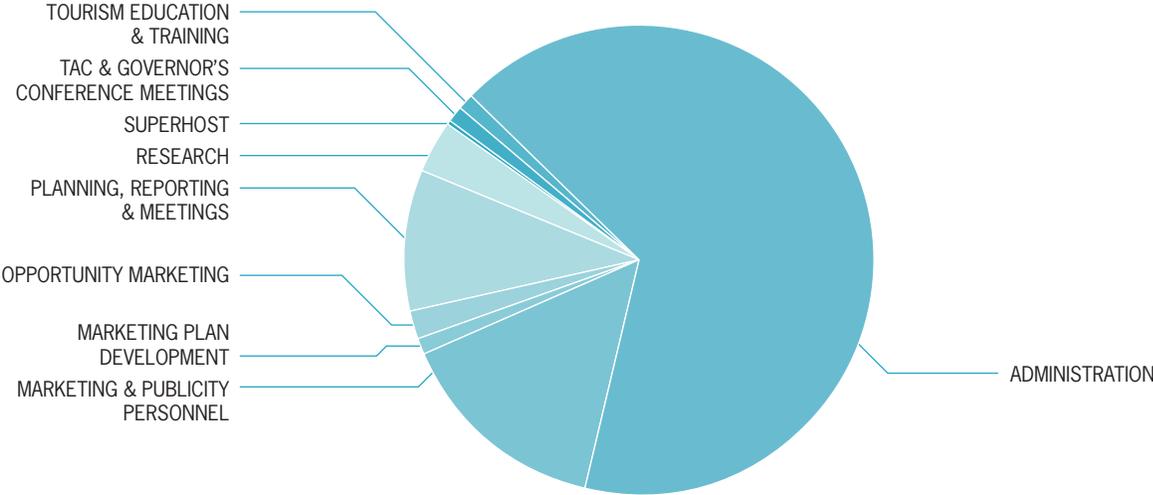
Publicity \$96,949



Group Marketing \$16,060



Marketing Support \$135,280



3 MARKETING SEGMENTS & MARKETING METHODS

Whitefish follows the basic travel decision funnel of Inspiration (sparking an interest and inspiring a traveler to visit Whitefish) > Orientation (Helping the visitor learn about where Whitefish is, how to get here, what facilities and activities are available for their travel) > Facilitation (Helping to connect visitors with specific businesses and activities to make a reservation and solidify their travel plans into a quality experience once here).

All marketing efforts feed into this funnel and resolve to online tools (website), travel guides and visitor information telephone lines that help connect visitors from spark of inspiration to actual business transaction at the local level. These tools include the website at www.ExploreWhitefish.com, the Whitefish Travel Guide, visitor information kiosks and wayfinding maps throughout town and a wayfinding app for mobile devices. These tools are important to help connect visitors with local business as well as help visitors have a great experience once they are here. If we inspired a visit, did nothing for the visitor once they arrived, and were reluctant to provide tools that help the visitor discover what to do, the visitor would be more likely to miss the quality experiences that would cause them to want to return. The Whitefish Convention and Visitors Bureau will undertake initiatives and activities in the following key areas during FY15.

3.1 MARKETING SEGMENT: CONSUMER

STRATEGY FOR CONSUMER

Our consumer advertising is based around visitation in our shoulder seasons and strategy is broken out into the four following categories: Autumn, Winter, Spring & Early Summer, and Visitor Fulfillment.

A. Autumn: Occupancy history in Whitefish shows that during the period of July through August the town is at or very near 100% capacity. From late August into mid-September, occupancy levels are still strong, but begin to wane. The objective is to extend the peak season and grow occupancy and business levels in the autumn for the time period of mid- September to the end of October. The approach for this time period is to develop and communicate narratives for adventures, activities, fall events, and specific reasons for visiting Whitefish during these time periods that cannot be experienced if Whitefish were visited another time. The WCVB has allocated 20% of its overall consumer advertising budgets to autumn marketing efforts.

DEMOGRAPHICS

The target audiences for this time period are those who do not have kids in school. This primarily means dual-income, no-kids and those 45 and older with HH income over \$75,000

PSYCHOGRAPHICS

Travelers seeking active experiences such as biking, horseback riding, paddling, and hiking. Casual experiences such as dining and shopping are also considered primary autumn activities for Whitefish. This means traveling to the town primarily for the purpose of relaxing, strolling the streets and shops and trying out great dining and nightlife options.

GEOGRAPHIC AUDIENCE

Seattle and Portland, Regional Drive-To

SUPPORTING RESEARCH & STATISTICS

Seattle and the Puget Sound area have been historically strong markets for Whitefish. Portland has been an emerging market and we have increased investment in this region. The existence of the Amtrak train route has made this connection logical, but the initiation of a direct flight on Alaska Air/Horizon has increased the possibilities of this market. Due to time/service issues with Amtrak (as a result of oil trains on the Empire Builder Route), we are looking to initiate marketing partnerships with Horizon/Alaska in similar ways to our partnerships with Amtrak.

- **Value of fly-in vs. drive-in customer types:** Not all visitors are alike. The same is true of their economic impact to Whitefish. Research by the ITRR indicates that Whitefish visitors from locations more than 300 miles away, who typically travel via airlines, spend considerably more money per day than visitors who travel by car. A total of 27% flew on a portion of their trip to Whitefish in 2013.
- **Fly-in visitors:** \$2,240 per trip average fly-in (excluding airfare); \$350 per day per party
- **Difference:** \$1,387 in additional spending per fly-in visitor (Source: ITRR). Based on these metrics, the additional \$1,387 in additional average spending per fly-in visitor provides additional margin in the cost of customer acquisition.

MEASURING SUCCESS

Click-through-Ratio to Subscriber Offer: Specific landing page resolution.

Bed Tax Collections for 3rd and 4th quarters (July – December).

B. Winter: Whitefish offers a world-class ski and snowboarding experience, including unique winter events, yet destination visitation to the town is still significantly lower than mid-summer high occupancy season. As a result, the WCVB has allocated 60% of its overall consumer advertising budgets to winter ski marketing efforts. These efforts also seek to focus business within a specific subset of the overall season, January to early February, historically a time period on the overall ski season with generally lower business levels.

DEMOGRAPHICS

Skiers and Snowboard activity participants with household incomes of \$75,000 or greater. Overall the percentage of the population that are active skiers or snowboarders is approximately 7% of the US population (SIA 2012 Participation Report). That means we are targeting a relatively small percentage of the population and can most efficiently reach this target through niche channels.

PSYCHOGRAPHICS

We apply largely the same geotravel profile to the ski market. While not all skiers and snowboarders fall within the geotraveler psychographic, we find that those with experiential preferences for authentic travel are more likely to appreciate and enjoy Whitefish and then return again in subsequent years. It is important that we acquire new, repeat customers, not simply attract one-time visitors who are not a good fit for the Whitefish experience and as a result will not likely return.

GEOGRAPHIC AUDIENCE

We are interested in US national communication opportunities, although often focus our efforts within the Seattle, Portland, Minneapolis and Chicago metro areas. Regional drive-to markets are also a target.

SUPPORTING RESEARCH & STATISTICS

Overall the percentage of the population that are active skiers or snowboarders is approximately 7% of the US population (SIA 2012 Participation Report). Our efforts are focused on niche communication channels with additional priority on our core metro markets of Seattle, Portland, Minneapolis, Chicago and Calgary.

MEASURING SUCCESS

Click-through-Ratio to Subscriber Offer: Specific landing page resolution.

Bed Tax Collections for 4th and 1st quarters (October – March).

C. Spring & Early Summer: The objective is to begin the visitor season earlier and grow occupancy and business levels in the spring and early summer for the time period of May and June. The approach for this time period is to develop and communicate narratives for adventures, activities and specific reasons for visiting Whitefish during these time periods that cannot be experienced if Whitefish were visited another time. The WCVB has allocated 20% of its overall consumer advertising budgets to spring and early summer marketing efforts.

DEMOGRAPHICS

The target audiences for this time period are those who do not have kids in school. This primarily means dual-income, no-kids and those 45 and older with HH income over \$75,000

PSYCHOGRAPHICS

Travelers seeking active experiences such as biking, horseback riding, paddling, and hiking. Casual experiences such as dining and shopping are also considered primary spring/early summer activities for Whitefish. This means traveling to the town primarily for the purpose of relaxing, strolling the streets and shops and trying out great dining and nightlife options.

GEOGRAPHIC AUDIENCE

Seattle and Portland. These audiences are closer-in and can make a decision to travel within a shorter timeframe.

SUPPORTING RESEARCH & STATISTICS

Seattle and the Puget Sound area have been historically strong markets for Whitefish. Portland has been an emerging market and we have increased investment in this region. The existence of the Amtrak train route has made this connection logical, but the initiation of a direct flight on Alaska Air/Horizon has increased the possibilities of this market. Due to time/service issues with Amtrak (as a result of oil trains on the Empire Builder Route), we are looking to initiate marketing partnerships with Horizon/Alaska in similar ways to our partnerships with Amtrak.

VALUE OF FLY-IN VS. DRIVE-IN CUSTOMER TYPES

Not all visitors are alike. The same is true of their economic impact to Whitefish. Research by the ITRR indicates that Whitefish visitors from locations more than 300 miles away, who typically travel via airlines, spend considerably more money per day than visitors who travel by car. A total of 27% flew on a portion of their trip to Whitefish in 2013.

FLY-IN VISITORS

\$2,240 per trip average fly-in (excluding airfare)

\$350 per day per party

Difference: \$1,387 in additional spending per fly-in visitor (Source: ITRR). Based on these metrics, the additional \$1,387 in additional average spending per fly-in visitor provides additional margin in the cost of customer acquisition.

MEASURING SUCCESS

Click-through-Ratio to Subscriber Offer: Specific landing page resolution.

Bed Tax Collections for 2nd quarter (April –June).

D. Visitor Fulfilment: Whitefish follows the basic travel decision funnel of Inspiration (sparking an interest and inspiring a traveler to visit Whitefish) > Orientation (helping the visitor learn about where Whitefish is, how to get here, what facilities and activities are available for their travel) > Facilitation (helping to connect visitors with specific businesses and activities to make a reservation and solidify their travel plans into a quality experience once here).

All marketing efforts feed into this funnel and resolve to online tools (website), travel guides and visitor information telephone lines that help connect visitors from spark of inspiration to actual business transaction at the local level. These tools include the website at www.ExploreWhitefish.com, the Whitefish Travel Guide, visitor information kiosks and wayfinding maps throughout town, and a wayfinding app for mobile devices. These tools are important to help connect visitors with local business as well as help visitors have a great experience once they are here.

DEMOGRAPHICS

30 to 60 years with household incomes beginning at \$75,000

PSYCHOGRAPHICS

Geotravellers with additional activity focus (as compared to heritage travel). This means travelers seeking active experiences such as biking, horseback riding, paddling, and hiking. Casual experiences such as dining and shopping are also considered primary autumn and spring activities for Whitefish. This means traveling to the town primarily for the purpose of relaxing, strolling the streets and shops and trying out great dining and nightlife options.

GEOGRAPHIC AUDIENCE

These tools are used to fulfill on interests from marketing communication as well as facilitate travelers at the local level once they have arrived on-site and help direct them to the various experience that Whitefish has to offer.

MEASURING SUCCESS

Website: Visitor Traffic, time on site.

Travel Guide: Distribution by channel.

Kiosks: Need to do some additional research for how these devices are used.

Visitor Information Center: Telephone calls and fulfillment.

Visitor Maps: Distribution by specific channel.

Mobile Wayfinding App: Downloads and specific locations for downloads.

METHODS FOR CONSUMER \$76,550 PUBLIC + \$193,170 PRIVATE = \$269,720 COMBINED

Content Generation\$0 Public \$11,860 Private

Copywriting and editing for consumer advertising, including website content development.

Consumer Advertising Production\$0 Public \$9,500 Private

Design and execution of our consumer advertising campaigns.

Consumer Media Planning\$0 Public \$4,500 Private

Strategic planning of our consumer advertising campaigns.

Consumer Shows.....\$0 Public \$22,500 Private

Participation in fall ski consumer shows in Seattle, Calgary, Minneapolis, Chicago and Portland metro areas.

eNewsletters\$0 Public \$2,160 Private

Eight newsletters are planned throughout the year promoting shoulder season activities and events to our consumer distribution list.

Facilitation Collateral.....\$0 Public \$20,500 Private

Printed travel guides and visitor maps are developed for distribution at consumer ski shows, when visitors request information via the website or toll-free telephone, and also for distribution at local businesses and information kiosks located around Whitefish, at Glacier Park International Airport (GPIA), and the Whitefish Amtrak® depot. Printed response postcards are used as an additional fulfillment tool for leads generated through our printed advertising.

Mobile Wayfinding App\$0 Public \$2,000 Private

Our mobile application for smartphones provides our visitors with instant “on-the-go” access to our website content in an easy to use format.

Online & Digital Advertising\$39,500 Public \$41,550 Private

We advertise on websites in our stated target markets as well as nationally through cooperative opportunities with the Montana Office of Tourism.

Out of Home.....\$0 Public \$2,500 Private

We explore opportunities to advertise on billboards, particularly with cooperative partners such as Whitefish Mountain Resort in our target markets. Although we have not done so in the past, the WCVB will also explore other out of home opportunities within these markets.

Photography & Video \$5,000 Public \$13,100 Private

Purchasing the rights to photos and video content for use in our consumer advertising.

Print Advertising.....\$32,050 Public \$27,700 Private

We advertise in publications within our target markets with alignment to geotraveler and other demographic profiles that have been outlined for Whitefish. Print opportunities, especially in cooperation with the Montana Office of Tourism in national active travel specific media channels, are also pursued.

Promotions.....\$0 Public \$2,000 Private

Aligned with specific campaigns, we participate in strategic promotions. This includes product placement, co-marketing opportunities, ski resort value-added promotions, cross-sell and resale opportunities, and other strategic relationships.

Radio & Television Advertising\$0 Public \$0 Private

We explore public radio sponsorship and exploration of other radio that reaches geotraveler market in the target geographic areas. Opportunities for television are approached with the same criteria.

Visitor Information Services\$0 Public \$14,300 Private

Our strategic partnership with the Whitefish Chamber of Commerce allows us to connect potential visitors with toll-free telephone information and on the ground visitors with access to walk-in information with extended hours during our busy summer season. We also stock an information kiosk at GPIA as well as the four information kiosks located around downtown Whitefish throughout the year.

Website\$0 Public \$19,000 Private

Our website, www.explorewhitefish.com, serves as a core fulfillment mechanism for advertisements and marketing communications. The site provides opportunities for site visitors to discover places to stay, eat, shop, and things to do.

3.2 MARKETING SEGMENT: PUBLICITY

STRATEGY FOR PUBLICITY

Positive editorial placement influences potential and return visitors to choose Whitefish as a destination to spend their discretionary travel dollars because of the credibility of an “expert” or non-biased “journalist,” who has done their research and/or shares first hand experiences with their audience. Pitching ideas for unique story angles and experiences, coordinating the logistics for first hand research, as well as sharing facts, photography and video, are efforts that “earn” the publicity placement that influences travelers.

SUPPORTING RESEARCH & STATISTICS

A study by Synaptic Digital and Kantar Video exposed respondents to three different forms of marketing, alone and in combination. The study looked at several major branding metrics to determine what type of marketing provided the biggest lift. Earned media was more powerful than brand creative or paid advertising at raising brand awareness, with a lift of 23 percentage points above control. A combination of earned media with paid or with paid plus brand creative lifted awareness even further.

MEASURING SUCCESS

A quarterly publicity report tracking story placement in newspapers, magazines, websites, radio and TV, including reach (audience or circulation) and equivalent ad space costs provide measurement of success, as well as tracking increases in website traffic, requests for more information and actual business (measured by accommodations tax, resort tax and tourism promotion assessment).

METHODS FOR PUBLICITY

\$0 PUBLIC + \$96,949 PRIVATE = \$96,949 COMBINED

Database & Clips.....\$0 Public \$4,120 Private

Researching and cataloguing all relevant articles published throughout the year. This provides the foundation for calculating our advertising equivalencies, which provides a valuable measure of success.

Glacier Country Media Events\$0 Public \$3,480 Private

Opportunities to jointly host press events in our core and emerging geographic markets.

Media Relations.....\$0 Public \$18,200 Private

Outreach to target publications, websites, and broadcast outlets with story idea pitches, facts, trends, and photography/videography tools.

News releases\$0 Public \$2,880 Private

Factual information regarding events, trends, travel packages, etc. New releases are distributed to target media for editorial consideration of placement or catalyst to research more information for feature story placement.

Online Media Kit.....\$0 Public \$7,849 Private

Updating our online public relations resource and hosting under www.explorewhitefish.com with facts, story ideas, events, photography, and other information for editorial needs.

PR Photography\$0 Public \$3,440 Private

Professional images provided at no cost to media outlets as a tool for story placement and aesthetics.

PR Promotions\$0 Public \$8,340 Private

Aligned with specific campaigns, we participate in strategic promotions. This includes athlete sponsorships and coordinations of those sponsorships and related assets with media partners and outlets.

PR Opportunity\$0 Public \$3,840 Private

Throughout the year, new public relations opportunities present themselves that were not specifically budgeted for.

PR Expenses & Travel.....\$0 Public \$11,600 Private

Expenses and travel related to executing on the publicity strategy.

Press Trips\$0 Public \$23,640 Private

Coordinate onsite logistics and experiences for first hand travel story research.

Social Media\$0 Public \$10,960 Private

Use of social media platforms, including Facebook, Twitter, and Instagram, to support marketing campaigns, publicity, and promotions.

3.3 MARKETING SEGMENTS: GROUP MARKETING

STRATEGY FOR GROUP MARKETING

Meetings and Conventions: Meetings and conventions have potential to build our shoulder seasons, particularly spring and fall. Member properties can offer lodging, meeting venues of choice, and catered meals with the area's outdoor recreational activities available at the particular time of the visit. The town of Whitefish offers additional benefits through a variety of excellent dining options, boutique shopping, art galleries, night life, and high quality performing arts venues and companies. Combined, this makes Whitefish a desirable location for a variety of meeting and convention groups.

DEMOGRAPHICS

The target audience includes small corporate meetings, incentive groups, annual association meetings, quarterly board meeting or retreats, and educational meetings that desire a scenic location with some activities available for team building and recreation.

GEOGRAPHIC AUDIENCE

Aligning with the Montana Office of Tourism and the WCVB, target areas including Seattle, Portland, Minneapolis and Chicago. Specific additional focus on Alberta, including but not limited to Calgary and Edmonton. Corporate group focus includes but is not be limited to Calgary, Edmonton, Seattle, Portland, Missoula, Bozeman and Spokane.

SUPPORTING RESEARCH & STATISTICS

Examples of types of organizations and meetings that have taken place during shoulder seasons in the past are Military Retreats (average \$3500/retreat), University of Montana's Mansfield Foundation (average \$5,000/meeting), Road Scholar Programs, American Institute of Justice (average \$8,000/meeting), Western Governors' Annual Meeting, Life Center Church Annual Couples Retreat (\$30,000), finance & insurance industry incentive groups (\$5,000 - \$25,000).

MEASURING SUCCESS

Increase meetings and convention revenue compared to previous year during shoulder seasons in participating properties. This will be measured by tourism promotion assessment collections and evaluation provided by participating properties.

Ski Group Marketing: The winter season ski product is a strong offering that has potential for growth. Participating properties and Whitefish Mountain Resort are cooperatively marketing winter ski trips to groups of skiers. Ski clubs contribute significant revenue in number of rooms rented and lift tickets purchased. Often they stay for seven nights although even weekend groups are significant because of the number of people. Although the main bottle neck is airfare and air seat availability, there are still a significant number of groups making trips to Whitefish every winter. Whitefish Mountain Resort ski group business has shown historical increase year to year.

SUPPORTING RESEARCH & STATISTICS

Whitefish Mountain Resort has a good indication of the volume of ski groups from their own lodging and group tickets ordered by groups staying in other properties. In addition, multiple WCVB member properties attend spring ski shows:

- Ski Councils: Texas, Crescent, Florida, Ohio Valley, and Chicago Metro Ski Council Trip Seminar

- PRW Shows: DC, NJ, Philadelphia, and Minneapolis
- Winter Ski & Sport VIP Reception
- Far West Ski Association Annual Convention

MEASURING SUCCESS

Increase number of ski groups staying at participating properties by 5%.

METHODS FOR GROUP MARKETING \$0 PUBLIC + \$16,060 PRIVATE = \$16,060 COMBINED

Association Membership\$0 Public \$0 Private

Explore and identify associations that would provide opportunities to reach prospective clients and solicit meetings and group events in a receptive environment. Potential organizations to consider include MPI (Meeting Professionals International), HSMIA (Hospitality Sales and Marketing Association International), and SkiTops.

eMint\$0 Public \$0 Private

Online database management software designed to generate leads for prospective conventions and meetings.

FAM Trips\$0 Public \$8,360 Private

Set dates for an annual familiarization (FAM) trips so that properties can invite interested meeting planners and participants to come to Whitefish and see the area, venues and activities. In most cases, airfare will be paid by the FAM participants but if a meeting planner attends the FAM that has potential to bring 200 room nights or more to the area and realizes that number of nights within a calendar year, then the FAM airfare will be reimbursed. The WCVB will also support the existing Winter FAM trip sponsored by Whitefish Mountain Resort, Grouse Mountain Lodge, The Lodge at Whitefish Lake, and Kandahar. Building off the fall 2013 Calgary press event organized and successfully executed by WCVB PR Manager Lisa Jones and Whitefish Mountain Resort, hold an event at an area restaurant in conjunction with the Calgary Snow Show. This model can also be replicated in Seattle, Portland and Minneapolis in conjunction with fall trade show attendance.

Online & Digital Advertising.....\$0 Public \$0 Private

Advertise on websites in our stated target markets which also meet our target demographic.

Print Advertising.....\$0 Public \$500 Private

Advertise in publications within our target markets with alignment to our demographic profiles. National Ski Club Newsletter and Small Market Meetings are examples of a publications that will be considered.

Trade Shows.....\$0 Public \$7,200 Private

Identify and attend a trade show that has attendees that meet the criteria of holding small meetings in mountain locations in January through June and/or September through mid-December. This attendance may be a coop with Glacier Country and/or Montana Office of Tourism. In addition, support member participation in spring group ski shows, which are focused on ski clubs and ski groups that have historically stayed at a variety of lodging properties.

3.4 MARKETING SEGMENT: MARKETING SUPPORT

STRATEGY FOR MARKETING SUPPORT

In order for the WCVB to effectively and strategically operate, the organization has set aside a budget to support the marketing efforts of the organization. This includes administrative and meeting costs, membership dues, strategic planning, marketing research, and funding for local, regional, and state-wide collaborative efforts that highlight and enhance our tourism economy. We believe that these types of efforts create results that we would not otherwise be capable of producing independently.

METHODS FOR MARKETING SUPPORT **\$23,450 PUBLIC + \$111,830 PRIVATE = \$135,280 COMBINED**

Administration **\$20,000 Public** **\$70,000 Private**

In order to promote Whitefish effectively and strategically, we require administrative support for staff and business expenses.

Air Service Support **\$0 Public** **\$0 Private**

The WCVB is an ex-officio member and financial sponsor of Glacier AERO (Airline Enhancement and Retention Organization). The mission of this organization is to work with community partners and various airlines to increase seasonal and full-time airline routes to Glacier Park International Airport (GPIA).

Marketing & Publicity Personnel **\$0 Public** **\$20,000 Private**

Additional WCVB staff is needed in order to execute the goals and objectives of the organization.

Marketing Plan Development **\$0 Public** **\$1,500 Private**

Each year, the WCVB works hand in hand with our agencies of record in order to create a comprehensive marketing plan that is the road map for coming year.

Opportunity Marketing **\$1,600 Public** **\$1,000 Private**

Throughout the year, new marketing opportunities present themselves that were not specifically budgeted for. Money is therefore set aside to examine these opportunities and potentially act upon them if they are in line with our marketing strategy.

Planning, Reporting & Meetings **\$0 Public** **\$13,080 Private**

Throughout the year, the WCVB's agencies of record provide reports and presentations on the status of current campaigns or PR related activities.

Superhost **\$350 Public** **\$0 Private**

The WCVB sponsors the Montana Superhost Customer Service Program each spring and offers training at no charge to frontline staff, managers, owners and engaged community members about the importance of customer service in delivering quality visitor experiences that not only satisfy customer needs, but instill a desire for repeat visitation.

TAC & Governor's Conference Meetings..... **\$1,500 Public** **\$0 Private**

The WCVB is required to attend all meetings of the Tourism Advisory Council (TAC) as well as the annual Governor's Conference on Tourism and Recreation. As these meetings take place all over the state, we require support for travel and expenses to attend.

Tourism Education & Training\$0 Public \$1,250 Private

The WCVB is a board member and financial sponsor of Voices of Montana Tourism, providing a united voice Montana's tourism stakeholders. Voices of Montana Tourism champions policies that sustainably grow tourism while preserving the spectacular nature, culture and sense of place that Montanans and visitors cherish.

Research\$0 Public \$5,000 Private

In order to gauge the effectiveness of our marketing efforts, the WCVB will take part in marketing research.

APPENDIX

This report summarizes nonresident visitors to Montana during quarter(s) 1,2,3,4, 2013.

These travelers spent at least on night in the followign city: Whitefish.

This group represents a sample size of 144 survey respondents, which equates to 5.1% of all nonresident visitors, or a total of 558,105 people.

Group Characteristics

- 26% of groups with all first time visitors
- 57% of groups with all repeat visitors
- 17% of groups with mixed first time and repeat visitors
- 27% Flew on a portion of their trip
- 8% Own a 2nd property in MT
- 7% Hired an outfitter
- 77% Plan to return within 2 years
- 93% Brought wireless technology

Activities in MT on This Trip

- 71% Scenic driving
- 49% Day hiking
- 40% Recreational shopping
- 40% Nature photography
- 37% Wildlife watching
- 23% Visiting other historical sites
- 21% Car / RV camping
- 15% Visiting museums
- 12% Attending festivals or events
- 11% Visiting Indian reservations
- 11% Gambling
- 10% Visit farmers market
- 10% Mountain biking
- 9% Golfing
- 8% Motorboating
- 8% Visiting Lewis & Clark sites
- 7% River rafting / floating
- 7% Fishing / fly fishing
- 6% Road / tour biking
- 6% Viewing art exhibits
- 6% Horseback riding
- 4% Skiing / snowboarding
- 4% Backpacking
- 4% Birding
- 3% Canoeing / kayaking
- 2% Sporting event
- 2% Attending performing arts
- 1% Hunting
- 1% Rockhounding
- 1% Snowshoeing
- <1% Snowmobiling
- <1% Geocaching
- <1% OHV / ATV
- <1% Follow dinosaur trail
- Cross-country skiing

Sites Visited on Trip

- 84% Glacier National Park
- 29% Yellowstone National Park
- 28% Other Montana State Parks
- 23% Flathead Lake State Parks
- 10% National Bison Range
- 9% Hot springs
- 4% Little Bighorn Battlefield
- 4% Ghost towns
- 4% Virginia/Nevada City
- 3% Bob Marshall Wilderness
- 3% Big Hole Battlefield
- 2% Museum of the Rockies, Bozeman
- 2% Clark Canyon Reservoir
- 2% Lewis & Clark Caverns State Park
- 2% Rocky Mountain Elk Foundation
- 2% Lolo Pass Interpretive Center
- 1% Fort Peck Lake
- 1% Bighorn Canyon Nat'l Recreation Area
- 1% Missouri Headwaters State Park
- 1% Lewis & Clark Interpretive Ctr, Great Falls
- 1% MT Historical Museum, Helena
- 1% CM Russell Museum, Great Falls
- <1% Ft. Peck Interpretive Center & Museum
- Grizzly & Wolf Discovery Center, West Yellowstone
- C.M. Russell National Wildlife Refuge
- Pompey's Pillar
- Missouri River Breaks Nat'l Monument

Reasons for Trip		
primary reason		all reasons
69%	Vacation/recreation/pleasure	84%
14%	Visit friends/relatives/family event	21%
9%	Just passing through	10%
4%	Business/convention/meeting	6%
2%	Shopping	8%
1%	Other	2%

Average Length of Stay in MT 6.47 nights Of Nights Spent in MT	
80%	of nights spent in Glacier Country
9%	of nights spent in Yellowstone Country
4%	of nights spent in Southwest Montana Region
3%	of nights spent in Central Montana Region
3%	of nights spent in Southeast Montana Region
1%	of nights spent in Missouri River Country

Percent of Nights Spent in Each Lodging Type	
40%	Hotel/motel
11%	Rented cabin/home
10%	Public land camping
8%	Second home/cabin/condo
8%	Resort/condominium
7%	Private campground
6%	Home of friend/relative
5%	Bed & Breakfast
2%	Other
1%	Vehicle in parking area
1%	Guest ranch

Montana Entry Points	
20%	Rooseville
14%	Kalispell Air
13%	Superior
9%	Lodge Grass
7%	Gardiner
5%	Troy
5%	Sula
4%	Piegan
4%	Monida
3%	Wibaux/Beach
3%	Missoula Air
2%	Sweetgrass

If on Vacation, Attracted to Montana for...		
primary attraction		all attractions
49%	Glacier National Park	78%
10%	Mountains / forests	63%
10%	Skiing / snowboarding	15%
8%	Open space / uncrowded areas	44%
6%	Lakes	43%
5%	Yellowstone National Park	23%
5%	Family/friends	19%
2%	Resort / guest ranch	6%
2%	Special events	6%
2%	Fishing	8%
1%	Rivers	36%
<1%	Hunting	4%
--	Snowmobiling	--
--	Wildlife	31%
--	A Montana State Park	4%
--	Other Montana history & culture	6%
--	Native american history & culture	12%
--	Northern great plains / badlands	3%
--	Lewis & Clark history	8%

Travel Mode to Enter MT	
70%	Auto/Truck
21%	Air
6%	RV/Trailer
2%	Train
1%	Motorcycle
--	Bus
--	Other

Wireless Technology Usage While in Montana

	Never	Sometimes	Frequently	Always	Mean
Restaurants	40%	22%	27%	11%	2.27
Shopping opportunities	59%	21%	14%	6%	1.76
Attractions to visit	49%	18%	19%	14%	2.12
Activities to do	55%	23%	13%	8%	1.87
Ratings and reviews	59%	19%	12%	11%	1.8
Price comparison	73%	14%	6%	7%	1.57
Lodging availability	63%	12%	11%	15%	1.86
Camping availability	82%	6%	6%	7%	1.37
Hours of operation	53%	23%	13%	11%	1.86
Road conditions	67%	16%	9%	8%	1.64
Road opening/closing	79%	15%	2%	5%	1.42
Weather	13%	20%	39%	28%	2.82
Directions/maps	22%	18%	33%	28%	2.69

Residency

21% Alberta, Canada
 11% Washington
 6% Minnesota
 6% British Columbia, Canada
 5% Michigan
 4% Florida
 4% Illinois
 4% Colorado
 4% Oregon
 3% California
 2% Pennsylvania
 2% Arkansas
 2% Massachusetts
 2% New York
 2% Texas
 2% Idaho
 2% Connecticut
 2% Wisconsin
 1% Saskatchewan, Canada
 1% Arizona
 1% Ohio
 1% Iowa
 1% South Carolina
 1% Georgia
 1% Missouri
 1% Germany
 1% Utah
 1% Maine
 1% South Dakota
 1% Wyoming
 1% New Jersey
 1% North Carolina
 1% North Dakota
 1% Mississippi
 1% Vermont
 1% Nevada
 1% Australia
 1% Louisiana
 <1% Alabama, West Virginia, Kansas, France, Kentucky,
 Tennessee

Respondent Age

24 - 80 Age range
 56 Average age
 58 Median age

Respondent Gender

59% Male
 41% Female
 19% First time visitor

Age Groups Represented

5% 0-5 years
 3% 6-10 years
 5% 11-17 years
 9% 18-24 years
 15% 25-34 years
 15% 35-44 years
 28% 45-54 years
 45% 55-64 years
 29% 65-74 years
 6% 75 and over

Household Income

14% Less than \$50,000
 24% \$50,000 to less than \$75,000
 20% \$75,000 to less than \$100,000
 16% \$100,000 to less than \$150,000
 12% \$150,000 to less than \$200,000
 13% \$200,000 or greater

Travel Group Type

12% Self
 58% Couple
 19% Immediate Family
 4% Family & Friends
 6% Friends
 <1% Business Associates
 2% Extended Family
 -- Organized Group or Club

Average Group Size: 2.51**Travel Group Size**

12% 1 traveler
 65% 2 travelers
 7% 3 travelers
 10% 4 travelers
 3% 5 travelers
 1% 6 travelers
 <1% 7 travelers
 1% 8 travelers
 -- 9 travelers
 <1% 10 travelers
 1% more than 10

Info Sources Used for Trip Planning

Most Useful		All Used
30%	Search Engine (i.e. Google)	46%
16%	Used no sources	22%
14%	National Park brochure/book/website	39%
10%	Other	14%
5%	Info. from private businesses	12%
5%	Guide book (i.e. Frommer's Lonely Planet)	13%
5%	Official MT website (VisitMT.com)	12%
5%	Automobile club (i.e. AAA)	12%
3%	Social media (i.e. Facebook)	3%
1%	Used a chamber/ visitor center	6%
1%	Consumer online reviews (i.e. TripAdvisor)	11%
1%	Other travel websites	12%
1%	Info. from special events	1%
1%	Montana advertising campaign	3%
1%	Mobile apps	7%
1%	Official MT guidebook magazine	5%
<1%	Online Video	2%
--	Magazine/newspaper articles	3%
--	Professional online travel reviews	2%
--	State Park brochure/website	7%

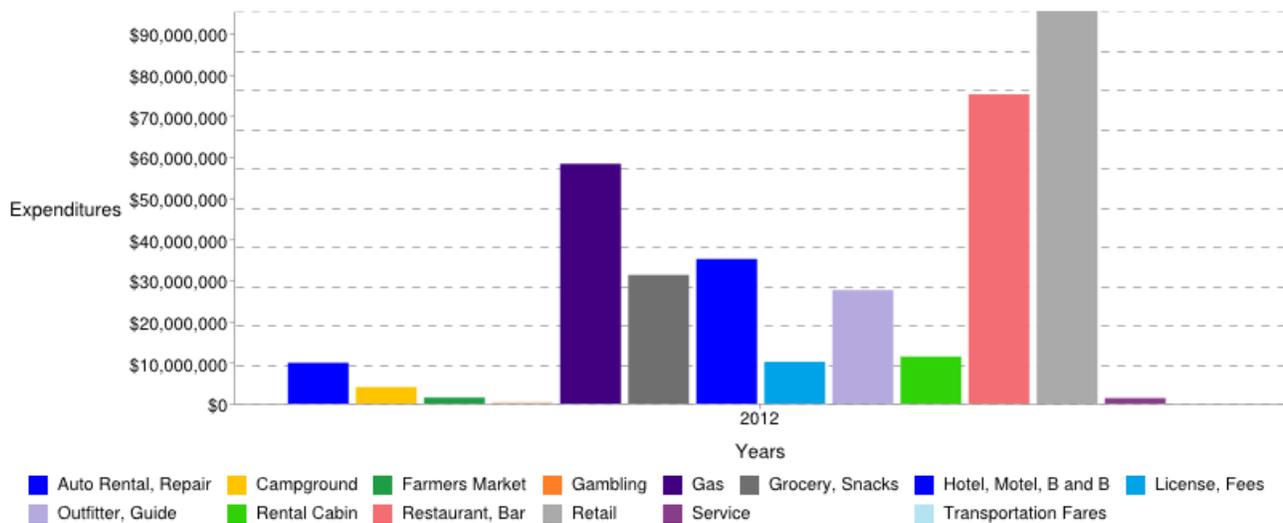
Sources Used During Trip

Most Useful		All Used
19%	Map applications (i.e. GoogleMaps)	46%
15%	Visitor information center staff	32%
13%	Motel/restaurant/gas station employee	29%
12%	Guide book (i.e. Frommer's Lonely Planet)	16%
10%	Official highway information signs	28%
9%	Brochure information rack	35%
7%	Mobile apps	16%
5%	Official MT guidebook magazine	10%
5%	Official MT website (VisitMT.com)	8%
3%	Consumer online reviews (i.e. TripAdvisor)	14%
2%	Social media (i.e. Facebook)	3%
1%	Billboards	2%

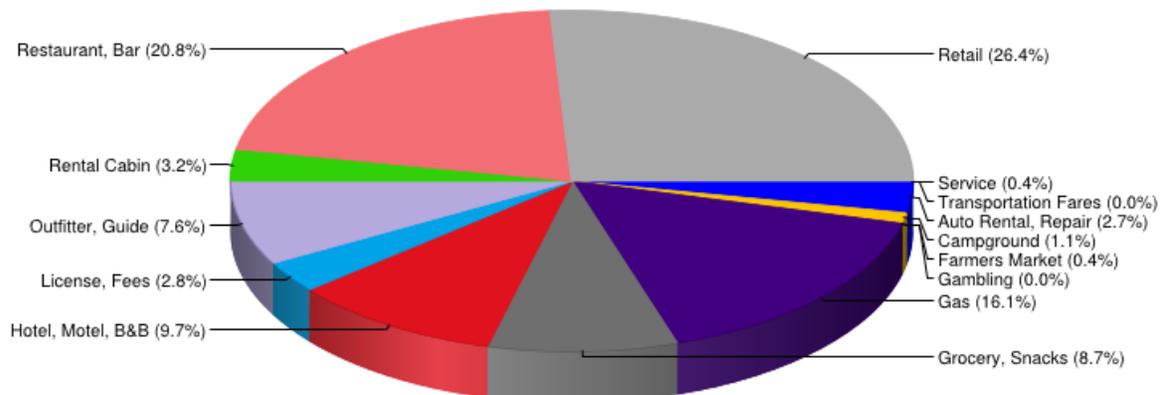
2012 Nonresident Expenditures for Flathead County (ITRR)

2012 Nonresident Expenditures for Flathead County			
Categories	Expenditures	% of County	% of State
Auto Rental, Repair	\$9,923,000	2.7%	0.3%
Campground	\$4,019,000	1.1%	0.1%
Farmers Market	\$1,450,000	0.4%	0.0%
Gambling	\$162,000	0.0%	0.0%
Gas	\$58,305,000	16.1%	1.8%
Grocery, Snacks	\$31,295,000	8.7%	1%
Hotel, Motel, B&B	\$35,175,000	9.7%	1.1%
License, Fees	\$10,179,000	2.8%	0.3%
Outfitter, Guide	\$27,592,000	7.6%	0.8%
Rental Cabin	\$11,438,000	3.2%	0.4%
Restaurant, Bar	\$75,221,000	20.8%	2.3%
Retail	\$95,464,000	26.4%	2.9%
Service	\$1,339,000	0.4%	0.0%
Transportation Fares	\$0	--	--
Total	\$361,562,000	100%	11.1%

2012 Nonresident Expenditures for Flathead County: \$361,562,000



2012 Nonresident Expenditures % for Flathead County: \$361,562,000



2012 Montana Nonresident Travel Group Expenditure Profiles by Airport of Arrival



2012 Montana Nonresident Travel Group Expenditure Profiles by Airport of Arrival



Average 2012 Daily Group Expenditures by Airport of Arrival¹

	Airport of Arrival in Montana ^{2, 3}						
	All Fliers	Billings	Bozeman	Great Falls	Helena	Kalispell	Missoula
Sample size	1,202	321	333	137	57	145	190
Nonresident Travelers	1,120,000	300,000	310,000	130,000	50,000	140,000	180,000
Group Size (people/group)	1.97	1.75	2.22	1.87	1.54	2.02	2.16
Length of Stay (nights)	7.30	6.96	7.25	6.47	5.93	8.22	8.00
% of All Travelers in 2012	10.5%	2.8%	2.9%	1.2%	0.5%	1.3%	1.6%
Restaurant, Bar	\$49.85	\$39.57	\$75.18	\$32.78	\$49.28	\$38.30	\$46.22
Retail Sales	\$41.60	\$40.28	\$53.18	\$39.76	\$20.77	\$23.56	\$37.44
Gasoline, Diesel	\$23.76	\$20.05	\$31.52	\$25.55	\$14.46	\$20.52	\$22.35
Hotel, B&B, etc.	\$20.42	\$18.08	\$22.76	\$18.47	\$21.94	\$18.10	\$24.24
Auto Rental	\$19.07	\$13.52	\$21.38	\$22.22	\$20.23	\$24.84	\$19.93
Groceries, Snacks	\$14.01	\$11.59	\$21.06	\$9.25	\$6.29	\$11.59	\$14.63
Outfitter, Guide	\$13.21	\$4.42	\$23.00	\$2.16	\$11.74	\$8.76	\$18.83
Licenses, Entrance Fees	\$6.22	\$3.72	\$14.02	\$3.04	\$3.67	\$2.72	\$2.95
Rental Cabin, Condo	\$4.37	\$0.96	\$9.25	\$1.52	\$1.34	\$7.64	\$2.41
Misc. Services	\$0.64	\$0.38	\$0.87	\$0.22	\$2.84	\$0.97	\$0.05
Farmers Market	\$0.45	\$0.24	\$0.68	\$0.25	\$0.41	\$0.72	\$0.47
Transportation Fares	\$0.31	\$0.07	\$0.82	\$0.00	\$0.00	\$0.10	\$0.36
Auto Repair	\$0.24	\$0.50	\$0.28	\$0.00	\$0.00	\$0.27	\$0.00
Campground, RV Park	\$0.17	\$0.06	\$0.03	\$0.29	\$0.00	\$0.57	\$0.31
Gambling	\$0.15	\$0.15	\$0.03	\$0.00	\$0.00	\$0.00	\$0.34
Total Avg. Daily per Group	\$194.47	\$153.59	\$274.05	\$155.52	\$152.97	\$158.65	\$190.53
Estimate of Statewide Spending	\$708,860,000	\$140,440,000	\$272,360,000	\$64,510,000	\$21,000,000	\$77,650,000	\$118,850,000

¹Spending data is gathered via on-site surveys of nonresident travelers at airports, gas stations, and rest areas in MT. Travelers report 24 hours worth of trip expenditures representing the day during which they were intercepted by an ITRR surveyor. ²Spending data presented here is representative of expenditures in MT by traveler groups who flew into one of the listed airports. ³Butte and West Yellowstone airports had insufficient sample sizes for inclusion in this analysis.

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WHITEFISH CITY COUNCIL MINUTES

March 17, 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, Senior Planner Compton-Ring, Public Works Director Wilson, Senior Project Engineer Hilding, Parks and Recreation Director Cozad, Parks Superintendent Loveless and Police Chief Dial. Approximately 30 people were in attendance.

2. PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Eric Sawtelle to lead the audience in the Pledge of Allegiance.

3. PRESENTATIONS

3a. Presentation by TD&H Engineering Firm on Skye Park pedestrian bridge (p. 124)

Doug Peppmeier with TD&H said they were the engineers for the project. The first thing they needed to do was to get the BNSF license agreement and that has been completed. They are presenting the design concept tonight. There is a 180 foot bridge span and the design is similar to other bridges in town. Staff asked them to change the wood rails. To meet ADA standards they will do a lot of fill and will re-construct a portion of Birch Point Drive. He said Bruce Boody was the mastermind behind much of this design and he was here tonight as well. Councilor Hildner said the bridge at Riverside Park has handrails that are too high. He wanted to be sure it was lowered and Mr. Peppmeier said that is one of the concerns they will be addressing with this bridge design. Director Wilson said they came up with a solution to this problem when they constructed the Rocksund Bridge and this design will be similar to that one. Mayor Muhlfeld asked and Peppmeier said they will work on the slope at Birch Point Drive to meet the ADA slope requirements for access.

3b. Proclamation – Proclaim April 5, 2014 as 2nd Annual Million March against Child Abuse Day (p. 51)

Mayor Muhlfeld read a proclamation against child abuse and neglect. He said that Flathead County had 1,559 reports of child abuse and neglect in 2013. He said the U.S. has the worst record, losing 5-10 children every day due to child abuse deaths. He proclaimed April 5, 2014 as the Annual Million March against Child Abuse.

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)

Dan Graves, Whitefish Mountain Resort, said he was here to represent the Chamber of Commerce tonight. He serves on the Chamber board.

March 17, 2014

Nick Polumbus, 303 Stumptown Loop, said he was here tonight as a School Board Trustee and as the proud parent of three children in the Whitefish School District. He said they will have a discussion at the April Board meeting about suggestions for an extended learning time class schedule. He said they are gathering information from students regarding pre-registration for next year, they held a learning tour on February 11, 2014, and they held at least one more public tour. All of the students have been oriented on the new building. They have created a scheduling team with High School administrators and District Administration and two high school teachers who were elected by their peers. A parent focus group was formed and their goal is to give feedback from the parent's point of view. He said he went to a school with extended learning times when he was in high school. He said they have spent three years investing in significant professional development for their teachers. Research shows that said students will be innovative and exciting instead of obedient with this new learning option.

Sarah Scott, 130 Armory Road, and a teacher at Whitefish High School, said concerns were raised about the extended learning schedule and whether students can concentrate that long. She explained some of the benefits of the block schedule. She said most of her students have a hard time transitioning in a 45-minute time period. By eliminating the number of transitions per day students will have more time on task. She said a typical high school teacher sees 120 students per day, but the block system reduces that number and gives them more time to work one on one with the students. She said project based learning will be an exciting option, especially for kinesthetic learners. She said she works with special needs students and her students need these methods to learn, but all students benefit from a schedule like this.

Eric Sawtelle, 239 Somers Avenue, and a teacher at Whitefish High School, spoke in favor of the extended learning schedule. He is a science teacher at Whitefish High School. Powerful learning experiences come from integration between disciplines as well as collaboration between students. Their goal would be to create bridges where students are engaged with the community as part of their curriculum. They want to integrate core sciences and community outreach with the food bank, for example.

Chris Hyatt, 611 Somers Avenue, spoke on behalf of the Hellroaring Ski Heritage Days. For event information people can visit the Flathead Valley Ski Education website at fvsef.org.

5. COMMUNICATIONS FROM VOLUNTEER BOARDS

Chief Dial said the 9-1-1 Committee met and talked about the budget. They proposed a 6.2% increase over all. They will be asking departments to cut back and will meet again in April to make a final decision on the budget.

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 March 3, 2014 Council regular meeting (p. 53)

6b. Ordinance No. 14-02; 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),

March 17, 2014

Secondary Business District (WB-2) and General Business District (WB-3) Zoning Designations (2nd Reading) (p. 69)

Councilor Sweeney offered a motion, seconded by Councilor Anderson, to approve the consent agenda. 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-___; An Ordinance amending Zoning Regulations in Whitefish City Code Section 11-2K-3 to identify shipping and packaging services as a conditional use in the Secondary Business District (WB-2) (First Reading) (p. 76)

Senior Planner Compton-Ring reported that at the City Council meeting on March 3, 2014, the Council did not recommend approval of a new definition of 'Business Services' nor add it as a permitted use to the WB-2 (Secondary Business District). Instead the Council directed staff to come back to the March 17th meeting 'with an alternative option for shipping and packaging services as a conditional use in the WB-2 zone.' The Council identified concerns including adding a broad range of uses to the WB-2 that would include more than just shipping and packaging services. The Council was interested in focusing the amendment to address the shipping and packaging services and not include an expanded definition of multiple 'Business Services' uses. The proposed changes are evaluated based on the criteria for consideration for amendments to the provisions of the Zoning Regulations per Section 11-7-12E.

Planner Compton-Ring said the staff report in tonight's packet did not include findings supporting utilizing the conditional use and she distributed copies and reviewed the proposed findings to the Council. She pointed out that, by definition conditional uses require a special degree of control to make such uses consistent with and compatible to other existing or permissible uses in the same area. Projects are reviewed by the Council to consider traffic implications, impacts on public infrastructure, noise, odor smoke, hours of operation, compatibility within the neighborhood and site suitability. Applications for conditional uses receive extra scrutiny from the community and the Council in a public forum through the Conditional Use Permit process.

Staff Report WZTA 14-03 recommends that the City Council, after considering testimony at the public hearing, the Planning Board recommendation, and the staff recommendation, approve an Ordinance amending Zoning Regulations in Whitefish City Code Section 11-2K-3 to identify shipping and packaging services as a conditional use in the Secondary Business District (WB-2). However, Planner Compton-Ring stated staff has recommended that shipping and packaging services be a permitted use, rather than a conditional use in the WB-2 zone. A shipping and packaging service probably doesn't warrant intense scrutiny like a CUP. Also, to make the zoning consistent, staff recommended they use the term private postal services and shipping services, which is also used in the Business Service District. She noted that more public comment in support of the zoning text amendment was received after their packet went out and she handed these out tonight.

Mayor Muhlfeld opened the public hearing.

Richard Hamm, 2330 Dillon Road, said they've been here for 10 years. When they first moved here they went to the shipping store and found the most conscientious folks ever. He said the new

March 17, 2014

facility is much easier to access and is all around safer. He doesn't see anything wrong with it being where it was. It is less dangerous where it is now. He recommended that they approve this request.

Bent Petersen, area franchisee for UPS stores in Montana spoke on behalf of Pete and Patty Olson and their business. He said UPS has been here for 21 years and Pete and Patty have built a successful business over the past 15 years. They have been in the same zoning district along Highway 93 for all of these years. He wanted to make it clear that there was never any intent on their part to evade the laws or subvert the rules. He said this is a franchise and locally owned by the Olson's. He said there is an inclination to think that big corporations have a negative impact on the community, but UPS is only the business title; this is a small local business. He said their business has changed drastically with internet purchasing so they need to be able to continue with all of the other services they offer along with packaging and shipping. He said their business is not a good fit downtown because of parking issues. He said he and the Olson's want to see a vibrant, successful downtown, but they can't put their business down there. He said the Olson's took the necessary steps to move their business and he hopes the Council will give them the opportunity to continue.

Janice Mazur, 133 Mallard Loop, spoke about the concept of business services in the WB-2 zone. She said they have a small law practice and work out of their home. She said when they moved here they looked at the schools and at the UPS store because it provides essential services for small businesses like theirs. She said if Whitefish wants to continue to attract small businesses, which are the heart of the community, then they need to support stores like the UPS store that provide assistance for small businesses. She said the WB-2 zone is the perfect location for businesses like these that support small businesses and have lots of traffic. It would be to Whitefish's advantage to adopt a permanent amendment for a designated area for business support services in this zone. She urged them to approve this request.

Mayre Flowers, Citizens for a Better Flathead (CBF), 35 4th St. West in Kalispell, apologized and said she didn't have copies of her comments tonight because she had computer problems. She said her comments are focused on the process and procedures that got them where they are tonight. It is not a personal issue about the UPS store; it is an issue about the process. CBF is recommending that they table this decision tonight. She said it was unfortunate that the new findings were not in the packet. The CBF would like an opportunity to see the findings and comment on them. The findings that were in the report were applicable to WZTA-14-03 and that staff report doesn't reference the CUP and the findings in that report recommend a string of other uses. She asked that her comments from the last meeting be continued over to this meeting as well. She said the Council is on a slippery slope if they adopt this request for one business.

She asked them to draft clear and defensible findings to support the text change tonight. She said they can't review it adequately, nor can the public, since it wasn't in the staff report. They deserve to have that cleared up before they move forward. She said the 5th and 6th clause has confusing wording that applies to multiple amendments. This should not be corrected on the fly. She said the additional memo by the Planning Office from 3/11/2014 has a troublesome analysis that should not be adopted as part of this proposal as well. It states that this change doesn't warrant additional scrutiny because this zone has other businesses in it with similar impacts. She said that broad description is a flawed argument and should be rejected now. The zone change needs to be based on the legal basis of Montana Law. She said their zoning must be consistent with the Growth Policy. She asked them to table this and bring it back for consideration. She respects that they are trying to find a reasonable compromise, but this needs more review.

WHITEFISH CITY COUNCIL MINUTES

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Rebecca Norton, 530 Scott Avenue, said it was shocking that they had a whole building built before they had the zoning. She said two 3-story buildings were built in her neighborhood in the wrong place, but the developer got away with this wrong action. She said they need to be less messy about how they handle situations in the future. It isn't fair to the people who are doing business here. She said if it means they do an audit to make sure things are precise and clear, that would be fine. It is disturbing to see that they are even here tonight.

Sean Frampton, 341 Central Avenue, said he was there to represent Mr. Halama tonight. He said this is consistent with the general zoning and the Code in 11-3-2 says a goal of the WB-2 zone is less congestion in the streets. This request is consistent with the intent and purpose of the WB-2 zone which speaks of services which require large storage or parking areas. He said the CUP concept doesn't appear proper because allowing shipping and packing in the WB-2 won't have a detrimental effect on the zone. He asked them to allow this as a permitted use.

Linda Hubner, 101 Beaver Creek Ranch Road, said they moved here and chose to use the UPS store because they needed a place to receive their mail. She said that the Olson's were warm and welcoming. She said from a practical perspective there is no difference in where the store is located now. It complements Walgreens and if she were a Council person she would think of 3 things: is there a good proprietor, is what they are doing safe, and does it add to the quality of the community. She thinks it improves downtown Whitefish as well as the outer area. She hoped they would make a decision that wouldn't harm the business and those who use the business.

Rhonda Fitzgerald, 412 Lupfer Avenue, said the WB-2 zone is an important zone in the community with a specific intent. The intent is to provide a location for businesses that require large storage or parking areas. She said if a lot of other businesses migrate into this zone then it damages the fabric of the rest of the community. She said it is unfortunate that they are discussing a specific type of business. She said about 20 people served on a committee that addressed uses in the WB-2 zone. One concern was that the mall had services that were grandfathered into the mall but were not allowed in the WB-2 zone. She doesn't think people understand that distinction. She said they have businesses downtown even now that effectively use shipping services. She said they need to get to the principles and not talk about specific businesses.

Mayor Muhlfeld closed the public meeting.

Councilor Anderson said the Council gave staff direction for a CUP. He has concerns about the alternate findings and thinks they need more work to be defensible. He said he thinks it should go back to staff one more time. Councilor Hildner said he agreed with Councilor Anderson that they should stick with the CUP. He said the private postal services/shipping wording that was suggested probably fits better with the Conditional Use Permit. Councilor Sweeney said he agreed they need more fleshed-out findings. He said the proprietor is someone the community holds in great regard. He said the problems were generated by the zoning issue and how it should be structured. He said he thinks they are in this place now because this type of use is not inappropriate in this area, but it doesn't fit in the zoning. It is not inappropriate for this zone and they need to figure out how they can best accommodate that particular use.

Councilor Anderson offered a motion, seconded by Councilor Feury, to table the proposed ordinance amending Zoning Regulations in Whitefish City Code Section 11-2K-3 to identify shipping and packaging services as a conditional use in the Secondary Business District (WB-2) to

the April 7, 2014 meeting and direct staff to provide more robust findings of fact particularly in regard to Growth Policy standards. The motion passed unanimously.

8. COMMUNICATIONS FROM PARKS AND RECREATION DIRECTOR

8a. Consideration of approving going out to bid for public restrooms addition to O'Shaughnessy Center (p. 116)

Director Cozad said Friday is his last official day as the Director of Parks and Recreation. He said he can't think of a better way to end his long career than here in Whitefish. He thanked the Councilors and committees he has worked with for the support they have given him. He also thanked the management team of the City of Whitefish for their support and collaboration. He said he doesn't think he has ever worked with a better team than the staff of the City of Whitefish. He thanked the community of Whitefish for their support. He and his wife, Kathy, will stay here in Whitefish. It is a wonderful place to be.

Director Cozad said that for many years the downtown core area of Whitefish has been without a designated public restrooms. Visitors have typically used the restroom facilities at the Library, or on occasion, the restrooms at the Train Depot. Neither of these facilities is designed, nor maintained, for the ever increasing demand as generated by the increased popularity of downtown Whitefish. Over the years special events and weekly events during the course of the summer and fall seasons continue to grow in size and scope and create even greater attendance in Depot Park and surrounding venues. In 2012 the city adopted the Depot Park Master Plan for the development and enhancement of Depot Park. Within the Depot Park Master Plan, it was proposed to consider the opportunity to add a public restroom to the exterior of the O'Shaughnessy Performing Arts Center (see Depot Park Master Plan). This option appears to be a viable solution to meeting the needs of providing a designated public restroom in the downtown area of Whitefish. It should also be noted that the development of a downtown restroom facility has been on the City Council "goals list" for the past few years.

The downtown restroom facility would be open to the public 12 months of year and would have lockable doors with designated hours of operation very similar to our current operations at Baker Park, City Beach, and Grouse Mountain Park, with the only difference being that these facilities are only open seasonally.

Councilor Anderson said he had concerns about the clearance for the eaves and Director Cozad said it will be built to City standards. Councilor Frandsen asked if it was too late to modify the doors on the restrooms. She said it appears that the door is directly open to the street. Director Cozad said the challenge is the ADA standards. He would look at it to make sure there was a barrier between the street and the stalls. Manager Stearns noted that they changed some of the dates in the legal notices requesting bids.

Councilor Hildner offered a motion, seconded by Councilor Barberis, to approve authorizing the public notice and solicitation for bids for the construction of the public restrooms addition to O'Shaughnessy Center. The motion passed unanimously.

9. COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

9a. Consideration of approving moving to final design stage for Skye Park Bridge and amendment of contract with TD&H Engineers for final design work (Three motions)

(p. 124)

Public Works Director Wilson clarified the three motions they need to move forward with this project.

He noted that staff also proposes to expand the scope of work to include 200 feet of new water main, which would tie an existing dead end main into the water transmission main crossing the river just upstream from the railroad trestle. This loop would improve the flow capacity and provide better security for the water system serving the Birch Point, West Lakeshore and Ramsey Avenue neighborhoods. The added construction cost for this item is estimated at \$15,000, which staff proposes to pay out of the Water Fund.

He said there is a letter from RC Beall who has concerns about his property on Washington Avenue. His lawn slopes down and in order to make the ADA grade the City needs to bring about 8 feet of fill into this area. He said they are trying to preserve his privacy while linking this trail together and allow ADA access. They will continue to work with RC Beall to address his concerns about his privacy, within reason.

Mayor Muhlfeld asked and Director Wilson said construction is anticipated for this fall. Councilor Hildner said the cost has gone up \$600,000 and wondered why they couldn't use Sewer and Water funds to reduce the draw on TIF funds. Director Wilson said the Sewer Department will benefit because they will be able to add extra loads to that road. He said \$20,000 from Wastewater is a rough estimate. They would typically break down the cost after they make a design award.

Councilor Hildner offered a motion, seconded by Councilor Frandsen, to direct staff to proceed with final design and development of construction documents for the Skye Park Bridge and Bicycle/Pedestrian Path project. The motion passed unanimously.

Councilor Hildner offered a motion, seconded by Councilor Frandsen, to approve the expanded scope of design necessary to rebuild the east end of Birch Point Drive and complete a water main loop in that vicinity. The motion passed unanimously.

Councilor Hildner offered a motion, seconded by Councilor Frandsen, to approve an amendment to the engineering contract with TD&H in an amount not to exceed \$6300 for design work.

Councilor Anderson said he is not comfortable with all the money coming out of the TIF. He said the TIF is used a lot and he thinks the dollars could be spent elsewhere. Director Wilson said there is a 10% contingency and that is \$67,000. He hopes that can go a long way toward bringing the cost back down.

Manager Stearns noted that the total cost is \$829,010 with construction and engineering. He said this is an important project and he thinks it is worth the City's investment.

The motions passed unanimously.

10. COMMUNICATIONS FROM CITY MANAGER

10a. Written report enclosed with the packet. Questions from Mayor or Council?(p. 133) None.

10b. Other items arising between March 12th and March 17th

Manager Stearns said he attended the Downtown Master Plan meeting and several of the staff and Councilors attended. He thinks 60-80 people attended and they got a lot of good comments. He said the consultants, Crandall/Arambula, will be finishing up the plan and it will come for final public review in 3-6 weeks.

11. COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

11a. Select a City Council member to participate on interview committee for Parks and Recreation Director.

Councilor Anderson volunteered for this position.

Councilor Sweeney offered a motion supporting Councilor Anderson to participate on the interview committee for the Parks and Recreation Director and all the Council agreed.

Councilor Hildner thanked Director Cozad and said he appreciates all of Karl's work and his efforts for the Park Board and Bike/Pedestrian Committee.

Councilor Hildner encouraged people to pick up after their dogs.

Councilor Frandsen thanked Director Cozad. Mayor Muhlfeld said someone emailed him photos of the trash and liter in front of businesses. He asked people to chip in and pick up some of the trash and cigarette butts.

Mayor Muhlfeld said he attended an event with Senators Tester and Walsh to discuss the North Fork Protection Act. He said it is held up in Congress because one Senator can block a bill from going to vote. He said with Council's permission he would send a letter to those Congressmen from the Council to encourage them to move forward on a vote; the Councilors agreed. He thanked Karl Cozad for his service, and congratulated Jason Loveless for his appointment as Interim Parks and Recreation Director.

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

Mayor Muhlfeld adjourned the meeting at 8:40 p.m.

Mayor Muhlfeld

Jane Latus Emmert, Recording Secretary

Attest:

Necile Lorang, City Clerk

**TRILLIUM SHORES, LLC
WHITEFISH LAKE LAKESHORE PERMIT
STAFF REPORT #WLV-14-W03
APRIL 7, 2014**

Owner:	Trillium Shores LLC
Mailing Address:	434 Dakota Avenue Whitefish, MT 59937
Applicant:	Curt Olson
Mailing Address:	P.O. Box 4362 Whitefish, MT 59937
Telephone Number:	319.215.6094
Property Legal Description:	Lot 17, Whitefish Townsite Co 5 Acre Tracts, Addition 1, Section 25, Township 31N, Range 22W
Property Address:	434 Dakota Avenue
Lake:	Whitefish Lake
Lake Frontage:	131 feet
Project Description:	Variance to add a 100' floating walkway to the end of an existing dock.

Discussion and Background Information:

This proposal was originally presented to the Lakeshore Protection Committee on September 11, 2013 as a standard lakeshore permit for the installation of a 100' floating walkway. After discussion the application was tabled until a text amendment could be presented to the Lakeshore Protection Committee and Whitefish City Council permitting this type of activity within certain areas of Whitefish Lake. However, after staff began compiling language for a draft proposal, it was determined that a text amendment was not the best option for the applicant's project. Staff ultimately directed the applicant to submit an application for a Lakeshore Variance as the site may have a unique hardship on Whitefish Lake.

The subject property received a lakeshore construction permit in 1997 for the existing dock, which is 100 feet long by 8 feet wide, with a 12 feet long by 8 feet wide breakwater wing. The dock was approved to allow the property owners the ability to move the dock farther out into Whitefish Lake as the water levels dropped, permitting better access to the water. In the years since the dock was approved, the surrounding area has continued to acquire more silt and sedimentation, with permits being issued to dredge north of the site at Baypoint. The subject property and surrounding lake area has a very gentle topographical gradient. As the lake level drops, a large area of land is exposed from the low water elevation to the high water mark. This area exceeds over 100 feet in length during the month of July and continues to grow as the lake recedes in August. The area becomes extremely wet as the water drops due to the lakebed soil type, making it difficult to reach the dock.

Proposal: The applicant is requesting a variance to install a floating walkway 100 feet long by 4 feet wide, which would be attached to the existing dock. The variance is requested for two sections of the Whitefish Lake and Lakeshore Regulations (WLLR): Section 13-3-1(F)(1) regarding impervious coverage and Section 13-3-1(K)(5)(a) regarding the overall length of the dock and gangway. The walkway will be constructed with floating sections linked together, which will rest on the lakebed during

low water. When the lake reaches high water, the walkway will float on the water exactly like the existing dock. The use of the floating walkway will allow the dock to stay in one location all season long rather than pushing it further out as the lake recedes. The lake level at the end of the existing dock during August is approximately 3 feet deep.

The applicant is not requesting to extend the existing dock further out into Whitefish Lake than what has already been permitted. Additionally, as the site of the proposed walkway is below the high water line, the applicant is not permitted to install stepping stones as it would be considered fill material and would require a Section 404 permit from the US Army Corps of Engineers. The use of the floating walkway will not disturb soil material as it will rest on top, and during high water will float similar to surrounding docks on the lake. The applicant is also requesting to modify the angle of the existing dock, as shown on the submitted site plan, in order to leave the dock in one location all season. The dock cannot be moved further north as the pilings from the crib dock removed in 1997 are exposed during low water. The modification in the dock angle will actually increase the amount of navigational space between the applicant's dock and the dock located on the adjacent property to the north.

Frontage and allowable constructed area: The property has 131 feet of lake frontage according to the submitted application, original survey, and previously approved lakeshore permit. The allowable constructed area based on 8 square feet per lineal foot of frontage is 1048 square feet. The application as submitted would bring the total constructed area within the Lake and Lakeshore Protection Zone to 1,296 square feet. This is over the permitted constructed allowance by 248 square feet.

Existing Constructed Area: The property has an existing dock consisting of 896 square feet.

Consideration of Minor Variance:

The applicant is requesting a variance to Section 13-3-1(F)(1) of the Whitefish Lake and Lakeshore Regulations, Construction Standards, Constructed Area, which requires "*the total of all constructed areas within the lake and lakeshore protection zone shall not exceed eight(8) square feet per each linear foot of shoreline*" and Section 13-3-1(K)(5)(a) Length of Docks on Whitefish Lake, which requires "*if the water depth at sixty feet (60') from low water (measured after August 15) is less than four feet (4') in depth, and cannot be moved to a location on the property to achieve four feet (4') depth, then the total dock length may be increased to the point at which water depth equals four feet (4'), but not to exceed one hundred feet (100') in maximum length, including gangway.*" In reviewing a minor variance application, there are four criteria that must be met prior to granting approval (13-4-2(A)(1) WLLR):

1. Due to unusual circumstances a strict enforcement of such requirements and standards would result in undue hardship.

Currently the applicant has a dock which is permitted and meets all requirements of the lakeshore regulations. However, the dock is the maximum which can be permitted and has been placed as far out into Whitefish Lake as possible. Additionally, the area surrounding the subject property has had significant sedimentation over the last 16 years since the dock was originally approved. The depth of water during the highest time of year is only 3 feet at the end of the dock. The changes in the lake have made it difficult for the applicant to access the dock without dragging it across the lakebed causing considerable damage to the surrounding area. Due to these unusual circumstances, which are very site specific, strict enforcement of the regulations would result in a hardship to the property owner.

2. No reasonable alternatives exist which do meet the standards herein.

While alternatives are available to the applicant, they are not reasonable due to the potential damage they may cause to the lake and lakeshore. One option would be to dredge the area surrounding the subject property and existing dock. This option has been completed in the past north of the subject property. Unfortunately this option does not offer a long lasting solution, and could potentially cause additional damage to the lakebed, natural vegetation surrounding the lake, water quality, and animal habitat. A second option would be to install stepping stones or a permanent walkway, south of the high water line out to the existing dock. This option would be regulated by the US Army Corps of Engineers Section 404 permit as the material placed below the high water line is considered fill material. It is unlikely that the Corps of Engineers would permit this type of activity as it disturbs the surrounding lakebed. The proposed activity is the best alternative to preserve the existing lakebed, lakeshore, water quality, and natural habitat.

3. Granting of the variance will not have adverse impacts on a lake or lakeshore in terms of the Policy Criteria for Issuance of a Permit.

The Policy Criteria for all permits include:

- A. *Materially diminish water quality;*
- B. *Materially diminish habitat for fish or wildlife;*
- C. *Interfere with navigation or other lawful recreation;*
- D. *Create a public nuisance or public safety hazard;*
- E. *Create a visual impact discordant with natural scenic values, as determined by the governing body, where such values form the predominant landscape elements; and,*
- F. *Alter the characteristics of the shoreline.*

The proposed variance for a floating walkway would not materially diminish water quality, diminish fish or wildlife habitat, or create a public nuisance and safety hazard. The applicant is not proposing to move the overall location of the existing dock, but to realign the dock to permit better access. The realignment of the dock would actually increase the navigational area between the dock and the neighboring property owner's dock located to the north of the subject property. The floating walkway would not alter the characteristics of the shoreline as the walkway would float on top to the water during high water, and then rest on the shoreline the remainder of the season.

4. Alternatively to subsections a & b (items 1 & 2 listed above), the granting of a variance would result in a general and universal public benefit.

General benefits from the requested variance would include minimizing impacts to the lakebed from increased movement of the existing dock during different water elevations, and greater accessibility for the property owner. Additionally, the realignment of the dock will create greater navigational space between the dock and the northern property owner's dock.

Conclusion: The applicant meets the criteria for a variance. The proposed work complies with Sections 13-3-1 General Constructions Standards and 13-4-2 of the Whitefish Lake and Lakeshore Protection Regulations.

Recommendation: Staff recommends that the Whitefish City Council approve the requested Minor Variance and lakeshore construction permit per the recommendation of the Whitefish Lakeshore Protection Committee subject to the following conditions:

Recommended Conditions of Approval:

1. 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'.
2. The floating walkway may be as long as necessary to span the distance between the low and high water marks. Changes or modifications to increase any dimension or change configuration must be approved through a permit amendment.
3. The floating walkway may not extend the existing dock further out into Whitefish Lake than what has been historically permitted.
4. Any wood used in construction of the new walkway 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.
5. If foam logs or similar easily damaged flotation systems are incorporated into the walkway 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/gangways 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.
6. Flotation-encased docks (i.e., Superdeck, EZ-Dock, Glacier Dock) or docks with rotomolded floats are strongly recommended for durability and longer-life.
7. No additional dock access is allowed unless included in the permit application and in the approved total dock length.
8. The floating walkway shall be constructed outside of the Lakeshore Protection Zone. Upon completion the components may be brought to the lakeshore area and launched.
9. The floating walkway 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.
10. The existing dock may be realigned as specified on the application project drawing; however under no circumstances shall the dock be located closer than twenty feet (20') from the riparian property lines.

11. Only one lakeshore dock is permitted per property ownership.
12. This permit is valid for a period of one year from the date of issuance. Upon completion of the work, please contact the Whitefish Planning and Building Department for inspection.

Report by: Bailey Minnich

**WHITEFISH LAKESHORE PROTECTION COMMITTEE
MINUTES OF MARCH 12, 2014**

The meeting was called to order at 6:02pm by member Scott Ringer.

MEMBERS PRESENT:

- Ron Hauf (via phone), Scott Ringer, Sharon Morrison, Joe Malletta (via phone) and Koel Abell. Bailey Minnich of the Whitefish Planning Office was also present.

MEMBERS ABSENT: Herb Peschel, Greg Gunderson, and Jeff Jenson

ADDITIONS/CORRECTIONS TO TONIGHT'S AGENDA: none

GENERAL PUBLIC COMMENT: none

ADOPTION of MINUTES from LAST MEETING:

- Minutes of February 12, 2014 were reviewed; motion to adopt by Sharon Morrison, seconded by Koel Abell. All in favor and motion carried.

NEW BUSINESS

WLP-14-W04 – Patrick Moore – Dock

[Applicant not present]

Discussion:

Staff began with a presentation of the proposed project and draft lakeshore permit report. The property is located at 2528 E. Lakeshore Drive. The application is for the installation of a floating 'F' shaped EZ dock. Following staff's presentation, the board discussed the submitted application and identified some deficiencies. One concern was that the applicant did not specify if the existing dock shown in the submitted pictures would be demolished. Also, the Board discussed the submitted site plan, proposed dimensions of the new dock, and the existing stairs which were not mentioned in the submitted application. Questions were raised regarding the amount of constructed area proposed, and requirement of having a 'to scale' site plan submitted. Although it was mentioned that the proposal is well within the amount permitted for the lakeshore frontage, the majority of the Board felt the application was not complete and additional information is necessary.

Motions:

- Sharon Morrison moved to recommend approval of application #WLP-14-W04 with an amendment that the existing dock was removed and disposed of outside of the Lakeshore Protection Zone. Ron Hauf seconded. Further discussion followed regarding the insufficient application. Motion failed due to tied vote, 2-2 (Joe Malletta and Koel Abell opposed).
- Sharon Morrison moved to table the application until it is sufficient. Koel Abell seconded. No further discussion. Motion was approved unanimously 5-0.

WLV-14-W03 – Trillium Shores – Floating Walkway

[Present: Curt Olson, Applicant's Representative]

Discussion:

Staff began with a presentation of the proposed project and draft variance report. The property is located at 434 Dakota Avenue. The applicant is requesting a variance to install a 100' floating walkway between the low and high water marks. Staff explained this project was originally presented to the Board in September 2013. At that time the Board tabled the application until a text amendment to the Lakeshore Regulations could be completed to permit this type of project. Staff clarified that since a text amendment would not be supported for one property owner, staff advised the applicant to submit a request for a variance, as it appears the site may have a unique hardship. The proposed variance would be to two sections of the regulations: Section 13-3-1(F)(1) regarding impervious coverage, and Section 13-3-1(K)(5)(a) regarding the overall length of the dock and gangway. When the lake reaches high water, the walkway would float on the water similar to the existing dock. The applicant is not requesting to extend the existing dock further out into Whitefish Lake. Board discussion followed Staff's presentation, with concerns on the location and definition of riparian boundary. Staff mentioned that if the applicant's request to modify the dock's angle was approved, per proposed Condition #9 the dock must continue to be 20 feet from the side riparian boundary line. The Board also discussed the submitted site plan and that the scale actually shows the walkway to be only 60 feet, not 100 feet. A possible motion to modify the application so the total dock and walkway length would be a maximum 160 feet long was discussed. Also mentioned was the walkway being placed permanently, concerns of potential ice damage, and water depth at both low and high water.

Motion:

- Sharon Morrison motioned to recommend approval of the variance with a condition that the dock extends no further than historically permitted and that the walkway is as long as necessary to span between the low and high water marks. Ron Hauf seconded. Further discussion occurred on the potential of setting a precedence on the lake. Motion was approved with 3-2 vote (Joe Malletta and Koel Abell opposed).

OLD BUSINESS

WLP-14-W02 – Lois Torfason – Shore Station

Discussion:

Staff explained that after discussing the motion made by the Board at last month's meeting with the applicant, she has decided to wait until later this summer to decide if she will continue with the application. The file will be on hold in the Planning Office until the applicant contacts staff.

ADJOURNMENT

Motion to adjourn the meeting was made and seconded. All approved and motion passed. The meeting was adjourned at 7:20 pm.

NEXT MEETING

April 9th, 2014 * 6:00pm
Whitefish Planning & Building Office
510 Railway Street – Whitefish, MT

**TRILLIUM SHORES, LLC
WHITEFISH LAKE LAKESHORE PERMIT
STAFF REPORT #WLV-14-W03
FEBRUARY 5, 2014**

Owner: Trillium Shores LLC
Mailing Address: 434 Dakota Avenue
Whitefish, MT 59937
Applicant: Curt Olson
Mailing Address: P.O. Box 4362
Whitefish, MT 59937
Telephone Number: 319.215.6094
Property Legal Description: Lot 17, Whitefish Townsite Co 5 Acre Tracts, Addition 1,
Section 25, Township 31N, Range 22W
Property Address: 434 Dakota Avenue
Lake: Whitefish Lake
Lake Frontage: 131 feet
Project Description: Variance to add a 100' floating walkway to the end of an
existing dock.

Discussion and Background Information:

This proposal was originally presented to the Lakeshore Protection Committee on September 11, 2013 as a standard lakeshore permit for the installation of a 100' floating walkway. After discussion the application was tabled until a text amendment could be presented to the Lakeshore Protection Committee and Whitefish City Council permitting this type of activity within certain areas of Whitefish Lake. However, after staff began compiling language for a draft proposal, it was determined that a text amendment was not the best option for the applicant's project. Staff ultimately directed the applicant to submit an application for a Lakeshore Variance as the site may have a unique hardship on Whitefish Lake.

The subject property received a lakeshore construction permit in 1997 for the existing dock, which is 100 feet long by 8 feet wide, with a 12 feet long by 8 feet wide breakwater wing. The dock was approved to allow the property owners the ability to move the dock farther out into Whitefish Lake as the water levels dropped, permitting better access to the water. In the years since the dock was approved, the surrounding area has continued to acquire more silt and sedimentation, with permits being issued to dredge north of the site at Baypoint. The subject property and surrounding lake area has a very gentle topographical gradient. As the lake level drops, a large area of land is exposed from the low water elevation to the high water mark. This area exceeds over 100 feet in length during the month of July and continues to grow as the lake recedes in August. The area becomes extremely wet as the water drops due to the lakebed soil type, making it difficult to reach the dock.

Proposal: The applicant is requesting a variance to install a floating walkway 100 feet long by 4 feet wide, which would be attached to the existing dock. The variance is requested for two sections of the Whitefish Lake and Lakeshore Regulations (WLLR): Section 13-3-1(F)(1) regarding impervious coverage and Section 13-3-1(K)(5)(a) regarding the overall length of the dock and gangway. The walkway will be constructed with floating sections linked together, which will rest on the lakebed during

low water. When the lake reaches high water, the walkway will float on the water exactly like the existing dock. The use of the floating walkway will allow the dock to stay in one location all season long rather than pushing it further out as the lake recedes. The lake level at the end of the existing dock during August is approximately 3 feet deep.

The applicant is not requesting to extend the existing dock further out into Whitefish Lake than what has already been permitted. Additionally, as the site of the proposed walkway is below the high water line, the applicant is not permitted to install stepping stones as it would be considered fill material and would require a Section 404 permit from the US Army Corps of Engineers. The use of the floating walkway will not disturb soil material as it will rest on top, and during high water will float similar to surrounding docks on the lake. The applicant is also requesting to modify the angle of the existing dock, as shown on the submitted site plan, in order to leave the dock in one location all season. The dock cannot be moved further north as the pilings from the crib dock removed in 1997 are exposed during low water. The modification in the dock angle will actually increase the amount of navigational space between the applicant's dock and the dock located on the adjacent property to the north.

Frontage and allowable constructed area: The property has 131 feet of lake frontage according to the submitted application, original survey, and previously approved lakeshore permit. The allowable constructed area based on 8 square feet per lineal foot of frontage is 1048 square feet. The application as submitted would bring the total constructed area within the Lake and Lakeshore Protection Zone to 1,296 square feet. This is over the permitted constructed allowance by 248 square feet.

Existing Constructed Area: The property has an existing dock consisting of 896 square feet.

Consideration of Minor Variance:

The applicant is requesting a variance to Section 13-3-1(F)(1) of the Whitefish Lake and Lakeshore Regulations, Construction Standards, Constructed Area, which requires *“the total of all constructed areas within the lake and lakeshore protection zone shall not exceed eight(8) square feet per each linear foot of shoreline”* and Section 13-3-1(K)(5)(a) Length of Docks on Whitefish Lake, which requires *“if the water depth at sixty feet (60’) from low water (measured after August 15) is less than four feet (4’) in depth, and cannot be moved to a location on the property to achieve four feet (4’) depth, then the total dock length may be increased to the point at which water depth equals four feet (4’), but not to exceed one hundred feet (100’) in maximum length, including gangway.”* In reviewing a minor variance application, there are four criteria that must be met prior to granting approval (13-4-2(A)(1) WLLR):

1. Due to unusual circumstances a strict enforcement of such requirements and standards would result in undue hardship.

Currently the applicant has a dock which is permitted and meets all requirements of the lakeshore regulations. However, the dock is the maximum which can be permitted and has been placed as far out into Whitefish Lake as possible. Additionally, the area surrounding the subject property has had significant sedimentation over the last 16 years since the dock was originally approved. The depth of water during the highest time of year is only 3 feet at the end of the dock. The changes in the lake have made it difficult for the applicant to access the dock without dragging it across the lakebed causing considerable damage to the surrounding area. Due to these unusual circumstances, which are very site specific, strict enforcement of the regulations would result in a hardship to the property owner.

2. No reasonable alternatives exist which do meet the standards herein.

While alternatives are available to the applicant, they are not reasonable due to the potential damage they may cause to the lake and lakeshore. One option would be to dredge the area surrounding the subject property and existing dock. This option has been completed in the past north of the subject property. Unfortunately this option does not offer a long lasting solution, and could potentially cause additional damage to the lakebed, natural vegetation surrounding the lake, water quality, and animal habitat. A second option would be to install stepping stones or a permanent walkway, south of the high water line out to the existing dock. This option would be regulated by the US Army Corps of Engineers Section 404 permit as the material placed below the high water line is considered fill material. It is unlikely that the Corps of Engineers would permit this type of activity as it disturbs the surrounding lakebed. The proposed activity is the best alternative to preserve the existing lakebed, lakeshore, water quality, and natural habitat.

3. Granting of the variance will not have adverse impacts on a lake or lakeshore in terms of the Policy Criteria for Issuance of a Permit.

The Policy Criteria for all permits include:

- A. *Materially diminish water quality;*
- B. *Materially diminish habitat for fish or wildlife;*
- C. *Interfere with navigation or other lawful recreation;*
- D. *Create a public nuisance or public safety hazard;*
- E. *Create a visual impact discordant with natural scenic values, as determined by the governing body, where such values form the predominant landscape elements; and,*
- F. *Alter the characteristics of the shoreline.*

The proposed variance for a floating walkway would not materially diminish water quality, diminish fish or wildlife habitat, or create a public nuisance and safety hazard. The applicant is not proposing to move the overall location of the existing dock, but to realign the dock to permit better access. The realignment of the dock would actually increase the navigational area between the dock and the neighboring property owner's dock located to the north of the subject property. The floating walkway would not alter the characteristics of the shoreline as the walkway would float on top to the water during high water, and then rest on the shoreline the remainder of the season.

4. Alternatively to subsections a & b (items 1 & 2 listed above), the granting of a variance would result in a general and universal public benefit.

General benefits from the requested variance would include minimizing impacts to the lakebed from increased movement of the existing dock during different water elevations, and greater accessibility for the property owner. Additionally, the realignment of the dock will create greater navigational space between the dock and the northern property owner's dock.

Conclusion: The applicant meets the criteria for a variance. The proposed work complies with Sections 13-3-1 General Constructions Standards and 13-4-2 of the Whitefish Lake and Lakeshore Protection Regulations.

Recommendation: The Whitefish Planning Department staff recommends the Whitefish Lakeshore Protection Committee recommend approval of the requested Minor Variance and lakeshore construction permit to the Whitefish City Council subject to the following conditions:

Recommended Conditions of Approval:

1. 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'.
2. The proposed floating walkway dimensions specified on the application project drawing of 4' x 100' shall not be exceeded. Changes or modifications to increase any dimension or change configuration must be approved through a permit amendment.
3. Any wood used in construction of the new walkway 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.
4. If foam logs or similar easily damaged flotation systems are incorporated into the walkway 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/gangways 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.
5. Flotation-encased docks (i.e., Superdeck, EZ-Dock, Glacier Dock) or docks with rotomolded floats are strongly recommended for durability and longer-life.
6. No additional dock access is allowed unless included in the permit application and in the approved total dock length.
7. The floating walkway shall be constructed outside of the Lakeshore Protection Zone. Upon completion the components may be brought to the lakeshore area and launched.
8. The floating walkway 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.
9. The existing dock may be realigned as specified on the application project drawing; however under no circumstances shall the dock be located closer than twenty feet (20') from the riparian property lines.
10. Only one lakeshore dock is permitted per property ownership.

11. This permit is valid for a period of one year from the date of issuance. Upon completion of the work, please contact the Whitefish Planning and Building Department for inspection.

Report by: Bailey Minnich



City of Whitefish
 Planning & Building Department
 PO Box 158
 510 Railway Street
 Whitefish, MT 59937
 Phone: 406-863-2410 Fax: 406-863-2409

File #: WLX-14-W03
 Date: 1/27/2014
 Intake Staff: BM
 Date Complete: _____

SUPPLEMENTAL LAKESHORE VARIANCE APPLICATION

WHITEFISH, BLANCHARD, LOST COON LAKE

FEE ATTACHED \$ \$490
 (nonrefundable)

The variance mechanism is not intended to address situations that are a matter of convenience rather than hardship. It is not intended to provide economic relief from a specific standards requirement. A lakeshore variance is not intended to address a violation that does not conform to the lakeshore regulations.

INSTRUCTIONS:

- Pre-application meeting is required with city staff. Date of pre-application meeting: _____
- Submit the application fee, completed standard lakeshore construction permit application, the supplemental variance 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.
- Staff will make a recommendation to the Lakeshore Protection Committee. A staff recommendation for approval of a variance does not provide a guarantee that the variance will be approved.
- 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. Appeals of the decision of the Whitefish City Council must be made in District Court per §75-7-215 of the Montana Code.

A. LEGAL DESCRIPTION OF PROPERTY:

Street Address 434 Dakota Ave

How many feet of the lake frontage do you own? 131

Assessor's Tract No.(s) 0906050 Lot No(s) 017

Block # 008 Subdivision Name WFSHTSTECO5ACTRADD1

Section 25 Township 31N Range 22W

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 Signature¹ _____

Date _____

TRILLIUM SHORES LLC
 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

Curt Olson
Applicant's Signature

27 Jan 14
Date

Curt Olson
Print Name

Representative's Signature
Curt Olson
Print Name

Date

APPLICATION CONTENTS:

Attached ALL ITEMS MUST BE INCLUDED - INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

- ___ Lakeshore Construction Permit Application
- ___ Supplemental Lakeshore Variance Application
- ___ Submit a site plan, either drawn to scale or with dimensions added, which shows in detail your proposed project, your property lines, existing and proposed buildings, traffic circulation, driveways, parking, landscaping, fencing, and any unusual topographic features such as slopes, drainage, ridges, etc. Where new buildings or additions are proposed, building sketches and elevations must be submitted.
- ___ Address 'Findings' and 'General Criteria' under C and D
- ___ Major Variances:
 - Address 'Major Variance Criteria' under E
 - Submit 'Environmental Impact Statement' §13-4-2B(2)

B. OWNER(S) OF RECORD:

Name: TRILLIUM SHORES LLC Phone: _____

Mailing Address: 1933 CRABAPPLE LN

City, State, Zip: WATERLOO IA 50701-9322

Email: _____

APPLICANT (if different than above):

Name: Curt Olson Phone: 319-215-6094

Mailing Address: PO Box 4362

City, State, Zip: Whitefish MT 59937

Email: cgolson1821@gmail.com

CONTRACTOR:

Name: _____ Phone: _____

Mailing Address: _____

City, State, Zip: _____

Email: _____

B. **FINDINGS** - The following criteria form the basis for approval or denial of the variance request. The burden of satisfactorily addressing these criteria lies with the applicant. These criteria are intended to prevent the circumvention of the lakeshore protection regulations and are typically based on a unique circumstance over which the property owner has no control.

1. Describe the nature of the variance request

The request is for a 400 sq. ft. floating walk-way that will attach to the existing dock. This would allow better accessibility to the lake in both high and low water conditions without constantly moving the dock in and out which causes disturbance to the lake bottom and potentially to the lake shore.

2. Explain which specific section of the Lakeshore Protection Regulations the variance would apply and the extent to which the request would deviate from the standard

13-3-K5-A-C-D length of docks ramp or gangway, water depth. The proposed walkway from the hi/lo water level will be 100' exceeding the standard by 40'.

3. Explain the reason why the variance is needed

Because the lake in this bay shows significant siltation causing a gentle topographical gradient from the surveyed high water to low water line making it difficult to access the lake at all times.

4. Describe alternatives to the proposed project that have been explored and describe why such alternative are unacceptable

A permanent wood/metal walk-way has been drawn and quoted. This concept has NO flexibility; the construction will disturb the lake bed and it is not aesthetically pleasing to the area.

Dredging has also been explored. Regulations from both the Lake Shore and the Core of Engineering make this a very costly and restrictive application.

5. Describe the conditions of the site as they now exist without the variance

Significant siltation has occurred within this bay causing periods of time throughout the summer/fall seasons when it is difficult to access the property by boat. It is necessary to pull the dock in and push it out on a frequent basis depending on the amount of rainfall. Even doing this, with all the resultant effort and disturbance to the lake bottom, the end result particularly in low water can be unsatisfactory.

D. DESCRIBE THE ANTICIPATED IMPACTS AS THEY RELATE TO THE POLICY CRITERIA BELOW:

(Note: A "yes" or "no" answer or simple restatement of the question is not acceptable.)

1. Due to unusual circumstances, a strict enforcement of such requirements and standards would result in undue hardship

This area of the lake has significant siltation therefore water levels vary from full pool to lower water depths. These changes make it difficult to access the dock with out moving it in and out several times during the summer season. This does cause disturbance of the lake shore bed.

2. No reasonable alternatives exist which do meet the standards herein

Other alternatives have been looked at as previously stated. A permanent walk made of steel and wood, plus dredging has been looked into but the existing regulations limit dredging to 100 sq... ft... which is not applicable to this application.

3. Granting of the variance will not have adverse impacts on a lake or lakeshore in terms of the "Policy Criteria for Issuance of a Permit" contained in Chapter 4 of the Whitefish Lake and Lakeshore Protection Regulations

All docks on WF Lake use this material which complies to current regulations, because of this it will not effect or diminish: water quality, habitat for fish or wild life, navigation or recreational law, or be public nuisance or public safety hazard. It should not create a visual impact or alter the shoreline.

4. Alternatively to (a) and (b), the granting of a variance would result in a general and universal public benefit

Accessibility via the means of a floating walk way to the dock without moving it in or out as water changes would provide great value not only to the home but others in this area, the lake bed would not be disturbed during these changes with potential effect to vegetation, fish and wildlife.

E. MAJOR VARIANCE CRITERIA: (Requires detailed answers to each of the following criteria below)

1. The variance request does not meet the requirements of §13-4-2A(1)

2. The variance request deviates substantially from the construction requirements or design standards of these regulations

N/A

3. The variance request creates a major environmental impact.

Trillium Shores, LLC

P.O. Box 805, Waterloo, Iowa 50704

Phone: 319-833-1234

January 27, 2014

City of Whitefish
Planning & Building Department
P.O. Box 158
Whitefish, MT 59937

To Whom it May Concern:

On the 27 day of January, 2014, the owners of Trillium Shores, LLC hereby authorize Curt Olson to act and sign on our behalf in matters relating to the Lakeshore Variance for 434 Dakota Avenue, Whitefish Montana. This authorization shall remain in effect until the project is completed.

A handwritten signature in black ink, appearing to read 'Thomas R. Penaluna', written over a horizontal line.

Thomas R. Penaluna, Partner / Owner

WHITEFISH, BLANCHARD & LOST COON LAKE

Lakeshore Construction Permit Application

A permit is required for any work, construction, demolition, dock/shore station/buoy installation, and landscaping or shoreline modification in the lake and lakeshore protection zone - an area extending 20 horizontal feet landward from mean high water of 3,000.79' msl (NAVD 1988) for Whitefish Lake, 3,144.80' msl (NAVD 1988) for Blanchard Lake and 3,104' msl (NAVD 1988) for Lost Coon Lake. Please fill in all information, sign and pay the appropriate fees. In order to be on the next Lakeshore Protection Committee Meeting agenda the completed application must be submitted a minimum of **3 weeks** prior to the next regularly scheduled meeting and all required information must be provided in order to be deemed complete and scheduled for the next meeting date. The Committee meets on the second Wednesday of every month. An incomplete application will not be accepted.

Submit Application To:

Whitefish Planning and Building Department
 PO Box 158 (510 Railway Street)
 Whitefish MT 59937
 Phone (406) 863-2410 Fax (406) 863-2409

OWNER

APPLICANT (If Other Than Owner)

Name William Shores LLC Phone _____
 Mail _____
 Address 434 Dakota Ave
 City, _____
 State, Zip Whitefish MT 59937
 Project address (if other than above) _____

Name Curt Olson Phone 319-215-6094
 Mail Address Po Box 4362
 City, _____
 State, Zip Whitefish MT 59937

Email address (staff reports are sent via email): cgoison1821@gmail.com

How many feet of the lake frontage do you own? 131'

Legal Description (available from annual property tax notice)
 Lot/Tract#: 17 Section: 25 Township 31 Range: 22
 Subdivision Name: WFSH TSTELOS AC TR ADD1

CONTRACTOR:

PHONE#:

Mail Address:

FEES:

Administrative Permit (no committee meeting) (waterlines, dead trees, buoys, burning, etc)	\$75
Administrative Permit (w/ committee meeting) (docks under 60', shore stations)	\$255
Standard Permit (construction, rip rap, stairs, dredging, filling, excavation, clearing, machinery operations) <input checked="" type="checkbox"/>	\$350 base fee (1 activity) \$140 each additional activity <i>(Activity is defined as a separate component or project that by itself would require a permit)</i>
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

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).

Add a floating walkway from the high water level to the existing dock. The walkway will be 100 long consisting of 12 10x16 wood 4x4 posts.

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.

None that I am aware of

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.

The addition of the floating walkway will allow the existing dock to remain in deeper water all the time without moving it as water rises + recedes.

3. 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?

None

4. The following Project Information must be included.

Is VICINITY MAP attached? yes

Is a "to scale" SITE PLAN attached? yes

Is a "to scale" PROJECT DRAWING attached? yes

Are at least 3 PHOTOS of work site attached? yes

1 photo of property from lake, 2 photos showing lakeshore protection zone from property boundary towards other property boundary, i.e., from north property line across to south property line, and photos of each existing structure or constructed area within the lakeshore protection zone (dock, boat house, stairs, etc)

I hereby state that the statements contained herein and the materials attached hereto are a true and complete statement of all proposed work and its effects (or probable effects) on the lake and lakeshore and that I have answered all questions in the application. The signing of this application signifies approval for City Planning staff to be present on the property for routine monitoring and inspection during the approval and development process.

[Handwritten Signature]

09/03/2013

Owners Signature (May be signed by applicant but authorization letter from owner must be attached)

Date:

Thomas R. Penaluna

Print Name

All work will be inspected for conformity with permit. The permit is valid for one year from date of approval. The permit can be renewed by the governing body upon request.



March 4, 1997

David & Karen Lauridsen
434 Dakota Ave
Whitefish, MT 59937

RE: Lakeshore Construction Applications #97-2
434 Dakota Avenue

Dear Mr. and Mrs. Lauridsen:

The Whitefish City Council approved the above referenced applications at their regular meeting on March 3, 1997. The Council supported the recommendations from the Lakeshore Protection Committee. The Conditions of Approval are noted on the attachment from the Lakeshore Protection Committee.

Please note that all construction shall conform with the standards and requirements contained in the Whitefish Lake and Lakeshore Protection Regulations adopted March 18, 1993 and Amended July 8, 1996. Thank you for your cooperation.

Sincerely,

Necile Lorang
Necile Lorang
Deputy City Clerk

encl.

PERMIT #: City Application #97-2
APPLICANT: Lauridsen, David & Karen

DATE: 02/12/97 **DOCK**

RECOMMENDED CONDITIONS OF APPROVAL:

1. 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 2,997'.
2. If the existing dock is to be sold or moved to another location on Whitefish Lake, a lakeshore permit must be obtained and the dock must be modified to conform to current regulations prior to moving.
3. 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 recommended. Use of painted material, plywood, particle board or other glued composite board is not allowed.
4. The dock shall be constructed outside of the Lakeshore Protection Zone. Upon completion the components may be brought to the lakeshore area and launched.
5. The dock shall be placed in the middle of the property ownership. Under no circumstances shall the dock be located closer than twenty (20) feet from the riparian property lines.
6. 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 permit amendment.
7. 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.
8. 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.
9. Reflection devices, not exceeding four (4) inches in diameter, shall be installed at the end of the dock in order to increase dock visibility for lake traffic.
10. Only one lakeshore dock is permitted per property ownership.
11. Existing floating dock and gangway shall be removed prior to installation of new dock, and stationary dock and pilings shall be removed during 1997 season.

This permit shall be valid for one year from the date of issuance. Upon completion of the work, please contact WLPC member Dewey Hartman at 862-3951 or 862-8620 for inspection.

SP PD

By: SANDS SURVEYING, Inc.
2 Village Loop
Kallispell, MT 59901
(406) 755-6481

JOB NO: 402801
DATE: August 5, 2013
FOR/OWNER: TRILLIUM SHORES, LLC

Exhibit Lake front of: Lot 17, Block 8 of Whitefish Townsite Company's Five Acre Tracts

IN SW1/4 SEC.25, T.31N., R.22W., P.M.,M., FLATHEAD COUNTY, MT



LEGEND:

- Found 5/8" Rebar & Cap (7328S)
- Found 5/8" Rebar & Cap (3344S)
- Set Iath at Elevation 3000.8' (NAVD 88 Datum)
- TBM - Spike in pier Elevation = 2997.59'
- (F) Found information
- (R) Record information per Amended Plat Lot 16, Blk. 8
- Boundary Adjoining
- Boundary Subject
- TBM
- High Water Mark (Elevation 3000.8')
- Lake level (shot on 7/31/2013)



NOTE:
 -Ownership extends to low water per 70-16-201
 and 70-20-201(5), Montana Code Annotated.
 -See Supreme Court of Montana, *Stidman v. City of Whitefish*, 748
 P2d 591 Case No. 87-14, and Fourth Judicial District Court for
 Lake County, case No. 8,327, as filed in microfiche 250554, records
 of Lake County, Montana, and Sections 8-132 to 8-157 Manual of
 Instructions for the Survey of the Public Lands of the United
 States 2009, the land between the high and low water marks is
 determined basically at right angles to the shore line, or in a
 cove or rounded section of a lake the lines should be extended
 out to the center point of the cove.

Nearby Map



FLATHEAD COUNTY GIS

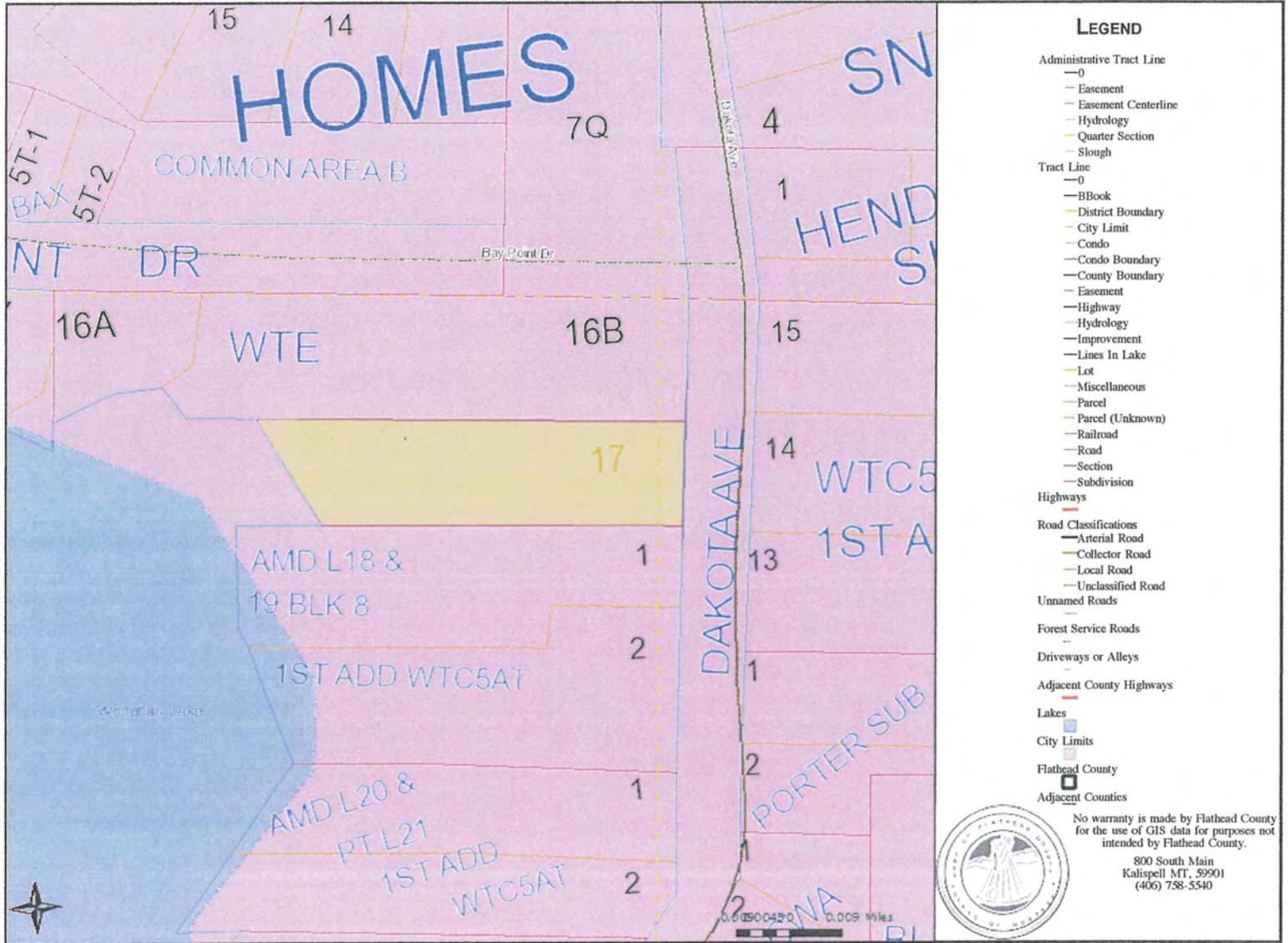
KALISPELL, MONTANA

MAP SCALE: 1:4,540 MAP CENTER: LATITUDE 48° 25' 19.87 LONGITUDE -114° 20' 50.63



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) 758-5900 Fax: (406) 758-5910



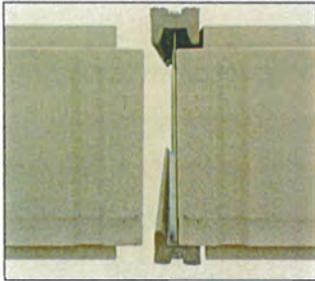
No warranty is made by Flathead County for the use of GIS data for purposes not intended by Flathead County.
 800 South Main
 Kalispell MT, 59901
 (406) 758-5540





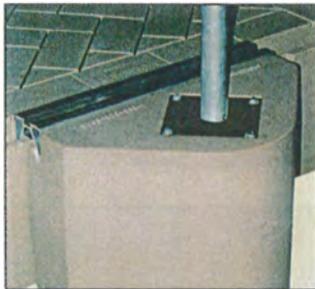


PolyDock Features



Assembly

- The special PolyDock connector is designed for easy installation.
- Available in 4-, 6- and 10-foot lengths to accommodate your dock configuration.



Pipe Brackets

- Durable polyethylene pipe brackets keep your dock in place with changing water levels and add stability.

Chain anchor kits (not shown) are also available.



Exceptional Design and Construction

- Aesthetically-pleasing sandstone brick pattern.
- Safe, non-slip surface.
- All-polyethylene shell construction provides strength and durability.

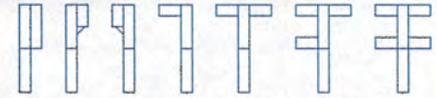
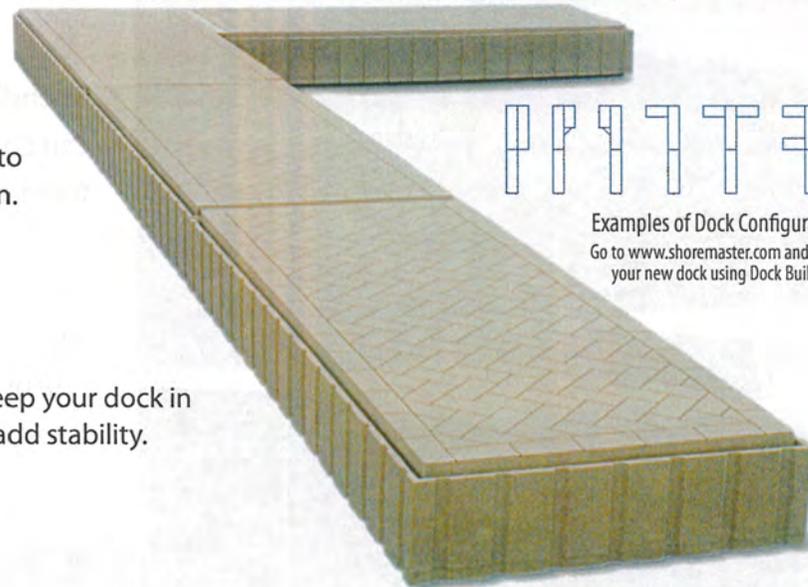


PolyDock Corner Section

- 4-foot triangle section.
- Provides additional walking surface.
- Adds strength and stability.
- Allows for unique layouts.

Accessories Available (See website for photos)

- Ramp
- Handrail
- Flagpole Holder
- Bench
- Bumpers
- Cleats
- Ladder
- Furniture



Examples of Dock Configurations
Go to www.shoremaster.com and design your new dock using Dock Builder.



www.shoremaster.com

Size	Capacity	Weight
4' x 6'	1,200 lbs	160 lbs
3' x 10'	1,360 lbs	200 lbs
4' x 10'	2,000 lbs	265 lbs
5' x 10'	2,300 lbs	340 lbs
6' x 8'	2,150 lbs	330 lbs
Corner	460 lbs	70 lbs

T.R.M. T.R. Marinan Co.
5660 Expressway, Missoula, MT 59808
406-543-5060 / trm@bigsky.net

An Authorized ShoreMaster Dealer

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



April 1, 2014

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

Mayor Muhlfeld and Councilors:

Request to Extend the Preliminary Plat for Wapiti Woods at Elk Highlands (WPP 09-18)

Request/Background:

This office is in receipt of a letter from Thomas Penaluna, on behalf of Elk Highlands Inc., requesting a 24-month extension for the Wapiti Woods at Elk Highlands preliminary plat. The Wapiti Woods at Elk Highlands preliminary plat is a 34-lot subdivision on 34.054 acres located on Big Mountain – between Ridge Top Drive, Elk Highlands Drive and Northern Lights Drive and can be described as Tract 5 in S2 T31N R22W. Attached to this report are the conditions of approval and the preliminary plat map.

The preliminary plat was approved by the Whitefish City Council on August 17, 2009. In 2012, the Council granted an additional 24-month extension under HB 522 that provided local jurisdictions additional flexibility. The preliminary plat now expires August 17, 2014.

Current Report:

This subdivision is located within the Whitefish planning jurisdiction and is zoned BR-4 (Flathead County Planned Resort). Upon review of the file, issues raised during the public hearing process included:

- *Secondary Emergency Access.* The project is designed with a main entrance off Northern Lights Drive and a secondary emergency access into the Sunrise Ridge subdivision to the east. The emergency access road is proposed to be a locked secondary emergency access. The Big Mountain Fire Department was satisfied with this approach, as was the Council.
- *Right-of-way Width for Private Roads.* All the roads within the Elk Highlands development are private. The applicant proposed two of the private roads to have a 40-foot right-of-way. This narrower right-of-way did not reduce the width of the actual paved roadway. The purpose of the narrower right-of-way is to reduce the

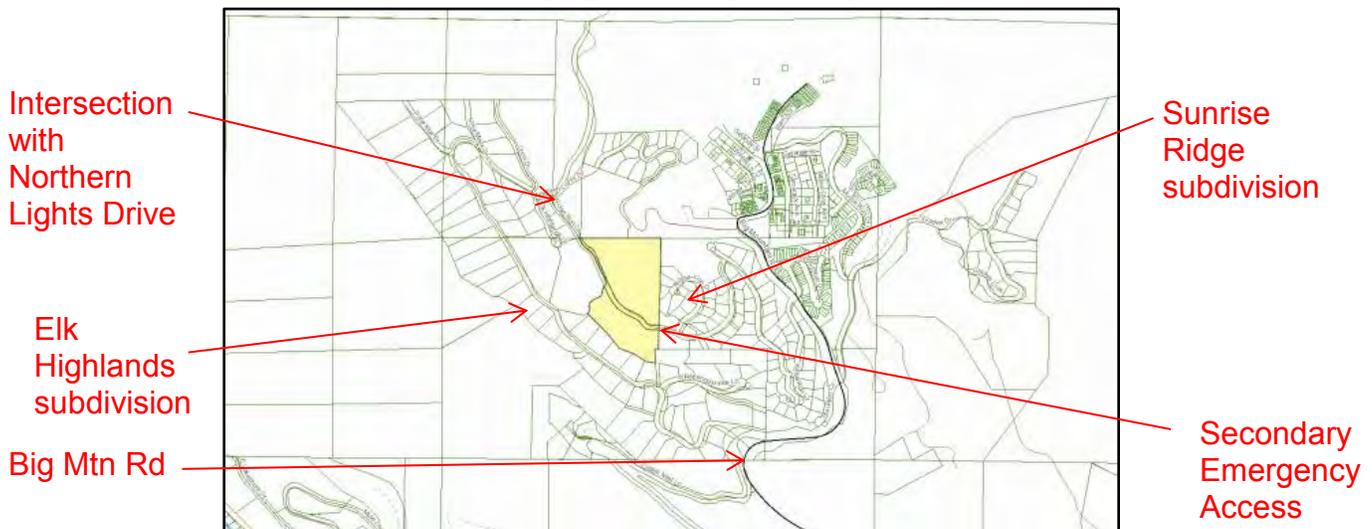
amount of clearing and grading needed to install the roadway. The Council approved this request.

Change in Standards:

Since 2009, when this project received preliminary plat, certain regulations have been amended including the Subdivision Regulations. Below is a summary of items that changed and are pertinent to this preliminary plat:

- This project was approved during an earlier version of the Water Quality Protection regulations (formerly known as the Critical Area regulations). Conditions 6-8 required the applicant, prior to final plat, to conduct a Site Stability Analysis on each lot to see if additional geotechnical analysis would be warranted. The City Council has since amended this section of the regulations to eliminate the Site Stability Analysis.¹ The subdivision regulations were also modified to incorporate slope analysis at the time the lots are created. There are two aspects in the new subdivision regulations:
 - 1) Identifying a 'clearing limits' on a slope of less than 30% where all the lot's development would occur (§12-4-12A); and
 - 2) Site characterization of lots with slopes greater than 10% to determine whether or not additional geotechnical analysis would be warranted prior to development. (§12-4-10A)
- Tree protection standards (§12-4-5) and Wildland Urban Interface standards (§12-4-6) have been added that are more detailed than the previous subdivision regulations. Condition #14 is related to wildland fire concerns. This particular neighborhood has been a leader in wildland urban interface mitigation over the years. They have removed trees to minimize neighborhood damage in the event of a fire.

(location of project highlighted in yellow)



¹ Now a geotechnical analysis is a requirement only for development within 200-feet of a water body and on a slope of 10% or greater.

Public Comment

A notice was mailed to adjacent land owners within 300-feet of the preliminary plat on March 14, 2014. A notice of the public hearing was published in the *Whitefish Pilot* on March 19, 2014. As of the writing of this report, we have received eleven letters. One letter in support of the request and ten letters in opposition. Neighboring property owners are concerned with:

- Subdivision's relationship with the larger Elk Highlands Homeowners' Association as far as maintaining the roads, ski lift, etc.
- Using the Elk Highlands name as part of the subdivision name
- Density of the project and being out of character with the larger neighborhood
- Timeframe for build-out
- Storm water retention and erosion control
- Impact on utilities
- Noise, outdoor lighting, development on the ridge
- Safety at intersection with Northern Lights Drive
- Use of Ridge Run Drive as an emergency access
- Impact on the environment and loss of green space
- Street width subdivision variance
- Rezone to allow more units (This request accompanied the preliminary plat in 2009)
- Effects on the ski access trail, chair lift and grooming for Elk Highlands/Northern Lights North
- Effects on property values
- Installation of the roads and the homes on steep lots
- Snow removal
- Impacts on the Home Again ski trail
- Impacts from the proposed Community Center

Recommendation:

Staff recommends the Council **approve** the request to extend the Wapiti Woods at Elk Highlands preliminary plat for 24 months, expiring on August 17, 2016 based on the following findings of fact:

Finding 1: The 34-lot preliminary plat was approved by the Council on August 17, 2009. In 2011, the Council granted an additional 24-month extension under HB 522 that provided local jurisdictions additional flexibility. The preliminary plat now expires August 17, 2014.

Finding 2: No other development or third party will be harmed if the preliminary plat is extended.

Finding 3: A legal notice was placed in the *Whitefish Pilot* on March 19, 2014 and public notice was mailed to property owners within 300-feet on March 14, 2014. As of the writing of this report, 11 letters have been received.

Sincerely,



Wendy Compton-Ring, AICP
Senior Planner

Att: Extension Request Letter, 1-28-14
 Conditions of approval, 8-17-09
 Preliminary plat map, 5-19-09
 Legal Notice, *Whitefish Pilot*, 3-19-14
 Adjacent Landowner Notice, 3-14-14
 Email, Dan Graves, 3-18-14
 Email, Alan & Susan Barclay, 3-23-14
 Email, Richard & Susan Williams, 3-24-14
 Email, Paul Okerberg, 3-24-14
 Email, Karl & Carol Moody, 3-24-14
 Email, Wes & Marie Reynolds, 3-25-14
 Email, Jay & Sheila Johnston, 3-28-14
 Email, Jerry & Rhona Meislik, 3-29-14
 Email, James Stroud, 3-30-14
 Email, Paul Okerberg, 3-31-14
 Email, James Wheat, 3-31-14

c/w/att: Necile Lorang, City Clerk

c/w/o/att: Thomas Penaluna, Elk Highlands Inc, PO Box 805 Waterloo, IA 50704
 Eric Mulcahy, Sands Surveying 2 Village Loop Kalispell, MT 59901



02-03-14 P12:20 IN

January 28, 2014

City of Whitefish
Planning & Building Department
Attn: Wendy Compton-Ring, AICP
P.O. Box 158
Whitefish, MT 59937
Fax: 406-863-2409

Dear Wendy:

We appreciate you providing information regarding House Bill 522 in 2012 which allowed us to request the first extension for 2 or more years. When the first extension was granted, we understood that we are allowed to request a subsequent extension prior to the expiration of the first extension on August 17, 2014.

At this time we would like to request another 2 year extension, for an expiration date of August 17, 2016. Due to economic conditions and market place activities we believe that our project was not been viable in the past. We believe that now we can begin work and need another 24 months to accomplish enough activity to get to a final plat. Your attention and consideration to this extension is most appreciated

If any additional information is needed or if you have any further questions please contact Eric Mulcahy at Sands Surveying who will be coordinating the extension for us. He can be reached at 406-755-6481 or Nina Hamer in my office at 319-833-1234 if you can't get ahold of Eric.

Sincerely,

Thomas R. Penaluna
President, Elk Highlands, Inc.

P.O. BOX 805 • WATERLOO, IOWA • 50704-0805
PHONE: 319-833-1234 • FAX: 319-833-1368

Exhibit A
Wapiti Woods at Elk Highlands
Preliminary Plat
WPP-09-18
Whitefish City Council
Conditions of Approval
August 3, 2009

The Whitefish City Council approved of the following requested subdivision variances:

- **Right of Way Width** from 60-feet to 40-feet;
- **Maximum Loop/Cul De Sac Length** from the maximum of 1000-feet as the applicant has installed a gated emergency/secondary route through the Sunrise Ridge neighborhood; and
- **Lighting Standards** from the requirement to install street lighting on the private roads.

The Whitefish City Council approved the project subject to the following conditions of approval:

1. The subdivision shall comply with Title 12 (Subdivision Regulations) and Title 11 (Zoning Regulations) and all other applicable requirements of the Whitefish City Code, except as amended by these conditions.
2. Except as amended by these conditions, the development of the subdivision shall be in substantial conformance with the approved preliminary plat, site plan and elevations that govern the general location of lots, roadways, parking, landscaping and improvements and labeled as “approved plans” by the city council.
3. Prior to any pre-construction meeting, construction, excavation, grading or other terrain disturbance, plans for all on and off site infrastructure shall be submitted to and approved by the Whitefish Public Works Department. The infrastructure improvements (sewer, roads, stormwater management, etc.) shall be designed and inspected by a licensed engineer and in accordance with the City of Whitefish’s design and construction standards. The City of Whitefish Public Works Department shall review and approve sewer, stormwater, grading and erosion control plans. Plans for grading, drainage, utilities, streets and other improvements shall be submitted as a package and reviewed concurrently. No individual improvement designs shall be accepted by Public Works.
4. Approval of the preliminary plat is subject to approval of detailed design of all on and off site improvements, including drainage. Through review of detailed road and drainage plans, applicant is advised that the number,

density and/or location of building lots, as well as the location and width of the road right-of-way, and widths of rights-of-way shown on the preliminary plat may change depending upon constructability of roads, pedestrian walkways, on-site stormwater retention, drainage easements or other drainage facilities or appurtenances needed to serve the subject property. This plan, also located within the Homeowners' Association Conditions Covenants and Restrictions, shall include a strategy for long-term maintenance. Fill on-site shall be the minimum needed to achieve positive drainage, and the detailed drainage plan will be reviewed by the City using that criterion.

5. Prior to any ground disturbing activities, a plan shall be submitted for review and approval by the Public Works and Planning & Building Department. The plan shall include, but may not necessarily be limited to, the following:
 - Dust abatement and control of fugitive dust.
 - Hours of construction activity.
 - Noise abatement.
 - Control of erosion and siltation.
 - Routing for heavy equipment, hauling, and employees.
 - Construction office siting, staging areas for material and vehicles, and employee parking.
 - Measures to prevent soil and construction debris from being tracked onto public roadways, including procedures to remove soil and construction debris from roadways as necessary.
 - Detours of vehicular, pedestrian, and bicycle traffic as necessary.
 - Notation of any street closures or need to work in public right-of-way.
6. Approval of the preliminary plat is subject to subsequent approval of detailed site stability analysis according to Section 3.I. of Ordinance 09-04 for the roadway. Through review of the site stability analysis, applicant is advised that the number, density and/or location building lots shown on the preliminary plat may change depending upon site stability recommendations.
7. Lots 13 and 16 shall conduct a site stability analysis pursuant to Section 3.I. of Ord. 09-04 prior to any construction on the site. This note shall be placed on the face of the plat.
8. If development of any other lots occurs on slopes of 40% or greater, a site stability analysis pursuant to Section 3.I. of Ord. 09-04 shall be required prior to the construction of the lot. This note shall be placed on the face of the plat.
9. All roads within the subdivision shall be built to City of Whitefish Public Works Standards and the Whitefish Subdivision Regulations and certified by a licensed professional engineer unless otherwise approved by the

Public Works Director. Public utilities shall only be located in road rights-of-way unless otherwise approved by the Public Works Director.

10. The City of Whitefish Public Works Department shall review and approve sewer, stormwater, grading and erosion control plans.
11. All on-site lighting shall be dark sky compliant and meet the requirements of the City's Outdoor Lighting ordinance.
12. A Certificate of Subdivision Approval be obtained from the Department of Environmental Quality and written approval by the Big Mountain Water Company and Big Mountain Sewer District approving the water and sewage treatment facilities for the subdivision.
13. Prior to approval of the final plat, the applicant shall produce a copy of the proposed Covenants, Conditions and Restrictions (CC&Rs) for the Wapiti Woods at Elk Highlands Subdivision Homeowners' Association (HOA) providing for:
 - Long-term maintenance of the open spaces, landscape buffers, private streets and trails.
 - Long-term weed management plan. The weed management plan shall be submitted to the Flathead County Weed Department for review and approval prior to final plat.
 - Snow removal on the roads and emergency access as a HOA responsibility.
 - Long-term maintenance plan for drainage and stormwater management facilities.
14. The following notes shall be placed on the face of the plat:
 - a. Building numbers shall be posted on the buildings in a clearly visible location.
 - b. All utilities shall be underground.
 - c. Unit owners are advised that they are moving into an area frequented by large and potentially dangerous wild animals. As such, owners are strongly encouraged to contact the Montana Department of Fish, Wildlife and Parks and obtain information on living with wildlife. The feeding of birds or other wildlife is discouraged as it may attract large predatory animals such as mountain lions and bears.
 - d. Buildings shall be constructed to maintain "defensible space" in accordance with City of Whitefish Subdivision Regulations.
 - e. All structures shall have only Class A or B fire-resistant roofing materials as rated by the National Fire Protection Association.
 - f. The internal roads shown on the final plat are intended to be privately owned and maintained and open to the public, including parking. It is understood and agreed that these internal roadways do not conform to City requirements for public roadways. Because of the road

configuration, they are not suitable for all-season maintenance by the public authority. The owners (and successors in interest) of the lots described in this plat will provide for all-season maintenance of the private roadways by creation of a corporation or association to administer and fund the maintenance. This dedication is made with the express understanding that the private roadways will never be maintained by any government agency or public authority. It is understood and agreed that the value of each described lot in this plat is enhanced by the private nature of said roadways. Thus, the area encompassed by said private roadways will not be separately taxed or assessed by any government agency or public authority.

15. The Sun Rise Ridge Homeowners' Association shall issue written approval for the use of their roadway for emergency vehicles. Their roadway also needs to be maintained in a driveable condition year round including plowing through the gate.
16. All areas disturbed because of road and utility construction shall be re-seeded as soon as practical to inhibit erosion and the spread of noxious weeds.
17. The Big Mountain Fire Department shall approve the access and hydrant location. A written approval shall be submitted along with the final plat application(s). hydrant placement, sprinkling of buildings, design of buildings to ensure the Fire Department can 'ladder-up' to upper stories and turning radius for the proposed street system, hydrant flows.
18. Common off-street mail facilities shall be provided by the developer and approved by the local post office.
19. This preliminary plat is valid for three years from Council action.
20. Ridge Run Drive, within Wapiti Woods at Elk Highlands, shall be renamed prior to final plat.

By: SANDS SURVEYING, Inc.
 2 Village Loop
 Kalispell, MT 59901
 (406) 755-6481

APPROVED
 CITY OF WHITEFISH
 PLANNING DEPARTMENT

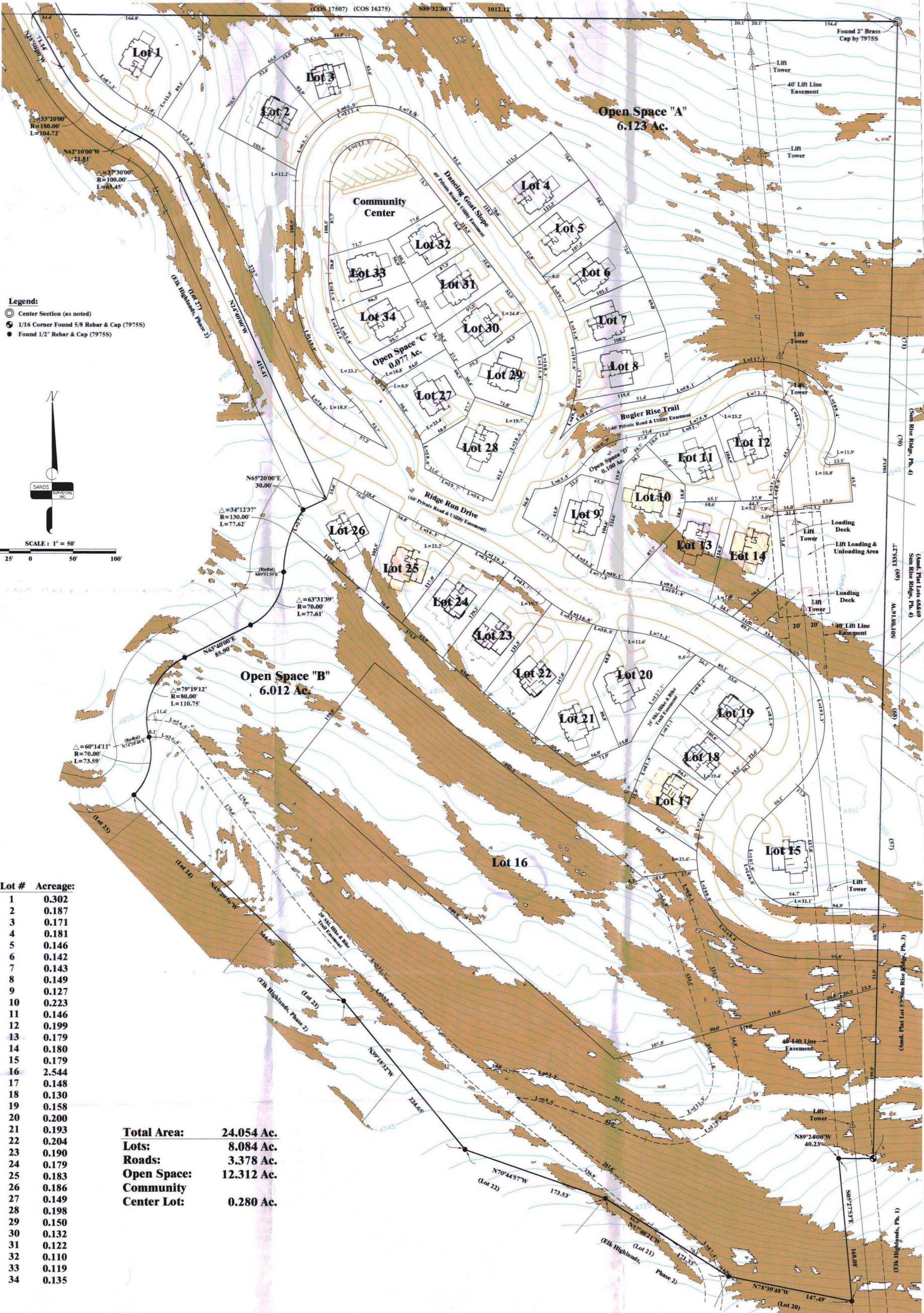
Whitefish City Council

Preliminary Plat of: Wapiti Wood at Elk Highlands

In the E1/2SW1/4 Sec. 2, T.31N., R.22W., P.M.,M., Flathead County, Montana

JOB NO: 93217 (194202.dwg)
 DATE: May 19, 2009
 FOR/OWNER: Elk Highlands Inc.

Notes:
 Vertical Datum: NAVD 88
 Contour Interval = 5'



- Legend:
- ⊙ Center Section (as noted)
 - ⊕ 1/16 Corner Found 5/8 Rebar & Cap (7975S)
 - Found 1/2" Rebar & Cap (7975S)



SCALE: 1" = 50'
 50' 25' 0' 50' 100'

Lot #	Acreage:
1	0.302
2	0.187
3	0.171
4	0.181
5	0.146
6	0.142
7	0.143
8	0.149
9	0.127
10	0.223
11	0.146
12	0.199
13	0.179
14	0.180
15	0.179
16	2.544
17	0.148
18	0.130
19	0.158
20	0.200
21	0.193
22	0.204
23	0.190
24	0.179
25	0.183
26	0.186
27	0.149
28	0.198
29	0.150
30	0.132
31	0.122
32	0.110
33	0.119
34	0.135

Total Area: 24.054 Ac.
Lots: 8.084 Ac.
Roads: 3.378 Ac.
Open Space: 12.312 Ac.
Community Center Lot: 0.280 Ac.

TO: office@whitefishpilot.com

PLEASE PUBLISH THE FOLLOWING LEGAL NOTICE ONCE ON
March 19th

PLEASE BILL: City of Whitefish

Do not publish above this line

**WHITEFISH CITY COUNCIL
NOTICE OF PUBLIC HEARING**

At the regular meeting of the Whitefish City Council on Monday, April 7, 2014 at 7:10 pm, the Council will hold a public hearing on the item listed below. The Council meets in Whitefish City Council Chambers, Whitefish, Montana.

1. A request by Thomas Penaluna, of Elk Highlands Inc, for a 24-month extension to the Wapiti Woods at Elk Highlands preliminary plat. The property is located on Big Mountain. Between Ridge Top Drive, Elk Highlands Drive and Northern Lights Drive and can be described as Tract 5 in S2 T31N R22W. (WPP 09-18) Compton-Ring

Documents pertaining to these agenda items are available for review at the Whitefish Planning & Building Department, 510 Railway Street, Whitefish, Montana 59937 during regular business hours. Inquiries are welcomed. Interested parties are invited to attend the hearing and make known their views and concerns. Comments, in writing, may be forwarded to the Whitefish Planning & Building Department at the above address prior to the hearing or via email: wcompton-ring@cityofwhitefish.org. For questions or further information regarding this request, phone 406-863-2410.

WHITEFISH CITY COUNCIL
John Muhlfeld, Mayor



Public Notice of Proposed Land Use Action

The City of Whitefish would like to inform you that Thomas Penaluna, on behalf of Elk Highlands Inc, is requesting a 24-month extension to the Wapiti Wood at Elk Highlands preliminary plat. This subdivision consists of 34 single family lots on 34.054 acres and is located between Ridge Top Drive, Elk Highlands Drive and Northern Lights Drive and can be described as Tract 5 in S2 T31N R22W. The property is undeveloped and is zoned BR-4 (Flathead County Resort Business). The preliminary plat was approved by the Whitefish City Council in August 17, 2009 and received an extension until August 17, 2014.

You are welcome to provide comments on the project. Comments can be in written or email format. The City Council will hold a public hearing and take final action for the request on:

**Monday, April 7, 2014
7:10 p.m.**

**Whitefish City Council Chambers, City Hall
402 E. Second Street, Whitefish MT 59937**

On the back of this flyer is the approved preliminary plat. Additional information on this proposal can be obtained at the Whitefish Planning Department located at 510 Railway Street. The public is encouraged to comment on the above proposals and attend the hearings. Please send comments to the Whitefish Planning Department, PO Box 158, Whitefish, MT 59937, or by phone (406) 863-2410, fax (406) 863-2409 or email at wcompton-ring@cityofwhitefish.org. Comments received by the close of business on Monday, March 31, 2014, will be included in the packets to Councilors. Comments received after the deadline will be summarized to Councilors at the public hearing.

Wendy Compton-Ring

From: Dan Graves <dgraves@skiwhitefish.com>
Sent: Tuesday, March 18, 2014 5:03 PM
To: Wendy Compton-Ring - City of WF
Cc: 'Tom Penaluna'
Subject: Wapiti Wood - Extension

Hi Wendy,

I'll be at that meeting in support, but wanted to give you the heads up that I'm in favor of this extension by Elk Highlands. I totally understand their situation in wanting to keep a plat "alive" during this less than stellar real estate market for resort property. I hope the Planning Dept. and the Town Council supports this extension. I'm sure you must understand the high cost of investment and the high risks. As with all businesses there is a model...or there should be. I'm sure the Elk Highlands business model needs the plat to stay alive. I believe it's not only good for them, but also good for the local region and Whitefish. The development has been first class and built with wonderful standards. The homeowners owners may not be full time residents, but they do spend money in the local community, bring friends and family, and pay high property taxes that support local government.

Daniel Graves
President
Whitefish Mountain Resort
Office 406-862-2978
Cell 406-871-1605
Fax 406-862-2955

"It is easier to do a job right than to explain why you didn't."

— Martin Van Buren

Wendy Compton-Ring

From: Barclay Alan <alan_barclay@yahoo.com>
Sent: Sunday, March 23, 2014 6:33 PM
To: wcompton-ring@cityofwhitefish.org
Cc: alan.barclay@intrepidinc.com
Subject: Comments on the 24-Month Extension of Wapiti Wood at Elk Highlands Preliminary Plat

To Whom It May Concern,

As property owners in Elk Highlands, we have these concerns regarding the proposed plat extension for Wapiti Wood at Elk Highlands:

1. They should not be taking advantage of our subdivision name, Elk Highlands. It is not a subdivision of Elk Highlands.
2. What access do they have to the proposed development site? We own and maintain the roads in the Elk Highlands subdivision. Are we to subsidize the development of another property via traffic and wear and tear on our streets? Will they repair the roads as they go?
3. Elk Highlands property owners pay hefty HOA dues, in large part to pay for the chairlift. The proposed Wapiti Wood subdivision is uphill of us, will share the ski trail home, and will have access to our chairlift. Are they also going to contribute to the maintenance of the chairlift and the ski trail?

Sincerely yours,

Alan and Susan Barclay
Elk Highlands Property Owners Lot #16
3065 High Mountain Dr.
Huntsville, AL 35811
PH: 256/658-4820 (Alan)
PH: 256/714-9563 (Susan)

Wendy Compton-Ring

From: Rick Williams <rickwill@rochester.rr.com>
Sent: Monday, March 24, 2014 11:10 AM
To: wcompton-ring@cityofwhitefish.org
Subject: Wapiti Wood development in Elk Highlands

Dear Planner,

With regards to the proposed development I would like to express my concerns as a local resident near this project:

- 1) Density of development (to high) in a single family residential neighborhoods and impact on ridge line profile with regards to proposed lots.
- 2) Timeframe , how long would a build out be a few years or constantly over 15 years
- 3) ingress and egress via Ridge Run/Northern Lights Road and intersection (safety and wear and tear).
- 4) Lighting designs and impact/noise
- 5) Impact on current utilities and how will shared maintenance occur.
- 6) Impact on slopes and erosion into Haskel Basin since some of this area is low and acts as a detention/retention pond during periods high runoff.

Please consider the above during approval of this project.

Sincerely,

Richard and Susan Williams
543 Elk Highlands Drive
Whitefish, Mt

Please use e-mail for a response.
rickwill@rochester.rr.com

Wendy Compton-Ring

From: Paul Okerberg <paulokerberg@bellsouth.net>
Sent: Monday, March 24, 2014 3:40 PM
To: Wendy Compton-Ring
Subject: Re: Wapiti Woods -

Thanks Wendy for the requested info.

In short, please include this e-mail as part of the public comment period.

Big Mountain HOA (comprised of the Sunrise Ridge and Wood Run subdivisions) will not support any change to the current closed, gated, uphill end of Ridge Run Drive (at the junction of Ridge Run Drive and Ridge Top Court) with respect to access - emergency egress or otherwise. Our roads are privately owned and maintained and in addition to the expense of additional wear and tear by plowing/vehicular traffic - there are security and privacy concerns that result from the proposed plan (that has received preliminary approval from the City of Whitefish) that would connect our community with the proposed Wapiti Woods development.

Big Mountain HOA is also deeply concerned with the high density of the development and how that would severely impact the environment - both flora and fauna of our mountain community.

Paul Okerberg
President
Big Mountain Homeowner's Association

From: Wendy Compton-Ring <wcompton-ring@cityofwhitefish.org>
To: Paul Okerberg <paulokerberg@bellsouth.net>
Sent: Monday, March 24, 2014 1:48 PM
Subject: Wapiti Woods -

I have included the plat map – you should be able to zoom around the map. I have also attached the approval letter, the original staff report and the letter to Council after the Planning Board public hearing. Please note condition #15 required a written agreement from the Sunrise Ridge HOA to use their roads as an emergency access and that the access be maintained in year-round drivable condition.

Let me know if you need any additional information.

Wendy Compton-Ring, AICP
Senior Planner
City of Whitefish
406-863-2418

Wendy Compton-Ring

From: Misc Moody e-mail account <moody@MoodyUS.com>
Sent: Monday, March 24, 2014 7:13 PM
To: wcompton-ring@cityofwhitefish.org
Subject: Comments-Public Notice of Proposed Land Use Action-Wapiti Wood Preliminary Plat Extension

We appreciate the opportunity to submit these comments electronically regarding the City of Whitefish's Public Notice of Proposed Land Use Action whereby Elk Highlands, Inc. is requesting a 24 month extension for the preliminary plat for the Wapiti Wood subdivision at Elk Highlands (image below).

My wife and I were new to the area in July of 2009, when Elk Highlands, Inc. requested an amendment to the Big Mountain West Overall Development Plan to request a street width variance and to change the density of this subdivision from 18 to 35 units. At that time we did not fully understand the location of this subdivision, nor did we fully appreciate the potential adverse impacts which could arise from such a significant density increase. Accordingly, we did not submit comments regarding that proposed action, but in hindsight we wish we had submitted comments opposing these amendments.

After completing our residence at 566 Elk Highlands in late 2010 and having spent much more time here, we are more familiar with the area and can now envision the potential adverse implications of the July 2009 action. We preface these comments with a statement that we have come to love this area and believe that every effort should be made to keep it as pristine as possible and to minimize the adverse effects of future development. We realize that there will be future development, but we believe that it should be rational and controlled development, one key attribute of which would be reasonable density restrictions. We believe that the pre-amendment density permit for 18 units is much more rational than the 35 unit density previously granted.

As such, we are opposed to the City granting this extension. Given the number of new residences added since 2009 and the experience gained from observing this activity, we believe that the street variance and density amendments previously granted almost 5 years ago need to be revisited and vetted within this expanded community. Among the key issues/concerns which we believe need an updated, open discussion are:

- The rationale underlying the original street width variance;
- The rationale underlying the density amendment (both of which were approved over 5 years ago);
- The safety, sufficiency, and upkeep of the ingress and egress plans for the subdivision, especially the impact on Ridge Run Drive & Northern Lights Road;
- Lighting requirements and their potential impact;
- Noise issues;
- The potential impact on existing utilities and related maintenance; and
- The time frame for the proposed build out.

Again, we strongly oppose any extension for this particular plat, and we appreciate this opportunity to comment on this matter.

Respectfully Submitted:

Karl & Carol Moody
566 Elk Highlands Drive
Whitefish, MT 59937
moody@MoodyUS.com
832 643-1882

Wendy Compton-Ring

From: Wes Reynolds <wesleyreynolds76@gmail.com>
Sent: Tuesday, March 25, 2014 4:43 PM
To: wcompton-ring@cityofwhitefish.org
Subject: Proposed Land Use-Wapiti Wood at Elk Highlands

We are against any extension of this plat. We own and live in the home at 1013 Whispering Pines Ln, Whitefish, MT in Elk Highlands. We have owned here since 2011 and have never heard anything about this development within the Elk Highlands. This development is not shown on any document at the Elk Highlands website, www.elkhighlands.com, nor is it mentioned within any document related to Elk Highlands covenants or regulations. This would double the amount of homes within Elk Highlands and place them on comparatively small lots in a condensed manner out of character with the remaining development. It has not been defined whether these homes would adhere to the current covenants or pay HOA dues. Building 34 homes, would result in near endless construction traffic on our current road, Elk Highlands Drive. The maintenance of Elk Highlands Drive is the responsibility of the HOA. This development would cut the current ski access trail at the top of the hill down to Elk Highlands residents, a key feature for the Elk Highlands neighborhood.

The developers, who also developed Elk Highlands, have requested this action concurrent with their decision to prematurely turn over the running of the Elk Highlands HOA to the owners. As previously stated, this would put a comparatively high density development in a very prominent place within the current Elk Highlands development without ever alerting the current owners of this intent and lowering the value of the lots they have been selling for the last ten years.

Wes and Marie Reynolds

Wendy Compton-Ring

From: Jay Johnston <jjohnston@lifetouch.com>
Sent: Friday, March 28, 2014 7:25 AM
To: wcompton-ring@cityofwhitefish.org
Cc: Bob Howard; Steve Cosby; AAA
Subject: Fwd: Fwd: Extension of Wapiti Woods

March 27 2014

To: Whitefish City Council Members
PO Box 158
Whitefish, MT.59937

From: Jay & Sheila Johnston
121 Elk Highlands Dr
Whitefish, MT.59937

Re: Wapiti Woods Preliminary Plat Extension

Dear Council Members,

We are owners of lot 20, in Elk Highlands, street address listed above. We plan to begin our new home build in April of 2015 with an experienced, local, home building expert. While we are in favor of well planned and managed developments, we do have concerns that, as far as we are aware, have not been decided upon or finalized regarding the Wapiti Woods extension request. We would like it to be put on record that we know of four (4) key areas of concern that should be addressed and resolution brought forth prior to the extension being granted:

- 1) It is our understanding that currently the Elk Highlands Lift operation and trail grooming expenses for skiers who use this lift, are paid for by the owners of Elk Highlands and Northern Lights North. This lift and groomed trails would also be needed to service the Wapiti Woods residences and thus should be a shared cost with the Elk Highlands and Northern Lights Owners. This should be addressed and finalized prior to an extension is approved.
- 2) Road usage and access is a concern. I am unable to determine from the drawings, how access for vehicles to Wapiti Woods is accomplished. I would be concerned, and opposed, if the road access is to be via Elk Highlands Road, which is maintained by the owners of Elk Highlands.
- 3) Ski trail usage. Skier access is critical for Owners of Elk Highlands. Currently, safe, accessible, maintained ski access is provided and in place from top of the Elk Highlands lift to the bottom of the lift. This access has two road crossings that are safe (bridge and tunnel) for traditional skiers, snowboarders and adaptive skiers use. An adaptive (handicapped wheelchair bound) skier can use the trail from top to bottom without equipment removal or need of a wheelchair to cross roadways. If, as is shown in the preliminary drawings, a new road is

put into place (currently called Ridge Run Drive on the Plat) any interference with the current ski trail via a road crossing should be required to have a bridge or tunnel provided. The bridge or tunnel should accommodate current snow cat equipment owned by the mountain to maintain a safe ski surface, without having to cross roadways.

4) The Wapiti Woods proposal creates smaller, denser and presumably lower cost properties with similar views as phases 1 & 2. This effect could encroach on the lifestyles of those who have, or will have, chosen to live in Elk Highlands. It could also increase traffic flow in an area not designed for added traffic. It also could create greater risks by a sheer numbers increase, the impediment of governance agreed to by those living in the current developments with Whitefish City Council today. It will likely affect values in Phases 1 and 2 on a negative side.

We are 4 months away from beginning to establish our new residence in the great state of Montana. I am sorry that we can not personally attend this important meeting and appreciate in advance your sharing and taking into concern our views.

Respectfully,

Jay & Sheila Johnston

Jay Johnston | Director, Business Development | Lifetouch National School Studios Inc.
11000 Viking Drive | Eden Prairie, MN 55344
jjohnston@lifetouch.com | 952.826.4401 (o) | 612.251.4896 (c) | 952.826.4833 (f)



Wendy Compton-Ring

From: Rhona <devonshiregardens@hotmail.com>
Sent: Saturday, March 29, 2014 9:28 AM
To: wcompton-ring@cityofwhitefish.org
Subject: Wapiti Ridge Subdivision
Attachments: Wapiti.doc

Dear Wendy

Thanks so much for meeting with us. We are enclosing our comments on the proposed extension of the Wapiti Ridge Plat. I have written it in this e-mail as well as attaching it separately as I did not know which would be easier for you to put in the packet.

Please let us know that you received this in time for it to be enclosed in the packet. Also let me know how we can access the packet in advance of the meeting.

Sincerely

Jerry & Rhona Meislik

TO: Wendy Compton Ring
City of Whitefish
Planning Department

From: Jerry & Rhona Meislik
161 Ridge Run Drive
Whitefish, MT 59937
Residents of Sunrise Ridge Subdivision

Subject: Wapiti Wood Plat Extension

We would like to voice our concerns with the proposed extension of the Wapiti Woods Plat Extension. This was originally approved in 2009 and then extended in 2012. Since the time of the original approval and extension a number of items are of great concern to us.

- 1. The private Ridge Run Drive road of the Sunrise Ridge development needs to be kept closed.** This is a private road that the Sunrise Ridge subdivision installed and maintains. It is not part of the Elk Highlands Development. Our concerns are with that of increased traffic, road wear, parking violations etc. With the road needing to be kept plowed for emergency services Wapiti homeowners association will need to arrange and deal with their snowplow people to keep the gate closed at all times other than the brief moments to plow the road. Any additional costs in maintaining the gate and it's opening and closing for plowing need to be borne by Wapiti. In the past a contractor in Elk Highlands actually came down that road and smashed the gate for easier access.
- 2. Lot sizes are basically .1-.2 acre.** These lots are less than half the size of existing and directly adjoining surrounding neighborhoods of Sunrise Ridge, Elk Highlands, Northern Lights and Northern Lights II. We believe that this is out of character with the area. The density of development has

already forced changes in the proposed road construction and will necessitate removing most of the trees from this naturally wooded area and likely leave pretty much nothing but homes, and garages.

3. Very steep land grades and contours on some of this property are a concern. The current black top roadway is already showing very significant cracking and movement down the slope along its length near the junction with Elk Highlands and Northern Lights drive. Many of the lots have very small level building envelopes and just the construction could create serious problems downhill. Where will they put the soil, etc. during construction and where will they put the snow in the winter.

4. Area above Home Again Trail. Some of this development and especially its **main road** lies above the Home Again ski trail so snow control, erosion and snow handling are of concern. Avalanche propagation down to the trail is problematic.

5. A proposed community center for all of Wapiti Ridge and Elk Highlands will create a parking and traffic logistics nightmare. There is an area that is labeled for the community center but there is no footprint so there is no way to know how large it will be. According to the map only 10 or 12 parking spots are shown for the clubhouse. This seems totally inadequate for the size of the development and the associated properties that will be using it.

Wendy Compton-Ring

From: james.stroud@ubs.com
Sent: Sunday, March 30, 2014 5:22 PM
To: wcompton-ring@cityofwhitefish.org
Subject: FW: Wapiti Wood Plat
Attachments: disclaim.txt

Dear Wendy and committee members,

I have been a homeowner up on Big Mountain since 2000. First I was in Wood Run and in 2011 I purchased land and built a new home in Sunrise ridge. I was never ask for comments on Wapiti Wood Plat in 2009 but if so I would of vociferously opposed it. I have reviewed the Plat in detail now and I am aghast that this was ever approved in the first place. As a sunrise ridge homeowner I now officially voice my opposition to this plan my reasons are six fold.

1. It will destroy beautiful green-space.

As this plan is currently drawn I see no way there will be any trees left in this currently beautifully wooded space. This destroys the natural beauty of the area as well as habitat for animals like Elk, mountain lions, deer etc. This entire plan reminds me of the Joni Mitchell song... "They paved paradise and put up a parking lot! "This is going to look like the it was practically strip mined. Our homes up here now are spaced in a way that preserves the beauty around us and keeping the population density low. This plan does not even come close to the nature and lifestyle intent of Sunrise ridge, elk highlands or Northern Lights.

2. It will dilute the value of properties already here in Sunrise ridge, Elk Highlands, Northern Lights and the density is totally out of character with the existing homes in the area. The density of the homes and population of this plat is more in character with town homes and condos down in the mountain village, yet many of these properties are left unsold because of very low demand. Most homes in our subdivisions surrounding areas have lots from 1/2 to 2 acres and have homes in value from 1 million to as high as 5 million. On lots of .15 to .30 of an acre with setbacks there is no way to build homes of comparable sizes, much less value. The congestion up there will be awful. How would you like to have a home built on a lot one tenth your size right next to you and one tenth your value?

3. The area as drawn will be next to impossible for logistics should a Fire occur. Also the adjacent private subdivisions will be taxed with additional traffic going in and out for construction, snow removal, emergencies and is going to create noise and congestion that all of us homeowners up here have built here specifically to avoid this!!!! If we wanted this much congestion, density and paved area we would have built down in the mountain village for a lot less money. If this is approved it will make our property much less valuable.

4. The steep grades will cause real difficulty in construction and potential for snow removal and is likely to tax the current access roads already strained capabilities. The road as it stands now is showing signs of cracking due to erosion from the grades and runoff. I see no way existing driveways could be built to the existing grade restrictions. One heavy rain in the spring is liable to wipe out and destroy potential roads or homes. This should

be left alone to nature. We have already had one major driveway slide in Sunrise ridge into the the ski access trail on to other homeowners properties and if anyone was there at the time of the slide could of proved fatal. This also happened where the builder attempted to do put too much house and driveway on a skinny lot! Sound familiar? Furthermore IT TOOK MONTHS TO CORRECT IT! The slopes here are much worse than the Gundersons driveway that collapsed due to a heavy spring rain. The current disaster in Washington state should bring great pause here.

6. There is NO demand for this development as existing small homes,condo's town homes on the mountain now as prices continue to be soft and units left unsold. This creates an eyesore and makes the entire area look economically weak. The last thing we want as homeowners is an adjacent development of small homes right next to us left unsold. If they are not selling in the mountain village, why would sell up here for even higher prices?

I have no problem with Mr Penaluna wanting to develop his property. However he should present a new proposal that is in keeping with the spirit of the original elk highlands development. That is ...much more size able lots and a low density of population. This would help insure the value of our properties and not overtax the adjacent areas logistics because of lower density. This would also keep more green-space up here The current plan will do nothing but destroy it. IT SHOULD BE REJECTED AS IS.

Sincerely

James Stroud

P.S. I am flying back all the way from Ohio to voice my opposition to this in person.

Wendy Compton-Ring

From: Paul Okerberg <paulokerberg@bellsouth.net>
Sent: Monday, March 31, 2014 11:31 AM
To: Wendy Compton-Ring
Subject: Wapiti Woods

Wendy,

With respect to the proposed development at Wapiti Woods on Big Mountain:

In addition to Big Mountain Homeowner's Association being **opposed** to a year round emergency egress road into Sunrise Ridge from Wapiti Woods, please revise the proposed plat of Wapiti Woods so that Ridge Run Drive is not shown extending into the proposed development. Having Ridge Run Drive shown as a named road in Wapiti Woods might confuse emergency response personnel in the event of an emergency if the area is eventually developed.

Thank you,

Paul Okerberg
President
Big Mountain Homeowner's Association

Wendy Compton-Ring

From: Paul Okerberg <paulokerberg@bellsouth.net>
Sent: Monday, March 31, 2014 3:47 PM
To: Wendy Compton-Ring
Subject: Wapiti Woods Comments

James Wheat lives adjacent to the proposed Wapiti Woods development on Ridge Top Drive. He did not receive a public notice and should have as he is the closest property owner to the proposed development. Mr. Wheat offered these concerns:

On Mon, Mar 31, 2014 at 9:45 AM, James

Wheat <jcw3vamt@comcast.net> wrote:

Paul, I don't know why I haven't been aware of this until now.

My concerns/objections would be:

Only emergency use of Ridge Run drive for them, no access, no construction use,

Who is going to pay for the additional plowing to the gate & through to Elk Highlands.

They are going to destroy acres of huckleberry bushes. hence what about concerns for bears etc,

It looks like they are going to change the road configuration. How does that affect our ability to ski home if lift is closed?

MULLEN (sp?) When they first started work in there they disturbed soil & mullen are all over the place. There should be a requirement that they control all noxious weeds during and after construction, including homesites, until native plants are established. It may take years but I have been doing it every year around my place mostly because they spread easily.

Are these concerns that can be voiced by the HOA?.

Do I need to do anything else?

Thanks Jimmy

Paul Okerberg

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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-3 to identify private postal services and shipping services as a conditional use in the Secondary Business District (WB-2).

WHEREAS, the City of Whitefish initiated an effort to define and identify "business services" as a permitted use in the Secondary Business District (WB-2), and amend the definition of personal services and professional services in Section 11-9-2 of the Whitefish City Code; and

WHEREAS, in response to the proposal to amend WB-2 Secondary Business District and Section 11-9-2 of 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 comment, and thereafter voted to direct staff to come back to the next City Council meeting with an option for shipping and packaging services as a conditional use in the WB-2 District; and

WHEREAS, at a lawfully noticed public hearing on March 17, 2014, the Whitefish City Council received an oral report from Planning staff, reviewed the proposed findings of fact, invited public comment, and thereafter voted to table the proposed text amendment until the next meeting; and

WHEREAS, at a lawfully notice public hearing on April 7, 2014, the Whitefish City Council received an oral report from Planning staff, reviewed the addendum to Staff Report WTZA 14-03 dated April 1, 2014, invited public comment and thereafter voted to approve the proposed text amendment and staff report and addendum as findings of fact; and

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

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 and its Addendum, dated April 1, 2014, are hereby adopted as Findings of Fact.

Section 3: An amendment to Whitefish City Code WB-2 Secondary Business District, Conditional Uses, Section 11-2K-3, as provided below, with the insertion shown underlined, is hereby adopted:

- Private postal services and shipping services.

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

**ADDENDUM to STAFF REPORT WTZA 14-03
PROPOSED CODE AMENDMENT
TITLE 11, CHAPTER 2K: SECONDARY BUSINESS DISTRICT
April 1, 2014**

This is an addendum to staff report WZTA 14-03 to the Whitefish City Council amending the conditional uses in the Secondary Business District (WB-2). The City Council hearing is scheduled on **April 7, 2014**.

BACKGROUND:

The Planning Board held a public hearing on February 20, 2014 and recommended approval of a text amendment to add 'business services' to the WB-2 list of permitted uses along with a definition for 'business services'.

At the City Council meeting on March 3, 2014, the Council did not recommend approval of a new definition of 'business services' nor add it as a permitted use to the WB-2 (Secondary Business District). Instead the Council directed staff to come back to the March 17th meeting 'with an alternative option for shipping and packaging services as a conditional use in the WB-2 zone.'

At the City Council meeting on March 17, 2014, the Council tabled the text amendment for 'shipping and packaging services' as a conditional use in the WB-2. The Council directed staff to develop more robust findings in order to support the text amendment and change the use to 'private postal services and shipping services' to be consistent with other areas of the zoning regulations.

COUNCIL PROPOSAL:

Add the following conditional use to §11-2K-3:

- Private postal services and shipping services.

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 §11-7-12E.

1. *Zoning Regulations Must Be:*
 - a. *Made in Accordance with a Growth Policy*

The Whitefish City-County Growth Policy was adopted in 2007 and addresses many aspects of development and growth in our community. The proposed text amendment is within the WB-2 zoning designation which is consistent with the General/Highway Commercial land use designation. The General/Highway Commercial land use designation is described as:

“Generally applied to the Hwy 93 corridor north of the Highway 40 intersection, this designation is defined by auto-oriented commercial and service uses. Specific land uses include retail, restaurants of all types and quality ranges (including those with drive-up facilities), professional offices, auto sales and services, hotels/motels, supermarkets, shopping centers or clusters, and convenience shopping, including the dispensing of motor fuels. Primary access is by automobile with ample parking provided on site. Development sites are properly landscaped to screen parking and drive areas and to provide a high-quality visual image. Zoning is generally WB-2, but higher density residential with WR-3 zoning, and mixed use development may also be appropriate in this area.”

A ‘private postal services and shipping services’ use is an auto-oriented service use with primary access by automobile and parking provided on-site.

Many of the goals and policies outlined in the Growth Policy support the proposed text amendment, specifically the following:

Land Use:

5. Protect and preserve the special character, scale, and qualities of existing neighborhoods while supporting and encouraging attractive, well-designed, neighborhood compatible infill development.

7. Plan for healthy, efficient, and visually attractive corridors along major transportation routes through the community.

Economic Development:

3. Seek ways to diversify the local base economy with compatible business and industries such that the character and qualities of Whitefish are protected

The ‘private postal services and shipped services’ use fits the character and quality of the WB-2 neighborhood. The use fits nicely along the highway corridor, as it is an auto-oriented land use and it will diversify the economy by providing another service within the community.

Finding 1: The proposed amendment is in accordance with the Growth Policy because the Growth Policy provides a definition for the General/Highway Commercial that supports services that are auto-oriented, uses that are primarily accessed by automobiles, it promotes a diversification of the economy, and it promotes uses that preserve the character of the neighborhood.

b. Designed to:

i. Secure safety from fire and other dangers

This particular criterion is specific to lot development and this code amendment is a legislative matter that would apply to the entire WB-2 zoning district. The review of securing the public from fire and other dangers is reviewed either at the time of building permit and/or subdivision.

Finding 2: The proposed code amendment is unrelated to securing safety from fire and other dangers because it is legislative request and not a site specific request.

ii. Promote public health, public safety and general welfare

This particular criterion is specific to lot development and this code amendment is a legislative matter that would apply to the entire WB-2 zoning district. The review of public health, public safety and general welfare is mostly reviewed either at the time of building permit and/or subdivision – through the building code and/or other development standards.

The proposed use promotes general welfare by adding a compatible use within the WB-2 zoning district.

Finding 3: The proposed code amendment promotes public health, public safety and general welfare because it is providing an additional compatible use within the zoning district.

iii. Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements

This particular criterion is specific to lot development and this code amendment is a legislative matter that would apply to the entire WB-2 zoning district. The review of transportation, water, sewer, schools, parks and other requirements is completed either at the time of building permit and/or subdivision.

Finding 4: The proposed code amendment has no impact on the adequate provision of transportation, water, sewerage, schools, parks and other public requirements because it is legislative request and not a site specific request.

2. *In the adoption of zoning regulations, the city shall consider:*
 - a. *Reasonable provision of adequate light and air*

This particular criterion is specific to lot development and this code amendment is a legislative matter that would apply to the entire WB-2 zoning district. The review of reasonable provision of adequate light and air is completed at the time of building permit.

Finding 5: The proposed code amendment is unrelated to reasonable provisions of adequate light and air because it is legislative request and not a site specific request.

b. The effect on motorized and nonmotorized transportation systems

This particular criterion is specific to lot development and this code amendment is a legislative matter that would apply to the entire WB-2 zoning district. The review of effects on motorized and nonmotorized transportation systems are evaluated at the time of building permit and/or subdivision.

Finding 6: The proposed code amendment has no impact on motorized and nonmotorized transportation systems because it is legislative request and not a site specific request.

c. Promotion of compatible urban growth

The purpose and intent of the WB-2 zoning district states the following:

“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.”

The ‘private postal services and shipping services’ use is a service that has a need for parking areas and proximity to highways or arterials streets. The proposed use promotes compatible urban growth.

Finding 7: The proposed code amendment promotes compatible urban growth because it implements the purpose and intent of the WB-2 zoning district.

d. The character of the district and its particular suitability of the property for the particular uses

The character of the district is auto-oriented, as described above in the purpose and intent of the WB-2 zoning district and ‘private postal services and shipping services’ is a use that is suitable for the character of the district.

The particular suitability of the property for the particular use portion of the criterion is specific to lot development and this code amendment is a legislative matter that would apply to the entire WB-2 zoning district. This review would either occur during the time of a zoning compliance permit, a business license or other land use review and not at the time of the legislative action.

Finding 8: The proposed code amendment is suitable to the character of the district because it is an auto-oriented service within an auto-oriented zoning district. The proposed code amendment is not related to the particular suitability of the property for the particular use because this portion of the criterion pertains more to site development than community wide zoning regulations and is not applicable to this code amendment.

- e. *Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area; and*

Finding 9: The proposed code amendment does not affect the value of buildings because it is legislative request and not a site specific request.

- 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: The proposed code amendment does not affect historical uses and established use patterns and recent changes in use trends because it is legislative request and not a site specific request.

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.

Finding 14: Whereas, the City-County Planning Board held a public hearing on February 20, 2014 and recommended approval of adding 'business services' to as a permitted use in the WB-2 zone and added a definition of 'business services' in the zoning regulations.

Finding 15: Whereas, the Council at the March 3, 2014 public hearing directed the staff to create a 'shipping and packaging services' use to be a Conditional Use within the WB-2 (Secondary Business District).

Finding 16: Whereas, the Council, at the March 17, 2014, public hearing directed staff to develop more robust findings and amend the proposed

Conditional Use to 'private postal services and shipping services' in order to be more consistent with other zoning districts.

RECOMMENDATION:

We find it is in the best interest of the City of Whitefish to amend the Secondary Business District (WB-2) to add 'private postal services and shipping services' as a conditional use.

Chuck Stearns

From: Necile Lorang <nlorang@cityofwhitefish.org>
Sent: Tuesday, April 01, 2014 8:16 AM
To: cstearns@cityofwhitefish.org; Wendy Compton-Ring
Subject: Fwd: UPS Store Zoining Issue

----- Original Message -----

Subject: UPS Store Zoining Issue
Date: Mon, 31 Mar 2014 18:11:23 -0700 (PDT)
From: Chuck Martin <cbmartin00@yahoo.com>
Reply-To: Chuck Martin <cbmartin00@yahoo.com>
To: nlorang@cityofwhitefish.org <nlorang@cityofwhitefish.org>

The purpose of this communication is to support creating a new definition of business services and add it to the permitted use in the WB-2.

I understand the council's concern of zoning and permitting from a broader view. I also urge Council to take a broader view as it relates to small business and the local economy. In my opinion, this simple decision to permit the UPS store to operate in their new location has taken an inordinate amount of time and energy that could be applied to more productive council actions.

Thank you.

Chuck Martin
358 Dakota Ave
Whitefish, MT
406-862-4090
cbmartin00@yahoo.com

Reply-To:brownwfshmt@yahoo.com

To:nlorang@cityofwhitefish.org <nlorang@cityofwhitefish.org>, store2029@theupsstore.com
<store2029@theupsstore.com>

Whitefish City Council

I have been doing business with the Whitefish UPS Store for over 10 years. For our convenience, we receive all of our mail there and we use them for sending over-night shipments of documents and materials.

I consider the UPS Store to be a BUSINESS SERVICE provider and NOT to be a RETAIL STORE per se. Their customers very seldom go there to purchase any merchandise but rather to seek their services. Just today, I sent an over-night package out of state which needed to arrive in Florida by Weds. March 5. I don't know of any other place in Whitefish, where I could send periodic shipments of this type. I, therefore, consider them to be a BUSINESS SERVICE provider and definitely NOT A RETAIL STORE.

Please consider the above in your zoning decision tonight.

Harry Brown
704C West 13th St.
Whitefish, MT 59937

Wendy Compton-Ring

From: Necile Lorang <nlorang@cityofwhitefish.org>
Sent: Monday, March 17, 2014 4:20 PM
To: David Taylor; Wendy Compton-Ring; cstearns@cityofwhitefish.org
Subject: Fwd: Re: UPS Store zoning

Another letter that I will copy and take over -
Necile

----- Original Message -----

Subject:Re: UPS Store zoning
Date:Mon, 17 Mar 2014 15:36:21 -0600
From:Pete and Deb Forthofer <petedebforthofer@gmail.com>
To:nlorang@cityofwhitefish.org

As residents of Whitefish & business owners, we urge city council members to approve the zoning request of the UPS Store. It makes no sense that moving a few hundred yards down the street to what we feel is a better location for this business would not be allowed. UPS Store provides invaluable services for BUSINESSES, along with tourists & residents of our town. Use common sense and stop making our city the enemy of good, clean & necessary businesses.

Pete & Deb Forthofer
5535 Hwy. 93 South
Whitefish, MT

received
3/17/14

Subject: compliance UPS store
From: Debbie Biolo (debbiebski@yahoo.com)
To: nlorang@cityofwhitefish.org;
Date: Monday, March 17, 2014 12:56 PM

Dear City Council Members:

I am writing to urge you to vote for the change needed for the UPS store to receive its business license that is on hold and meet their zoning compliance needs with the city. Due to their moving into the building that developer understood was approved with no indication from the city of zoning issues, this small business owner is in jeopardy and in need of the cooperation of city officials, not threats of withheld license and threats of the city pursuing zoning violations. The city knew when it's Senior Planner "signed off" for the building permit that UPS was the first new business to move into the building.

The newspaper reporting states that the city has allowed "business services" to operate in the WB-2 over the years. There is no reason for this business owner to be treated any differently. There is no negative to be found in public safety or any other adverse affects to the community by allowing UPS to be a compliant tenant.

There will be great adverse affects to the small family business who have invested in the move in good faith if the city acts unreasonably towards them.

Please use this instance to reconsider how absurd many of your ordinances and restrictions are to the community and its many small businesses. As you strive to "narrow" and restrict opportunities for business people in Whitefish people are getting trampled in ridiculous examples like this one where UPS is not "technically accurate" to function next door to Verizon.

This small business is not in the wrong, the ordinances are in the wrong and need to be reconsidered in the light of expanding business opportunities and health to our community, not narrowing and limiting with ridiculous examples like this one.

Please do the right thing in light of these circumstances that UPS has found themselves in through no wrong doing of their own, and give them the support that any business would hope for from their city officials.

I appreciate the opportunity to have citizen's input considered in your decision making.
Sincerely,
Debbie Biolo
Whitefish resident

I

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



March 11, 2014

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

Re: Zoning Text Amendment – Business Services: WZTA 14-03 – Tabled from March 4, 2014 Council Meeting

Honorable Mayor and Council:

Background:

At the City Council meeting on March 3, 2014, the Council did not recommend approval of a new definition of 'Business Services' nor add it as a permitted use the WB-2 (Secondary Business District). Instead the Council directed staff to come back to the March 17th meeting 'with an alternative option for shipping and packaging services as a conditional use in the WB-2 zone.'

The Council identified concerns including adding a broad range of uses to the WB-2 that would include more than just shipping and packaging services. The Council was interested in focusing the amendment to address the shipping and packaging services and not include an expanded definition of multiple 'Business Services' uses. The minutes are attached.

Council Recommendation:

The attached find the draft ordinance, within the Conditional Uses (11-2K-3):

- Shipping and packaging services

Staff Analysis:

A conditional use by its nature is a use that, unless mitigated, could have a negative impact on the immediate neighborhood. The zoning establishes the review criteria (§11-7-8) and projects are evaluated by the Council to consider traffic implications, impacts on public infrastructure, noise, odor smoke, hours of operation, compatibility within the neighborhood and site suitability. The zoning regulations have the following definition:

§11-9-2 – CONDITIONAL USE: Those uses requiring the granting of a conditional use permit. Because of characteristics peculiar to the uses, or

because of the size, technological processes or equipment, or because of the exact location with reference to surroundings, streets and existing improvements or demands upon public facilities, these uses require a special degree of control to make such uses consistent with and compatible to other existing or permissible uses in the same area.
(emphasis added)

The WB-2 has the following permitted uses (§11-2K-2):

- Antique stores and auction barns.
- Automobile, boat, and recreational vehicle sales, rentals, parts, repair and service.
- Automotive service stations and convenience stores within.
- Bed and breakfast establishments.
- Bowling establishments.
- Building supplies outlets.
- Bus depot.
- Churches or similar places of worship.
- Daycare centers (13 or more individuals).
- Financial institutions and professional services.
- Frozen food lockers, not including slaughtering.
- Furniture and floor coverings stores.
- Grocery stores.
- Hair salons.
- Hospitals, and associated related nursing homes, retirement homes, congregate housing and personal care facilities in a campus setting.
- Hotels, motels, and other hospitality and entertainment uses.
- Household appliance and electronics stores.
- Laundry and dry cleaning.
- Machinery and equipment sales, rental and repair.
- Medical clinics and associated therapeutic health services.
- Military surplus stores.
- Mortuaries and crematories.
- Professional offices.
- Public buildings.
- Recreational facilities, private and commercial.
- Residential:
 - * Caretaker's units.
- Restaurants.
- Seed and grain sales.
- Theaters.
- Vendors.
- Veterinary office, small animal.
- Wholesale and warehousing.

These permitted uses would have similar hours, similar impacts to public services and facilities, similar impacts on the transportation system, etc. as the proposed 'shipping and packaging services' use.

The following is a list of Conditional Uses in the WB-2 (§11-2K-3):

- Accessory apartments.
- Bars/lounges.
- Boat and recreational vehicle storage.
- Casinos within a casino overlay zone.
- Colleges, business and trade schools.
- Light assembly and light manufacturing.
- Manufactured home subdivisions.
- Microbreweries.
- Ministorage.
- Personal care facilities when not in association with a hospital in a campus setting.
- Recreational vehicle parks, campgrounds and amusement parks (2 acres minimum size).
- Truck stops.
- Veterinary hospital.

A review of the list of Conditional Uses shows a pattern of uses with a possible impact on a neighborhood with noise, lack of compatibility, excessive use of public infrastructure, incompatible hours, etc. These conditional uses all deserve extra scrutiny from the community and the Council in a public forum through the Conditional Use Permit process.

Staff Recommendation:

After careful consideration of the Council direction and discussion with the city attorney and zoning administrator, staff recommends the new proposed use be included in the list of 'permitted uses' as opposed to 'conditional uses' so as to be consistent with the rest of the zoning code. 'shipping and packaging services' has no more impacts to the WB-2 zoning district than a grocery store or a professional office nor does it warrant additional scrutiny through the Conditional Use Permit process that the Council typically reviews.

Another item to consider for consistency within the zoning regulations is to use the same term that is already established in the WBSD (Business Service District), 'private postal services and shipping services' instead of 'shipping and packaging services'.

Staff recommends the City Council add the following permitted use to §11-2K-2:

- Private postal services and shipping services.

This item has been placed on the agenda for your regularly scheduled meeting on March 17, 2014. Should Council have questions or need further information on this matter, please contact the Planning & Building Department.

Respectfully,

A handwritten signature in black ink that reads "Wendy Compton-Ring". The signature is written in a cursive, flowing style.

Wendy Compton-Ring, AICP
Senior Planner

Att: Council Transmittal, 3-4-14 Meeting

c: w/att Necile Lorang, City Clerk

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

Subject: zoning compliance
From: "Susan Schnee" <schnee@aboutmontana.net>
Date: 3/3/2014 11:46 AM
To: <nlorang@cityofwhitefish.org>

received
3-3-14

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" <whitefishtoy@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



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 1 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.

Wendy Compton-Ring

From: Necile Lorang <nlorang@cityofwhitefish.org>
Sent: Tuesday, March 04, 2014 1:55 PM
To: Wendy Compton-Ring
Subject: Fwd: WB-3 proposed zoning change

----- Original Message -----

Subject:WB-3 proposed zoning change
Date:Tue, 04 Mar 2014 11:54:24 -0700
From:Crystal Winters <crystalwinters@bresnan.net>
To:nlorang@cityofwhitefish.org

3/4/2014

Dear Whitefish City Council Members,

As yet another attempt is being made to re-zone for a "special interest" may we remind the council of all the time and effort spent on establishing the WB-3 zoning just a few years ago, and the reasons behind those regulations.

We as a small business community need to protect our downtown core. The zoning regulations require a zoning compliance permit, as such any proposed business should be aware of what uses ARE permitted within the zone. To be effective these regulations MUST be enforced as they are written, the plan must be followed if it is to be successful! The City must follow their own regulations or all is lost.

Having been in business in Whitefish for 35 years we can truly appreciate the determination of the city council to maintain our vibrant downtown. Just look at Columbia Falls for example, to see where the downtown has suffered due to lack of zoning protection.

Please reject any piecemeal changes to the WB-3 zoning and stand up for what makes our Whitefish a unique and viable city for small business.

Craig and Susan Drynan
Crystal Winters LLC
232 Central Ave.
Whitefish, MT 59937

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,

A handwritten signature in black ink that reads "Wendy Compton-Ring".

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: DEFINITIONS
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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ORDINANCE NO. 14-_____

An Ordinance of the City Council of the City of Whitefish, Montana, approving a commercial Planned Unit Development Overlay including a conditional use permit and zoning deviations on 4.156 acres of a 5.766 acre parcel at 6340 Highway 93 South to develop a hotel.

WHEREAS, Larry Lambert of Lambert Hotels seeks approval of a commercial Planned Unit Development (PUD) Overlay including a Conditional Use Permit (CUP) and zoning deviations for 4.156 acres of a 5.766 acre parcel at 6340 Highway 93 South (Tract 3ABO in S1, T30N, R22W) for development of a 76-room, 45-foot tall hotel, and 82 off-street parking spaces; and

WHEREAS, the PUD application includes a request for a zoning deviation for a 45-foot building height from the maximum height of 35-feet from the natural grade in the WB-2 zoning district; and

WHEREAS, the PUD application includes a request for a CUP for the proposed 20,030 square foot building in excess of 15,000 square feet in the WB-2 zoning district; and

WHEREAS, in exchange for the zoning deviations, the applicant proposes to provide the dedication of an 80-foot Baker Avenue extension, as planned in the 2007 Whitefish Transportation Plan; and

WHEREAS, in response to the applicant's request, the City Planning and Building Department prepared Staff Report No. WPUD 14-01, dated March 13, 2014, reviewed the proposed PUD, prepared findings, subject to twelve (12) conditions as contained in the staff report, and recommended that the PUD be approved; and

WHEREAS, following adjacent landowner notice, at a lawfully noticed public hearing on March 20, 2014, the Whitefish City-County Planning Board considered the proposed PUD and staff report, received public input, and thereafter unanimously recommended approval of the proposed PUD, subject to twelve (12) conditions of approval, attached as Exhibit "A", and adopted the staff report as findings of fact; and

WHEREAS, at a lawfully noticed public hearing on April 7, 2014, the Whitefish City Council received Staff Report No. WPUD 14-01 and an oral report from staff, received public input, and discussed the proposed PUD, including a CUP and zoning deviations, findings and conditions of approval; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to approve the proposed PUD, CUP and zoning deviations, subject to the conditions of approval; and

WHEREAS, the proposed PUD, CUP and zoning deviations to the WB-2 zoning district, subject to the conditions of approval, will be compatible with and conform to

the Whitefish City-County Growth Policy and the City of Whitefish Zoning Regulations, and will not adversely affect the appropriate development of the community;

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 adopted as Findings of Fact.

Section 2: The City Council hereby approves and adopts as Findings of Fact Staff Report No. WPUD 14-01.

Section 3: The City Council hereby approves the requested commercial Planned Unit Development Overlay, Conditional Use Permit and zoning deviations, for development of a 76-room, 45-foot tall hotel and 82 off-street parking spaces on 4.156 acres of a 5.766 acre parcel at 6340 Highway 93 South (Tract 3ABO in S1, T30N, R22W), subject to the twelve conditions of approval shown on Exhibit "A", attached hereto and incorporated herein by reference.

Section 4: The Zoning Administrator is authorized and directed to amend the official zoning map to carry out the terms of this Ordinance.

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, ON THIS _____ DAY OF _____, 2014.

John M. Muhlfeld, Mayor

ATTEST:

Necile Lorang, City Clerk

Exhibit "A" to Ordinance No. 14-___
Conditions of Approval

1. Except as amended by these conditions, the development of the planned unit development shall be in substantial conformance with the approved site plan and elevations that govern the general location of buildings, landscaping, building height and improvements and labeled as "approved plans" by the City Council.
2. Prior to any ground disturbing activities, a plan shall be submitted for review and approval by the City of Whitefish Planning Department. The plan shall include, but may not necessarily be limited to, the following:
 - Dust abatement and control of fugitive dust.
 - Hours of construction activity.
 - Noise abatement.
 - Control of erosion and siltation.
 - Routing for heavy equipment, hauling, and employees, including signage to direct equipment and workers.
 - Construction office siting, staging areas for material and vehicles, and employee parking.
 - Measures to prevent soil and construction debris from being tracked onto public road, including procedures remove soil and construction debris from road as necessary.
 - Detours of vehicular, pedestrian, and bicycle traffic as necessary.
 - Notation of any street closures or need to work in public right-of-way. (Engineering Standards, Appendix K)
3. Prior to any construction, excavation, grading or other terrain disturbance, plans for all on and off-site infrastructure shall be submitted to and approved by the Whitefish Public Works Department. The improvements (water, sewer, roads, street lights, sidewalks, etc.) within the development shall be designed and constructed by a licensed engineer and in accordance with the City of Whitefish's design and construction standards. The Public Works Director shall approve the design prior to construction. Plans for grading, drainage, utilities, sidewalks and other improvements shall be submitted as a package and reviewed concurrently. No individual improvement designs shall be accepted by Public Works. (Engineering Standards, Chapter 1)
4. All areas disturbed because of road and utility construction shall be re-seeded as soon as practical to inhibit erosion and spread of noxious weeds. (Engineering Standards, Chapter 7)
5. The site and building shall meet all Fire Department standards for hydrants, access and the building itself. (IFC)

6. All 'big box' site design standards shall be met with this project including: parking lot landscaping, pedestrian lanes, bicycle parking, SNOW bus stop, if needed, and screening service, loading and refuse areas. (Finding 5, §3.8.1, Architectural Review Standards)
7. All 'big box' building design standards shall be met with this project including: building equipment, blank wall limitations, use of materials and entryways. (Finding 5, §3.8.2, Architectural Review Standards)
8. Architectural review and approval shall be obtained prior to submitting an application for a building permit. (§11-3-3B, WCC)
9. A parking plan shall be submitted that meets the parking requirements "1 space per guestroom or suite; plus 1 space for every 2 employees per maximum shift". (§11-6-2B, WCC)
10. Any further development of this lot shall require an amended PUD permit. Future site plans shall carefully integrate existing healthy trees.
11. An 80-foot right-of-way for Baker Avenue extension in a location identified by the Public Works Director shall be dedicated to the City of Whitefish prior to submitting a building permit application.
12. This approval is valid for three years from the date of City Council approval. (§11-2S-9C, WCC)

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



April 1, 2014

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

RE: Hampton Inn and Suites (WPUD 14-01)

Honorable Mayor and Council:

Summary of Requested Action: Larry Lambert, on behalf of Lambert Hotels, is requesting a planned unit development (PUD) and a conditional use permit (CUP) in order to develop a hotel at 6340 Highway 93 S. The three-story hotel is proposed to have 76 rooms with 82 on-site parking spaces. The project consists of one parcel with two zoning designations. The eastern half is WB-2 (Secondary Business District) and western half is WLR (One-Family Limited Residential District). There are two Growth Policy designations on the project. The eastern half is General Commercial and western half is Suburban Residential.

The applicant is proposing to exceed the maximum building height, blend the zoning designations (described above) to push the WB-2 zone to the eastern edge of the Baker Avenue extension and only overlay the PUD on the portion of property between Highway 93 S and the Baker Avenue extension. In exchange for the building height zoning deviation, the applicant is proposing to dedicate right-of-way through the property to facilitate the future Baker Avenue extension. This right-of-way dedication will connect with the right-of-way recently dedicated by the Dear Tracs subdivision to the north.

Since the footprint of the building exceeds 15,000 square feet, the applicant is also required to obtain a Conditional Use Permit. These requests are being reviewed together, as the review criteria are nearly the same.

No development plans are proposed for the remainder of the property. The applicant has shown a possible future building area behind the hotel, but any future development will require an amended PUD. In addition, the applicant has no immediate plans for the residential property to the west of Baker Avenue, but the applicant doesn't want to encumber the residential property with the PUD overlay.

Planning Board Action: The Whitefish City-County Planning Board held a public hearing on March 20, 2014 to consider the request. Following the hearing, the Planning Board recommended approval of the above referenced PUD/CUP, subject to twelve conditions as contained in the staff report and adopted the staff report as findings of fact (4-1, Phillips voting in opposition; Anderson and Gunderson were absent).

Planning & Building Department Recommendation: Staff recommended approval of the above referenced PUD/CUP subject to twelve (12) conditions of approval set forth in the attached staff report.

Public Hearing: At the public hearing, the applicant spoke on behalf of the project. Also, four members of the public spoke at the hearing. One was in support of the application. The other three had concerns with the requested height of the building, the additional commercial property and the proposed Baker Avenue extension alignment. As proposed, the Baker Avenue right-of-way would cross Park Knoll Lane near the bottom of a hill out of the Park Knoll neighborhood. It was pointed out that the street crossing might be safer if the road was further to the east.

The draft minutes from the March Planning Board meeting are attached as part of this packet. Due to the public comments regarding the future alignment of Baker Avenue extension, staff has included a copy of the South Whitefish Transportation Plan map (adopted 2/2000) and Transportation Plan map (adopted 2/2010)

This item has been placed on the agenda for your regularly scheduled meeting on April 7, 2014. Should Council have questions or need further information on this matter, please contact the Planning Board or the Planning & Building Department.

Respectfully,



Wendy Compton-Ring, AICP
Senior Planner

Att: Exhibit A: Recommended Conditions of Approval
Minutes, draft, City-County Planning Board, 3-20-14

Exhibits from 3-20-14 Staff Packet

1. Staff Report – WPUD 14-01, 3-13-14
2. Adjacent Landowner Notice, 2-28-14
3. Advisory Agency Notice, 2-28-14
4. Application for Planned Unit Development, 2-3-14

c: w/att Necile Lorang, City Clerk

c: w/o att Larry Lambert, Lambert Hotels, 4965 Jaiden Lane Missoula, MT 59803

Marc Liechti, APEC Engineering, 111 Legend Trail Kalispell, MT 59901

Exhibit A
HAMPTON INN and SUITES
WPUD 14-01
Whitefish City-County Planning Board
Recommended Conditions of Approval
March 20, 2014

1. Except as amended by these conditions, the development of the planned unit development shall be in substantial conformance with the approved site plan and elevations that govern the general location of buildings, landscaping, building height and improvements and labeled as “approved plans” by the City Council.

2. Prior to any ground disturbing activities, a plan shall be submitted for review and approval by the City of Whitefish Planning Department. The plan shall include, but may not necessarily be limited to, the following:
 - Dust abatement and control of fugitive dust.
 - Hours of construction activity.
 - Noise abatement.
 - Control of erosion and siltation.
 - Routing for heavy equipment, hauling, and employees, including signage to direct equipment and workers.
 - Construction office siting, staging areas for material and vehicles, and employee parking.
 - Measures to prevent soil and construction debris from being tracked onto public road, including procedures remove soil and construction debris from road as necessary.
 - Detours of vehicular, pedestrian, and bicycle traffic as necessary.
 - Notation of any street closures or need to work in public right-of-way. (Engineering Standards, Appendix K)

3. Prior to any construction, excavation, grading or other terrain disturbance, plans for all on and off-site infrastructure shall be submitted to and approved by the Whitefish Public Works Department. The improvements (water, sewer, roads, street lights, sidewalks, etc.) within the development shall be designed and constructed by a licensed engineer and in accordance with the City of Whitefish’s design and construction standards. The Public Works Director shall approve the design prior to construction. Plans for grading, drainage, utilities, sidewalks and other improvements shall be submitted as a package and reviewed concurrently. No individual improvement designs shall be accepted by Public Works. (Engineering Standards, Chapter 1)

4. All areas disturbed because of road and utility construction shall be re-seeded as soon as practical to inhibit erosion and spread of noxious weeds. (Engineering Standards, Chapter 7)

5. The site and building shall meet all Fire Department standards for hydrants, access and the building itself. (IFC)
6. All 'big box' site design standards shall be met with this project including: parking lot landscaping, pedestrian lanes, bicycle parking, SNOW bus stop, if needed, and screening service, loading and refuse areas. (Finding 5, §3.8.1, Arch Review Stds.)
7. All 'big box' building design standards shall be met with this project including: building equipment, blank wall limitations, use of materials and entryways. (Finding 5, §3.8.2, Arch Review Stds.)
8. Architectural review and approval shall be obtained prior to submitting an application for a building permit. (§11-3-3B)
9. A parking plan shall be submitted that meets the parking requirements "1 space per guest room or suite plus 1 space for every 2 employees per maximum shift." (§11-6-2B)
10. Any further development of this lot shall require an amended PUD permit. Future site plans shall carefully integrate existing healthy trees.
11. An 80-foot right-of-way for Baker Avenue extension in a location identified by the Public Works Director shall be dedicated to the City of Whitefish prior to submitting a building permit application.
12. This approval is valid for 3-years from the date of City Council approval. (§11-2S-9C)

received
4-1-14

April 1, 2014

Memo to: Whitefish City Council

From: Park Knoll Estates Homeowners Association

Subject: Comments on Planned Unit Development WPUD 14-01

Council members and staff,

On behalf of the Park Knoll Estates Home Owners Association, (HOA), I would address the following two items:

1. The HOA has no problem with the proposed hotel per se.
2. However, the HOA does have and has had for several years a problem with the location of the proposed Baker Ave. extension right of way location.

Some background information:

1. Park Knoll Estates was developed in the mid-80's. Park Knoll Lane is a private road into the subdivision and is owned and maintained by the HOA.
2. The requirement for a Baker Ave. extension has been known at least as far back as the early 90's. At that time, in revising the Master Plan, the Planning Board attempted to include a Baker Ave. extension south from 19th St., however there was not the political will to do so at that time..
3. In late 1999 the Baker Ave. extension resurfaced in the South Whitefish Neighborhood Plan, adopted in February, 2000. That plan did attempt to define the route of the Baker Ave. extension. Although not personally involved, I have not found anyone happy with the compromise route selected. For better or worse, that route has influenced the current dilemma.
4. In 2007 the Whitefish Transportation Plan was adopted. It, again, identified the need to extend Baker Ave. south to JP Road as an urban arterial. As a member of the Citizen's Advisory Committee for that project, I unsuccessfully attempted to have the consultant reexamine and identify the route for that extension.
5. In 2011/2012 the Dear Tracs Subdivision was proposed (property north of Wendy's extending from US 93 to the eastern boundary of the Park Knoll Estates Subdivision). As a condition of approval, Dear Tracs was required to deed an 80 foot right of way for the Baker Ave. extension. Both the HOA and Dear Tracs argued unsuccessfully to have it moved to the zoning boundary between commercial and residential zoning. Instead, it was required to roughly correspond to the South Whitefish Neighborhood Plan.
6. In today's proposal there is a requirement to deed an 80 ft. right of way extending south across the proposed PUD property. Again, the HOA objects to the proposed location.

Why is the HOA concerned?

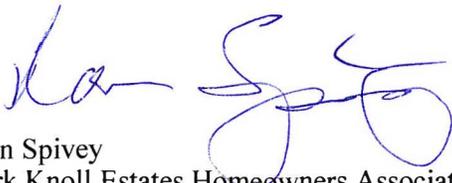
1. The HOA supports the extension of Baker Ave. south, but cannot support an intersection with our private road that is dangerous for travelers on both Baker and Park Knoll Lane. The current projected extension does just that, as it intersects Baker at the base of a steep pitch on our road, which, in the winter, becomes icy even though we plow the road regularly. Drivers traveling out of our subdivision toward US 93 will often not be able to safely stop at the base of that steep pitch.
2. There is a solution to this problem that the HOA has lobbied for, but has yet to convince the City to adopt. We have repeatedly proposed that the extension of Baker be located along the boundary between commercial and residential zoning in this area. This would create a Park Knoll intersection that is safe for drivers on both roads. Additionally, it would provide secondary access from Baker to the commercial properties along that section of US 93, further mitigating traffic congestion on US 93.

How can we resolve this issue?

1. Put two aspects of this proposed development on hold: (1) the actual location of the required right of way and (2) at this point do not convert the residential land between the hotel parking lot and the projected right of way from residential to commercial zoning. These actions would not prevent the hotel from proceeding if that is your wish, but they would allow the following:
 - a. Reexamination and redefinition the location of the Baker Ave. extension from 19th St. to JP Rd. This would entail updating the South Whitefish Neighborhood Plan, which seems to be driving the current right of way locations. That Plan is 15 yrs old and out of date.
 - b. Consider the design characteristics of an urban arterial as called for in the Transportation Plan (MSN-3). Additionally, factor in the desirability of secondary access to the commercial properties along that route as a means of further mitigating traffic congestion along US 93.
 - c. Alternatively, the requested right of way could be severely angled to the east –a far less desirable solution.

Failure to resolve this issue now, from a HOA perspective, appears to be “kicking the can down the road”, setting up an inevitable confrontation between the HOA with their private road and a developer or the city itself, whenever the need arises to cross Park Knoll Lane. We would urge the city to address this issue at this time before any additional deeded right of ways are required and recorded.

Respectfully,



Don Spivey
Park Knoll Estates Homeowners Association

**WHITEFISH CITY PLANNING BOARD
MINUTES OF MEETING
MARCH 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 and Vic Workman. Greg Gunderson and Zak Anderson were absent. Senior Planner Compton-Ring represented the Whitefish Planning & Building Department.

APPROVAL OF MINUTES

Ellis offered corrections to the minutes under Good and Welfare, and the next paragraph which should be 2014 instead of 2013. Workman offered a correction stating that his name is spelled Vic.

Smith moved and Phillips seconded to approve the February 20, 2014 City minutes of the 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.

LAMBERT PUD REQUEST

A request by Larry Lambert, on behalf of Lambert Hotels, is requesting a commercial Planned Unit Development overlay on 4.156 acres of a 5.766 acre parcel at 6340 Highway 93 S described as Tract 3ABO in S1 T30N R22W. The development will consist of a 45-foot tall 76-room hotel.

**STAFF REPORT WPUD 14-
01**

Planner Compton-Ring reported on a request by Larry Lambert of Lambert Hotels for a Planned Unit Development (PUD) to develop a 76-room Hampton Inn & Suites.

The applicant is proposing a Planned Unit Development to overlay a portion of Tract 3ABO east of the proposed Baker Avenue extension. The applicant is proposing a three story 76-room hotel with 82 off-street parking spaces. The building will be setback from the Highway toward the wider portion of the lot.

An open space area is proposed at the entrance of the project that will also include the stormwater facilities. Landscaped areas are also located around the hotel and within the parking area. In addition, there are sidewalks connecting the hotel to the highway sidewalk system and outdoor patios spaces next to the swimming pool and breakfast area for guest usage.

There are no proposed changes to the Highway 93 S frontage. The existing access will remain in the same location and be incorporated

into the design of the project.

The applicant is proposing to dedicate future Baker Avenue Extension right-of-way through this property, pursuant to the long-range transportation plan. This right-of-way will be an extension of the right-of-way dedicated to the city recently with the Dear TRACs subdivision to the north of this project.

In the long-term, the applicant has also identified possible future office buildings and associated parking areas to the west of the hotel. No plans or details are provided. Any future development of these areas will require review through an amended PUD.

The applicant has no plans for the area to the west of the Baker Avenue extension. The applicant also does not want to encumber that area with the PUD overlay.

Zoning Deviations. The PUD request includes the following zoning deviations:

- **Building Height Standards.** Maximum height in the WB-2 is 35-feet from the natural grade. The applicant is requesting a building height of 45-feet, but the elevations included with the application show the majority of the roof at 31-feet with roof elements varying, but 42-feet at the tallest.

Benefits Provided. In exchange for the above described zoning deviations, the applicant is providing the following benefit:

- **Implementation of the 2007 Whitefish Transportation Plan** through the dedication of an 80-foot Baker Avenue extension. (Identified as project MSN-3)

Other Approvals Requested. In addition to the Planned Unit Development overlay, there is a Conditional Use Permit requested. Since the application requests are nearly identical and they are integrated with the PUD request, we will review these requests together:

- **Bulk/Scale in Excess of 15,000 Square Feet.** The WB-2 requires a Conditional Use Permit for buildings in excess of 15,000 square feet in order to review its mass and scale in relation to the larger neighborhood. The footprint of the proposed hotel is 20,030 square feet.

The front portion of the property is developed with the former Wendy's restaurant while the vast majority of the property is undeveloped. The eastern half of the tract is zoned WB-2 (Secondary Business District) and the western half of the tract is zoned WLR (One-Family Limited Residential District). Zoning can be blended through the PUD process. The property is served by all public services.

A notice was mailed to adjacent land owners within 150-feet of the subject parcel on February 28, 2014. A notice was mailed to advisory agencies on February 28, 2014. A notice was published in the *Whitefish Pilot* on March 5, 2014. As of the writing of this report, no public comments have been received.

- A. Preserve and/or enhance environmentally sensitive areas of the site. The *High Groundwater Map* shows the front portion of the lot that is already developed with the former Wendy's restaurant an area with the possibility of high groundwater. It should be noted that these maps are planning level maps and the engineering review will evaluate the soils in the area for infrastructure installation, including stormwater facilities. There are no other mapped environmentally sensitive areas on the site. There are a number of trees to the west but they will not be removed as part of this project.

Finding 2: This front portion of this parcel is identified as possibly having high groundwater. Public Works staff will carefully evaluate the infrastructure installation in order to preserve environmentally sensitive areas of the site.

- B. Preserve crucial wildlife habitat and/or daily or seasonal migration corridors. There are no mapped crucial wildlife habitat and/or daily or seasonal migration corridors on this site; however it is likely that deer and other animals travel through the property.

Finding 3: Staff finds the 'preserve crucial wildlife habitat and/or daily or seasonal migration corridors' criterion is not applicable to this project.

- C. Provide usable open space. §11-2S-3C requires no more than 70% of the lot can be covered with buildings and parking areas. According to the applicant, 37% of the entire property is devoted to parking area and buildings. The WB-2 zoning designation doesn't have a lot coverage standard and it is expected that development in the area will be at an urban form and scale. This project is setting the building back from the Highway 93 S property lines in order to provide a pleasing open space/stormwater facility area as an attractive feature of the development. Some of the usable open space areas of the project include a patio area outside the pool area and pedestrian connections from the hotel to the sidewalks on Highway 93 S.

While the applicant is providing limited usable open space

areas, the general overall purpose of a hotel is not to recreate on-site, but to enjoy the great amenities within our community.

Finding 4: The project is providing usable urban open space in the form of a patio adjacent to the pool areas and the integration of a bike/pedestrian sidewalk to connect to the city's bike/pedestrian system. The project has 63% open space, which exceeds the 30% PUD requirement. Staff finds the project has provided adequate usable open space.

- D. Preserve and protect the character and qualities of existing neighborhoods. The character of this neighborhood is larger commercial buildings with very large parking areas to accommodate users of the buildings or provide a location to store merchandise and/or equipment. This property is adjacent to a single family neighborhood to the west. The area to the west is heavily wooded, which is part of its character.

This project is not proposing to remove any of the trees to the west of the project with this phase. Staff will recommend a condition of approval that any future phases of development will require an amended PUD and review of any tree removal will be important.

This project is required to obtain Architectural Review prior to submitting any building permits. The applicant has already met with the Architectural Review Committee (ARC) twice in a pre-application format and they submitted their official application today. They will be on the April agenda for the ARC committee. The applicant is requesting the building height deviation in order to avoid a plain flat roof. By adding articulation to the top of the roof, it reduces its overall massiveness of the building, which is an important element in Architectural Review.

This building will be among the tallest in this neighborhood. The applicant points to reducing the footprint of the building, making the building an interesting shape as opposed to a linear building and pushing the building back from the highway right-of-way as efforts to have the building fit into the neighborhood. In addition, the church to the south of the hotel is fairly tall and there is some topography to the north of the project that will also go a long way to mitigate the building's height and mass. Staff tends to agree with their assessments and their strategies for mitigating its height.

Finding 5: The project is preserving and protecting the

character and qualities of the neighborhood by placing the building 260-feet back from the front property line, by proposing a non-typical building shape, and by articulating the roof forms. Further review by the Architectural Review Committee, including the big box standards, will also ensure neighborhood compatibility.

- E. Make efficient use of infill property. The project is on the edge of the expanding urban area and it isn't infill per se; however, the project is served by a public right-of-way and all public services and facilities are available and in place for the project.

Finding 6: The property is making efficient use of existing commercial property, as it is served by all public services and facilities.

- F. Provide effective buffers or transition between potentially incompatible uses of land. The proposed hotel is a permitted use in the WB-2 and it is adjacent to other permitted or conditionally permitted uses in the WB-2 zoning district. The project will be required to install landscaping according the Landscaping Chapter, including the required tree density standards. No buffering would be required. The place where incompatibility could be a concern is further to the west where the residential uses are located. There are a number of trees to the west and the Baker Avenue Extension will also be a buffer between the commercial uses and the residential uses. At the time of any further development of the property to the west, issues surrounding buffers and transitions between potentially incompatible uses will be addressed.

Finding 7: The applicant is not proposing an incompatible use where an effective buffer or transition is needed.

- G. Facilitate street continuity and connectivity, and attractive high quality streetscapes. The Baker Avenue Extension project is one the Major Street Network projects identified in the 2007 Transportation Plan. A Major Street Network (MSN) is an improvement needed to facilitate the anticipated traffic demands of 2030. The Plan identifies this project (MSN-3) which would connect West 19th Street to JP Road. According to the Transportation Plan, the project is needed because there are limited north-south routes on the south end of Whitefish and it would help to alleviate escalating north-south traffic on Highway 93 S. The plan also recommends the road be designed as an urban arterial with one-lane in each direction, bike lanes, curb, gutter, sidewalk, planter

strips and sidewalks.

The right-of-way will be dedicated prior to submitting a building permit application. While the City will not be requiring any extensions of utilities at this time, at the time of any future subdivision or development of the property to the west of the Baker Avenue extension, the City will require the water and sewer main lines be extended within the Baker Avenue Extension right-of-way.

The proposed project is placing the building back from the highway in order to provide a large landscaped area in order to facilitate an attractive high quality streetscape.

The Public Works Department has not required a Traffic Study with this project, as its only access is located along Highway 93 S, a state right-of-way, which built to full-capacity. The only traffic recommendation is to work with MDT to see if an approach permit is required from MDT. Comments from MDT indicate any changes to the approach will require review by their Department.

Finding 8: An attractive, high quality streetscape is being developed through the installation of landscaping. The street system is established so there are limited opportunities to improve connectivity; however the applicant is dedicating a public right-of-way to implement the Transportation Plan.

- H. Provide pedestrian and bicycle facilities and encourage transportation alternatives. The applicant is proposing to install a sidewalk that would connect to the existing sidewalk system along Highway 93 S. In addition, the applicant is proposing bike racks adjacent to the building.

Finding 9: The project is providing pedestrian and bicycle facilities to encourage transportation alternatives.

- I. Provide affordable housing. This is a commercial project and this criterion is not applicable.

Finding 10: Staff finds the ‘provide affordable housing’ criterion is not applicable to this project.

- J. Provide a variety of residential product type while avoiding a monotonous and institutional appearance. This project is a commercial project and is not proposing any residential products.

Finding 11: Staff finds the ‘Provide a variety of residential

product type while avoiding a monotonous and institutional appearance' criterion is not applicable to this project.

- K. Compliance with and/or implementation of the growth policy. The Growth Policy designates this property as General Commercial and Suburban Residential. The WB-2 zoning designation is consistent with the land use designation, but the WLR is an Urban land use designation within a Suburban land use designation.

Finding 12: The project complies with and implements the Whitefish City-County Growth Policy and the Transportation Plan.

Title 11, Chapter 7, Subsection 8 – Conditional Use Permits.

As described previously in the report, the applicant is also requesting a Conditional Use Permit because the footprint of the building exceeds 15,000 square feet. Many of the criteria in §11-7-8J are similar to those required for a PUD. As we have done in the past, the review will occur at the same time and the additional findings below are specific to the Conditional Use Permit.

Finding 13: The subject property is suitable for the proposed hotel because the proposal complies with the lot development standards, with the exception of the requested zoning deviation; access to the site is an existing driveway; and there are no environmental constraints on the property to limit development.

Finding 14: The quality and functionality of the proposed development is adequate because the applicant meets the required number of parking spaces, as conditioned; the proposed use will not impact existing traffic circulation; signage will meet the sign regulations; and all new utilities will be undergrounded.

Finding 15: The subject property has adequate availability of public services because the property is currently served by sewer and water; is within the jurisdiction of the Whitefish Fire Department and the City of Whitefish Police Department; and is located directly adjacent to a paved state highway.

Finding 16: The proposed development is not anticipated to have a negative neighborhood impact because the proposed hotel will access a completed state highway that is built to capacity; there will be no noise or vibration beyond associated construction disturbance; no fumes or other odors are anticipated; and there will be no unusual hours of operation.

Finding 17: The proposed hotel is compatible with the surrounding neighborhood because the use is similar to existing uses in the

neighborhood; it will be consistent with the design, size and density of the immediate area; and the final review of the building design will be reviewed by the Architectural Review Committee.

STAFF ANALYSIS.

Building Height Design Standards. The applicant is requesting a deviation to the building height. The WB-2 zoning designation limits the maximum building height to 35-feet. According to the submitted plans, the top of the roof is 31-feet with various roof elements that go up to 42-feet. The applicant has requested a maximum building height of 45-feet in order to have flexibility with the design. The applicant has pointed to ensuring an attractive design to fit better into the neighborhood.

The applicant has met with the Architectural Review Committee twice and, while an official application has not been submitted nor approved, the design appears to be on the right track and the Committee appears to be satisfied with the approach of the design and the treatment of the roof. (A final approval from the Architectural Review Committee will occur after the Council has acted on the application)

Staff is also satisfied with their approach to the roof elements. The varying roof lines help to reduce the massiveness of the building and roof. Staff would also like to point out that the areas that will exceed the maximum building height are small portions and not the entire roof. In the past the Council has approved buildings to exceed the maximum building height in order to facilitate an attractive design.

The Whitefish Fire Marshal has reviewed the project. The Fire Department's goals for this project are:

- to make sure the firefighters have safe and efficient roof access; and
- to have safe and efficient patient transport routes.

The Fire Department has a 35-foot roof ladder which gives the department a 28-foot vertical working distance. Without taller ladders fire fighter will be using high-rise fire tactics on buildings over 28-feet.

Staff supports this building height deviation.

Blending of the Zoning Districts. The applicant has proposed to blend the WLR and WB-2 zoning districts and push the WB-2 zoning district to the eastern boundary of the Baker Avenue Extension. The purpose of this is to facilitate the development of the hotel further back on the lot and allow for the future

development of professional offices between the hotel and the Baker Avenue extension. The WB-2 zoning district boundary is 500-feet from Highway 93 S and applicant is proposing to push the WB-2 an additional 280-feet to the west.

Pushing the WB-2 to the eastern edge of the right-of-way places the hotel in a better location to develop a superior design that better fits in the City. There are inherent problems with residential uses immediately abutting commercial uses; placing a right-of-way between residential and commercial uses provides a better buffer and could better protect residential. Staff supports the blending of zoning districts, as requested.

BOARD DISCUSSION

Phillips asked about the benefit and Compton-Ring said the road extension is a great benefit to the City. Ellis asked and Compton-Ring said they are about ½ mile from this business to Baker Avenue. Ellis asked and Compton-Ring said at the time the property is subdivided the applicant will pay for any extensions and any service lines they need for their utilities at this time. Ellis said the Board is being asked to approve the PUD, which relates to the variance of the zoning, and the CUP deals with the big box store requirements because it exceeds 15,000 square feet. He asked and Compton-Ring said Safeway had to meet the big box requirements.

PUBLIC HEARING

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

Larry Lambert, President of Lambert Hotel Management Hotel Corporation said they own one hotel, manage four others and have two others in the initial development stage, including this one. He said he has been doing this for 20 plus years. They bought the land back in November and they wanted to tear down the Wendy's and put a 50' tall hotel where Wendy's sat. They realized that plan wouldn't fit in Whitefish—they needed to get the building down to 3- feet. He said they redesigned their hotel down to 35 feet and it looked blocky, like a prison or a dormitory. He noted that Mark Liecti with APEC Engineering is their local engineer for the project and is here tonight as well. He showed the area they will dedicate to the City for future Baker Avenue. He said there are about 1-½ acres of residential property to the west. He said he talked to folks in the neighborhood and they specifically left out at development in the portion of land closest to the neighbors. He said the proposed commercial zone would end at the boundary line of Baker Avenue. He said it is a big building for Whitefish, so they turned it into an "L" shaped building and add articulations for the roof design. Where the Wendy's store was they will create a grand landscaped area with sidewalks that connect down to the highway.

He showed them the design and said it is not a typical Hampton Inn

and Suites. It is a beautiful building. Rebecca Norton asked and he said they could make it two stories high instead of three, but then it would have a larger footprint. They added design features that match Whitefish buildings like the Sportsman & Ski Haus, the Emergency Services Building and the Safeway Store to make it meld into the town.

Ellis asked if the design they are showing tonight is close to the final design and Mr. Lambert said they will find out on April 1st when they meet with the Architectural Review Committee. He said they have a few higher architectural points to break up the design. He said the Fire Department told them they had to adhere to the high rise building code. The firefighters need to be able to get into the building and walk out on the roof without any real effort. Because of this, there is a penthouse just behind the highest point on the building so a person can hit the top of the stairs, open the door and walk out on the roof. That means the Fire Department can get up there with emergency equipment. Rebecca Norton asked if they plan on doing anything on the roof like a roof top café and Lambert said they have no intent to do that. He said the ARC committee asked them if they wanted to have a sitting area up there, but liability is an issue. Instead, they will have a covered patio on the north side to give folks a place to take in the views of Big Mountain. He showed a video of the actual scaled buildings along Highway 93 S with the hotel in the background.

Rebecca Norton, 530 Scott Avenue, is not in favor of the height deviation; concerned that the city is overlooking the big box standards; this proposal will change the landscape too much – it is too much; she urged the Planning Board to stay within the regulations; it's not good to block views – they are too important

Don Spivey, 117 Park Knoll Lane, is here representing the Park Knoll HOA; they have concerns with the location of Baker Avenue extension and its intersection with Park Knoll Lane; he doesn't think additional commercial land is necessary; suggests the city wait on the dedication of Baker Avenue extension until the final alignment is determined

Adam Kincheloe, 526 Silverleaf Drive, no issues with the hotel; concerns with the right-of-way dedication; happy there will be no bar or restaurant within the hotel – it's better to send people downtown

Mark Carlson, 4405 Whitefish Stage Road, good asset to town

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

STAFF COMMENTS Planner Compton-Ring clarified that, contrary to the comments by

Ms. Norton, they are not overlooking the big box requirements—the CUP is part of the whole application. Also, when the Dear Tracs project came through they did talk about just getting a right-of-way agreement or easement to be determined at a future date, but City staff was advised that it was better to get the dedicated right-of-way, so that is how it ended up being a dedicated right-of-way in that location. Smith added that it made sense because the applicant had to know where they had to put in utilities. Smith noted that they are voting on the CUP and PUD tonight, which doesn't have anything to do with the exact right-of-way location. She presumed that location could still move and Planner Compton-Ring agreed that they could still work that out with Director Wilson.

MOTION

Smith moved and Workman seconded to adopt the findings of fact in staff report WPUD 14-01 and recommend to the Whitefish City Council that the Planned Unit Development for the Hampton Inn and Suites, the Conditional Use Permit for buildings over 15,000 square feet standard in the WB-2 Zoning District be approved and that the deviations to the zoning be granted subject to the 12 conditions of approval recommended by staff.

BOARD DISCUSSION

Phillips said the parapet design they need over the roof is a safety issue. He said they could drop down the roof section and create the start of the eave-line lower and bring it above the parapet. He said they could shed the drainage lines toward the front of the building. They don't need the height to get the break-up of the façade. He said he likes the height for the sign, especially since it sits back from the road. He said it is costing the developer a lot of money to do what they are doing and he would suggest those changes. Ellis said it looks like a nice plan. He deferred to Phillips on how they might mitigate the issues on the height. He said he hopes they can put a lot more than 17 trees on this property. He agreed with Diane Smith that they are just voting on the height restrictions and not the right-of-way easement.

AMENDMENT

Phillips offered a friendly amendment to mitigate the height to 35' feet. The motion died for lack of second.

BOARD DISCUSSION

Stein mentioned that Whitefish Lake Lodge is 52; Planner Compton-Ring said Monterra is over 35. Stein said it is also not the only building over 15,000 square feet in Whitefish. In fact, many homes are that big.

VOTE

The motion passed 4-1 with Phillips voting in opposition. (Scheduled for City Council on April 17, 2014.)

NEW BUSINESS

Work session on Growth Policy Infill Policy

The Planning Board is tasked with making a recommendation to the

**HAMPTON INN & SUITES
STAFF REPORT
PLANNED UNIT DEVELOPMENT; WPUD 14-01
MARCH 13, 2013**

A report to the Whitefish City-County Planning Board and the Whitefish City Council regarding a request by Larry Lambert of Lambert Hotels for a Planned Unit Development (PUD) to develop a 76-room Hampton Inn & Suites. A public hearing is scheduled before the Whitefish City-County Planning Board on March 20, 2014 and a subsequent hearing is set before the City Council on April 7, 2014.

I. PROJECT SCOPE

The applicant is proposing a Planned Unit Development to overlay a portion of Tract 3ABO east of the proposed Baker Avenue extension. The applicant is proposing a three story 76-room hotel with 82 off-street parking spaces. The building will be setback from the Highway toward the wider portion of the lot. The hotel will have amenities for hotel guests including a pool, a breakfast area, a workout room, virtual golf room and conference room. Off-street parking will be located southeast and west of the building. Access to the site is proposed off Highway 93 S at the existing access.

An open space area is proposed at the entrance of the project that will also include the stormwater facilities. Landscaped areas are also located around the hotel and within the parking area. These areas are not usable open space areas, but are intended to soften the effects of the building and parking areas and to create an attractive landscaped entrance to the project. In addition, there are sidewalks connecting the hotel to the highway sidewalk system and outdoor patios spaces next to the swimming pool and breakfast area for guest usage.

There are no proposed changes to the Highway 93 S frontage. The existing access will remain in the same location and be incorporated into the design of the project.



The applicant is proposing to dedicate future Baker Avenue Extension right-of-way through this property, pursuant to the long-range transportation plan. This right-of-way will be an extension of the right-of-way dedicated to the city recently with the Dear TRACs subdivision to the north of this project.

In the long-term, the applicant has also identified possible future office buildings and associated parking areas to the west of the hotel. No plans or details are provided. Any future development of these areas will require review through an amended PUD.

The applicant has no plans for the area to the west of the Baker Avenue extension. The applicant also does not want to encumber that area with the PUD overlay.

Zoning Deviations. The PUD request includes the following zoning deviations:

- Building Height Standards. Maximum height in the WB-2 is 35-feet from the natural grade. The applicant is requesting a building height of 45-feet, but the elevations included with the application show the majority of the roof at 31-feet with roof elements varying, but 42-feet at the tallest.

Benefits Provided. In exchange for the above described zoning deviations, the applicant is providing the following benefit:

- Implementation of the 2007 Whitefish Transportation Plan through the dedication of an 80-foot Baker Avenue extension. (Identified as project MSN-3)

Other Approvals Requested. In addition to the Planned Unit Development overlay, there is a Conditional Use Permit requested. Since the application requests are nearly identical and they are integrated with the PUD request, we will review these requests together:

- Bulk/Scale in Excess of 15,000 Square Feet. The WB-2 requires a Conditional Use Permit for buildings in excess of 15,000 square feet in order to review its mass and scale in relation to the larger neighborhood. The footprint of the proposed hotel is 20,030 square feet.

A. Owner/Applicant:

Larry Lambert
Lambert Hotels
4965 Jaiden Lane
Missoula, MT 59803

Technical Assistance:

Marc Liechti
APEC Engineering
111 Legend Trail
Kalispell, MT 59901

B. Location:

The subject project is located at 6340 Highway 93 S and can be legally described as Tract 3ABO in Section 1, Township 30N, Range 22W, P.M.M., Flathead County.



C. Existing Land Use and Zoning:

The front portion of the property is developed with the former Wendy's restaurant while the vast majority of the property is undeveloped. The eastern half of the tract is zoned WB-2 (Secondary Business District) and the western half of the tract is zoned WLR (One-Family Limited Residential District).



D. Adjacent Land Uses and Zoning:

North:	commercial	WB-2
West:	residential	WLR
South:	church	WB-2
East:	commercial	WB-2

E. Utilities:

Sewer:	City of Whitefish
Water:	City of Whitefish
Stormwater:	on-site
Solid Waste:	North Valley Refuse
Gas:	Northwestern Energy
Electric:	Flathead Electric Co-op
Phone:	CenturyLink
Police:	City of Whitefish
Fire:	City of Whitefish
Schools:	Whitefish School District #44

F. Public Notice:

A notice was mailed to adjacent land owners within 150-feet of the subject parcel on February 28, 2014. A notice was mailed to advisory agencies on February 28, 2014. A notice was published in the *Whitefish Pilot* on March 5, 2014. As of the writing of this report, no public comments have been received.

II. REVIEW AND FINDINGS

This request is reviewed in accordance with the Whitefish City-County Growth Policy and the City of Whitefish Zoning Regulations.

Title 11, Chapter 2 – Zoning Districts:

The proposed use and development standards within the WB-2 are being met with this application, with the exception of the requested deviations.

The WB-2 (Secondary Business District) Purpose and Intent:

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.

Finding 1: The proposed use and development standards are being met with the proposal with the exception of the requested zoning deviations.

The Planned Unit Development district is intended to encourage flexible land use development by allowing development based upon a comprehensive, integrated and detailed plan rather than upon specific requirements applicable on a lot by lot basis. The development, according to the Purpose and Intent of the PUD chapter, provides the following benefits, as applicable:

- A. Preserve and/or enhance environmentally sensitive areas of the site. The *High Groundwater Map* shows the front portion of the lot that is already developed with the former Wendy's restaurant an area with the possibility of high groundwater. It should be noted that these maps are planning level maps and the engineering review will evaluate the soils in the area for infrastructure installation, including stormwater facilities. There are no other mapped environmentally sensitive areas on the site. There are a number of trees to the west but they will not be removed as part of this project.

Finding 2: This front portion of this parcel is identified as possibly having high groundwater. Public Works staff will carefully evaluate the infrastructure installation in order to preserve environmentally sensitive areas of the site.

- B. Preserve crucial wildlife habitat and/or daily or seasonal migration corridors. There are no mapped crucial wildlife habitat and/or daily or seasonal migration corridors on this site; however it is likely that deer and other animals travel through the property.

Finding 3: Staff finds the 'preserve crucial wildlife habitat and/or daily or seasonal migration corridors' criterion is not applicable to this project.

- C. Provide usable open space. §11-2S-3C requires no more than 70% of the lot can be covered with buildings and parking areas. According to the applicant, 37% of the entire property is devoted to parking area and buildings. The WB-2 zoning designation doesn't have a lot coverage standard and it is expected that development in the area will be at an urban form and scale. This project is setting the building back from the Highway 93 S property lines in order to provide a pleasing open space/stormwater facility area as an attractive feature of the development. Some of the usable open space areas of the project include a patio area outside the pool area and pedestrian connections from the hotel to the sidewalks on Highway 93 S.

While the applicant is providing limited usable open space areas, the general overall purpose of a hotel is not to recreate on-site, but to enjoy the great amenities within our community.

Finding 4: The project is providing usable urban open space in the form of a patio adjacent to the pool areas and the integration of a bike/pedestrian sidewalk to connect to the city's bike/pedestrian system. The project has 63% open space, which exceeds the 30% PUD requirement. Staff finds the project has provided adequate usable open space.

- D. Preserve and protect the character and qualities of existing neighborhoods. The character of this neighborhood is larger commercial buildings with very large parking areas to accommodate users of the buildings or provide a location to store merchandise and/or equipment. This property is adjacent to a single family neighborhood to the west. The area to the west is heavily wooded, which is part of its character.

This project is not proposing to remove any of the trees to the west of the project with this phase. Staff will recommend a condition of approval that any future phases of development will require an amended PUD and review of any tree removal will be important.

This project is required to obtain Architectural Review prior to submitting any building permits. The applicant has already met with the Architectural Review Committee (ARC) twice in a pre-application format and we anticipate the official application will be forthcoming soon. These pre-application meetings give the applicant and the Committee an opportunity to discuss the project in a less formal way and address broad issues and concerns. An important part of the formal review is ensuring new buildings complement the existing built neighborhood. The ARC reviews scale, form and materials for new buildings to ensure they do not detract from the existing neighborhood. In addition, for buildings with a footprint greater than 15,000 square foot, there are additional standards to mitigate the effects of a very large building. These standards look at the site – for example, how pedestrians and bicyclists interface with the project, how a larger parking area is screened and they also look at the building – for example screening equipment, prohibiting large blank walls and other material selection issues.

The applicant is requesting the building height deviation in order to avoid a plain flat roof. By adding articulation to the top of the roof, it reduces its overall massiveness of the building, which is an important element in Architectural Review.

This building will be among the tallest in this neighborhood. The applicant points to reducing the footprint of the building, making the building an interesting shape as opposed to a linear building and pushing the building back from the highway right-of-way as efforts to have the building fit into the neighborhood. In addition, the church to the south of the hotel is fairly tall and there is some topography to the north of the project that will also go a long way to mitigate the building's

height and mass. Staff tends to agree with their assessments and their strategies for mitigating its height.

Finding 5: The project is preserving and protecting the character and qualities of the neighborhood by placing the building 260-feet back from the front property line, by proposing a non-typical building shape, and by articulating the roof forms. Further review by the Architectural Review Committee, including the big box standards, will also ensure neighborhood compatibility.

- E. Make efficient use of infill property. The project is on the edge of the expanding urban area and it isn't infill per se; however, the project is served by a public right-of-way and all public services and facilities are available and in place for the project.

Finding 6: The property is making efficient use of existing commercial property, as it is served by all public services and facilities.

- F. Provide effective buffers or transition between potentially incompatible uses of land. The proposed hotel is a permitted use in the WB-2 and it is adjacent to other permitted or conditionally permitted uses in the WB-2 zoning district. The project will be required to install landscaping according the Landscaping Chapter, including the required tree density standards. No buffering would be required. The place where incompatibility could be a concern is further to the west where the residential uses are located. There are a number of trees to the west and the Baker Avenue Extension will also be a buffer between the commercial uses and the residential uses. At the time of any further development of the property to the west, issues surrounding buffers and transitions between potentially incompatible uses will be addressed.

Finding 7: The applicant is not proposing an incompatible use where an effective buffer or transition is needed.

- G. Facilitate street continuity and connectivity, and attractive high quality streetscapes. The Baker Avenue Extension project is one the Major Street Network projects identified in the 2007 Transportation Plan. A Major Street Network (MSN) is an improvement needed to facilitate the anticipated traffic demands of 2030. The Plan identifies this project (MSN-3) which would connect West 19th Street to JP Road. According to the Transportation Plan, the project is needed because there are limited north-south routes on the south end of Whitefish and it would help to alleviate escalating north-south traffic on Highway 93 S. The plan also recommends the road be designed as an urban arterial with one-lane in each direction, bike lanes, curb, gutter, sidewalk, planter strips and sidewalks.

The right-of-way will be dedicated prior to submitting a building permit application. While the City will not be requiring any extensions of utilities at this

time, at the time of any future subdivision or development of the property to the west of the Baker Avenue extension, the City will require the water and sewer main lines be extended within the Baker Avenue Extension right-of-way.

The proposed project is placing the building back from the highway in order to provide a large landscaped area in order to facilitate an attractive high quality streetscape.

The Public Works Department has not required a Traffic Study with this project, as its only access is located along Highway 93 S, a state right-of-way, which built to full-capacity. The only traffic recommendation is to work with MDT to see if an approach permit is required from MDT. Comments from MDT indicate any changes to the approach will require review by their Department.

Finding 8: An attractive, high quality streetscape is being developed through the installation of landscaping. The street system is established so there are limited opportunities to improve connectivity; however the applicant is dedicating a public right-of-way to implement the Transportation Plan.

- H. Provide pedestrian and bicycle facilities and encourage transportation alternatives. The applicant is proposing to install a sidewalk that would connect to the existing sidewalk system along Highway 93 S. In addition, the applicant is proposing bike racks adjacent to the building.

Finding 9: The project is providing pedestrian and bicycle facilities to encourage transportation alternatives.

- I. Provide affordable housing. This is a commercial project and this criterion is not applicable.

Finding 10: Staff finds the 'provide affordable housing' criterion is not applicable to this project.

- J. Provide a variety of residential product type while avoiding a monotonous and institutional appearance. This project is a commercial project and is not proposing any residential products.

Finding 11: Staff finds the 'Provide a variety of residential product type while avoiding a monotonous and institutional appearance' criterion is not applicable to this project.

- K. Compliance with and/or implementation of the growth policy. The Growth Policy designates this property as General Commercial and Suburban Residential. The WB-2 zoning designation is consistent with the land use designation, but the WLR is an Urban land use designation within a Suburban land use designation.

General Commercial:

Generally applied to the Hwy 93 corridor north of the Highway 40 intersection, this designation is defined by auto-oriented commercial and service uses. Specific land uses include retail, restaurants of all types and quality ranges (including those with drive-up facilities), professional offices, auto sales and services, hotels/motels, supermarkets, shopping centers or clusters, and convenience shopping, including the dispensing of motor fuels. Primary access is by automobile with ample parking provided on site. Development sites are properly landscaped to screen parking and drive areas and to provide a high-quality visual image. Zoning is generally WB-2, but higher density residential with WR-3 zoning, and mixed use development may also be appropriate in this area.

Suburban Residential:

Lower density residential areas at the periphery of the urban service area generally fall under this designation on the Future Land Use Map. The residential product type is predominantly single-family, but cluster homes and low-density town homes that preserve significant open space are also appropriate. Densities range from one unit per 2 ½ acres to 2.5 units per acre, but could be higher through the PUD. Zoning districts include WCR, WER, and WSR. Cluster residential that preserves considerable open space, allows for limited agriculture, maintains wildlife habitat is encouraged.

There are many goals and policies within the Whitefish City-County Growth Policy that support this project.

Economic Development – Goal 4: “Develop and promote Whitefish as a year-round convention and destination community providing amenities for the visitor and employment opportunities.”

Land Use – Goal 5: “Protect and preserve the special character, scale and qualities of existing neighborhoods while supporting and encouraging attractive, well-designed, neighborhood compatible infill development.”

Land Use – Goal 7: “Plan for healthy, efficient and visually attractive corridors along major transportation routes through the community.”

Transportation – Goal 1: “Provide an efficient and effective transportation system to serve the present and future needs of the Whitefish area.”

Transportation – Goal 2: “Integrate transportation and land use so that choices of transportation modes are optimized.”

Finding 12: The project complies with and implements the Whitefish City-County Growth Policy and the Transportation Plan.

Amendments – §11-7-12E:

The following considerations from §11-7-12E are intended to guide both the Planning Board and the City Council when considering an amendment to the official zoning map.

Considerations from §11-7-12E	Staff Report Section Reference/Comments
Zoning Regulations Must Be:	
Made in Accordance with a Growth Policy	See Section II.K.
Designed to:	
Secure safety from fire and other dangers	The Whitefish Fire Department has preliminarily reviewed the project. Adequate access and other Fire Department issues are being included as conditions of approval and will also be reviewed at the time of building permit.
Promote public health, public safety and general welfare	See above – in addition, the Building Department will review the new structure through the building permit process.
Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements	See Section I.E.; as described earlier in the report, MDT commented on the project and requested if the applicant intends to reconstruct the access, MDT will need to approve the changes.
In the adoption of zoning regulations, the city shall consider:	
Reasonable provision of adequate light and air	A request for a deviation to the building height is requested. All other zoning standards are being met.
The effect on motorized and non-motorized transportation systems	See Section II.G., H.
Promotion of compatible urban growth	See Section II.D.
The character of the district and its particular suitability of the property for the particular uses	See Section II.D.
Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area; and	This criterion is subjective at best. However, it is permissible for the Board to consider testimony from nearby residents as prima facie evidence of adverse impact. This proposal only applies to the subject property, and sets no binding precedent for any other zone change or PUD proposal.
That historical uses and established uses	The Planning Board and the City Council should consider

Considerations from §11-7-12E	Staff Report Section Reference/Comments
patterns and recent change in use trends will be weighed equally and consideration not be given one to the exclusion of the other.	the historical and established use patterns, including trends, when making a decision on the project. See Section II.D.

Title 11, Chapter 7, Subsection 8 – Conditional Use Permits.

As described previously in the report, the applicant is also requesting a Conditional Use Permit because the footprint of the building exceeds 15,000 square feet. Many of the criteria in §11-7-8J are similar to those required for a PUD. As we have done in the past, the review will occur at the same time and the additional findings below are specific to the Conditional Use Permit.

Finding 13: The subject property is suitable for the proposed hotel because the proposal complies with the lot development standards, with the exception of the requested zoning deviation; access to the site is an existing driveway; and there are no environmental constraints on the property to limit development.

Finding 14: The quality and functionality of the proposed development is adequate because the applicant meets the required number of parking spaces, as conditioned; the proposed use will not impact existing traffic circulation; signage will meet the sign regulations; and all new utilities will be undergrounded.

Finding 15: The subject property has adequate availability of public services because the property is currently served by sewer and water; is within the jurisdiction of the Whitefish Fire Department and the City of Whitefish Police Department; and is located directly adjacent to a paved state highway.

Finding 16: The proposed development is not anticipated to have a negative neighborhood impact because the proposed hotel will access a completed state highway that is built to capacity; there will be no noise or vibration beyond associated construction disturbance; no fumes or other odors are anticipated; and there will be no unusual hours of operation.

Finding 17: The proposed hotel is compatible with the surrounding neighborhood because the use is similar to existing uses in the neighborhood; it will be consistent with the design, size and density of the immediate area; and the final review of the building design will be reviewed by the Architectural Review Committee.

III. STAFF ANALYSIS.

Building Height Design Standards. The applicant is requesting a deviation to the building height. The WB-2 zoning designation limits the maximum building height to 35-feet. According to the submitted plans, the top of the roof is 31-feet with various roof elements that go up to 42-feet. The applicant has requested a maximum building height of 45-feet in order to have flexibility with the design. The applicant has pointed to ensuring an attractive design to fit better into the neighborhood.

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The Whitefish Fire Marshal has reviewed the project. The Fire Department's goals for this project are:

- to make sure the firefighters have safe and efficient roof access; and
- to have safe and efficient patient transport routes.

The Fire Department has a 35-foot roof ladder which gives the department a 28-foot vertical working distance. Without taller ladders fire fighter will be using high-rise fire tactics on buildings over 28-feet. Such items the Fire Department will be reviewing include, among other items:

- Protected stairwells from outside the building to each floor and the roof in a location where a hose line can reach within a 150-feet of every area on the roof
- Standpipes in each stairwell (wet or dry)
- Maximum of 150-feet from a standpipe connection to any area of the building
- Sprinklered building (including attic spaces and a dry system under the entrance way) with enough pressure for the top floor
- Fully addressable alarm system
- Elevator to each floor big enough to handle the stretcher in a flat position
- Know box near the FDC and Alarm panel
- Fire Hydrant(s) located near the FDC and stairway standpipes

Staff supports this building height deviation.

Blending of the Zoning Districts. The applicant has proposed to blend the WLR and WB-2 zoning districts and push the WB-2 zoning district to the eastern boundary of the Baker Avenue Extension. The purpose of this is to facilitate the development of the hotel further back on the lot and allow for the future development of professional offices between the hotel and the Baker Avenue extension. The WB-2 zoning district boundary is 500-feet from Highway 93 S and applicant is proposing to push the WB-2 an additional 280-feet to the west.

Pushing the WB-2 to the eastern edge of the right-of-way places the hotel in a better location to develop a superior design that better fits in the City. There are inherent problems with residential uses immediately abutting commercial uses; placing a right-of-

way between residential and commercial uses provides a better buffer and could better protect residential. Staff supports the blending of zoning districts, as requested.

IV. RECOMMENDATION

It is recommended that the Whitefish City-County Planning Board adopt the findings of fact in staff report WPUD 14-01 and recommend to the Whitefish City Council that the Planned Unit Development for the Hampton Inn and Suites, the Conditional Use Permit for buildings over 15,000 square feet standard in the WB-2 Zoning District be **approved** and that the deviations to the zoning be granted subject to the following conditions of approval:

1. Except as amended by these conditions, the development of the planned unit development shall be in substantial conformance with the approved site plan and elevations that govern the general location of buildings, landscaping, building height and improvements and labeled as “approved plans” by the City Council.
2. Prior to any ground disturbing activities, a plan shall be submitted for review and approval by the City of Whitefish Planning Department. The plan shall include, but may not necessarily be limited to, the following:
 - Dust abatement and control of fugitive dust.
 - Hours of construction activity.
 - Noise abatement.
 - Control of erosion and siltation.
 - Routing for heavy equipment, hauling, and employees, including signage to direct equipment and workers.
 - Construction office siting, staging areas for material and vehicles, and employee parking.
 - Measures to prevent soil and construction debris from being tracked onto public road, including procedures remove soil and construction debris from road as necessary.
 - Detours of vehicular, pedestrian, and bicycle traffic as necessary.
 - Notation of any street closures or need to work in public right-of-way. (Engineering Standards, Appendix K)
3. Prior to any construction, excavation, grading or other terrain disturbance, plans for all on and off-site infrastructure shall be submitted to and approved by the Whitefish Public Works Department. The improvements (water, sewer, roads, street lights, sidewalks, etc.) within the development shall be designed and constructed by a licensed engineer and in accordance with the City of Whitefish’s design and construction standards. The Public Works Director shall approve the design prior to construction. Plans for grading, drainage, utilities, sidewalks and other improvements shall be submitted as a package and reviewed concurrently. No individual improvement designs shall be accepted by Public Works. (Engineering Standards, Chapter 1)

4. All areas disturbed because of road and utility construction shall be re-seeded as soon as practical to inhibit erosion and spread of noxious weeds. (Engineering Standards, Chapter 7)
5. The site and building shall meet all Fire Department standards for hydrants, access and the building itself. (IFC)
6. All 'big box' site design standards shall be met with this project including: parking lot landscaping, pedestrian lanes, bicycle parking, SNOW bus stop, if needed, and screening service, loading and refuse areas. (Finding 5, §3.8.1, Arch Review Stds.)
7. All 'big box' building design standards shall be met with this project including: building equipment, blank wall limitations, use of materials and entryways. (Finding 5, §3.8.2, Arch Review Stds.)
8. Architectural review and approval shall be obtained prior to submitting an application for a building permit. (§11-3-3B)
9. A parking plan shall be submitted that meets the parking requirements "1 space per guest room or suite plus 1 space for every 2 employees per maximum shift." (§11-6-2B)
10. Any further development of this lot shall require an amended PUD permit. Future site plans shall carefully integrate existing healthy trees.
11. An 80-foot right-of-way for Baker Avenue extension in a location identified by the Public Works Director shall be dedicated to the City of Whitefish prior to submitting a building permit application.
12. This approval is valid for 3-years from the date of City Council approval. (§11-2S-9C)



Public Notice of Proposed Land Use Action

The City of Whitefish would like to inform you that Lambert Hotels is proposing to construct a 75-room Hampton Inn & Suites hotel. The property is developed with the now closed Wendy's restaurant and is zoned WB-2 (Secondary Business District) and WLR (One-Family Limited Residential District). The property is located at 6340 Highway 93 S described as Tract 3ABO in S1 T30N R22W. As part of the requested Planned Unit Development, the applicant is requesting deviations to the following zoning standards:

- Maximum Building Height – up to 45-feet where the standard is 35-feet; and
- Blending of the zoning districts in order to push the commercial zoning to the eastern edge of the future Baker Avenue right-of-way.

You are welcome to provide comments on the project. Comments can be in written or email format. The City-County Planning Board will hold a public hearing for the proposed project request on:

Thursday, March 20, 2014
6:00 p.m.
Whitefish City Council Chambers, City Hall
402 E. Second Street, Whitefish MT 59937

The City-County Planning Board will make a recommendation to the City Council, who will then hold a public hearing and take final action on Monday, April 7, 2014 at 7:10 p.m., also in the Whitefish City Council Chambers.

On the back of this flyer is a site plan of the project. Additional information on this proposal can be obtained at the Whitefish Planning Department located at 510 Railway Street. The public is encouraged to comment on the above proposals and attend the hearings. Please send comments to the Whitefish Planning Department, PO Box 158, Whitefish, MT 59937, or by phone (406) 863-2410, fax (406) 863-2409 or email at wcompton-ring@cityofwhitefish.org. Comments received by the close of business on Monday, March 10, 2014, will be included in the packets to the Planning Board members. Comments received after the deadline will be summarized to the Planning Board members at the public hearing.

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



Date: February 28, 2014
To: Advisory Agencies & Interested Parties
From: Whitefish Planning & Building Department

The regular meeting of the Whitefish City-County Planning Board will be held on Thursday, March 20, 2014 at 6:00 pm. During the meeting, the Board will hold public hearings on the items listed below. Upon receipt of the recommendation by the Planning Board, the Whitefish City Council will also hold subsequent public hearing on Monday, April 7, 2014. City Council meetings start at 7:10 pm. Planning Board and City Council meetings are held in the Whitefish City Council Chambers, Whitefish, Montana.

1. Larry Lambert, on behalf of Lambert Hotels, are requesting a commercial Planned Unit Development overlay on 4.156 acres of a 5.766 acre parcel at 6340 Highway 93 S described as Tract 3ABO in S1 T30N R22W. The development will consist of a 45-foot tall 75-room hotel. (WPUD 14-01) Compton-Ring

Documents pertaining to this agenda item is available for review at the Whitefish Planning & Building Department, 510 Railway Street during regular business hours. Inquiries are welcomed. Interested parties are invited to attend the hearing and make known their views and concerns. Comments in writing may be forwarded to the Whitefish Planning & Building Department at the above address prior to the hearing or via email: dtaylor@cityofwhitefish.org. For questions or further information regarding this proposal, phone 406-863-2410.

Wendy Compton-Ring

From: Wendy Compton-Ring <wcompton-ring@cityofwhitefish.org>
Sent: Thursday, February 27, 2014 4:49 PM
To: 'Anne Moran (asmoran@mt.gov)'; Ashley Keltner (a.keltner@flathead.coop); 'Ben DeVall'; Bill Dial (bdialw1@bresnan.net); 'BJ Grieve'; Cal Scott (cscott@flathead.mt.gov); Christina L Schroeder (christina.l.schroeder@usace.army.mil); 'Chuck Curry (ccurry@flathead.mt.gov)'; Columbia Falls Fire Department (cffire@centurytel.net); 'Dave Lawrence (dlawrence@skiwhitefish.com)'; Dennis Oliver (doliver@mt.gov); 'Doug Schuch (douglas.schuch@bnsf.com)'; 'Eric Smith (eric.smith@northwestern.com)'; Gary Engman (gengman@mt.gov); Gary Krueger (gkrueger@flathead.mt.gov); Ginger Kauffman (gingerk@flatheadcd.org); 'James Freyholtz (jfreyholtz@mt.gov)'; 'Joe Page' (jpage@cityofwhitefish.org); 'John Wilson'; 'Judy Williams (juwilliams@mt.gov)'; Karen Reeves; 'Kate Cassidy (kcassidy@flathead.mt.gov)'; Kate Orozco (orozcok@wfps.k12.mt.us); 'Kuennen, Norman'; 'Lisa Timchak (latimchak@fs.fed.us)'; 'Lorch, Steve'; Lori Collins; 'Lynn Zanto (lzanto@mt.gov)'; 'Marcia Sheffels (msheffels@flathead.mt.gov)'; 'Mark Baumler (mbaumler@mt.gov)'; 'Mark Deleray (mdeleray@mt.gov)'; North Valley Refuse (nvr@centurytel.net); 'Pamela Holmquist (pholmquist@flathead.mt.gov)'; 'Patti V (pattiv@flathead.mt.gov)'; 'Pris, Jeremy'; 'Rita Hanson (for Whitefish Water & Sewer District)'; 'Steve Kilbreath (skilbreath@mt.gov)'; 'Steve Kvapil (steve.j.kvapil@usps.gov)'; 'Stickney, Nicole'; Tara Fugina (tfugina@flathead.mt.gov); 'Tom Kennelly'; Tony.Hirsch@Centurylink.com; 'Traci Sears '; Virgil Bench (vbench@cityofwhitefish.org); 'Whitefish Parks and Recreation'
Cc: David Taylor; Bailey Minnich (bminnich@cityofwhitefish.org)
Subject: March City-County Planning Board notice
Attachments: 3-2014_PB meeting.pdf

Attached please find the notice for the March meeting

Wendy Compton-Ring, AICP
Senior Planner
City of Whitefish
406-863-2418



City of Whitefish
 Planning & Building Department
 PO Box 158
 510 Railway Street
 Whitefish, MT 59937
 Phone: 406-863-2410 Fax: 406-863-2409

File #: _____
 Date: _____
 Intake Staff: _____
 Date Complete: _____

PLANNED UNIT DEVELOPMENT

FEE ATTACHED \$ _____

(See current fee schedule)

INSTRUCTIONS:

- A Site Review Meeting with city staff is required. Date of Site Review Meeting: _____
- Submit the application fee, completed application and appropriate attachments to the Whitefish Planning & Building Department a minimum of **forty five (45) days prior** to the Planning Board meeting at which this application will be heard.
- The regularly scheduled meeting of the City-County Planning Board is the third Thursday of each month.
- After the Planning Board hearing, the application is forwarded with the Board's recommendation to the next available City Council meeting for hearing and final action.

A. PROJECT INFORMATION:

Project Address: 6340 US Hwy 93 South
 Total Area of Property: 5.766 acres
 Zoning District: WB2 and WLR
 Assessor's Tract No.(s) _____ Lot No(s) _____
 Block # _____ Subdivision Name _____
 Section 1 Township 30 Range 22

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.

[Signature]
 Owner's Signature

Feb 3, 2014
 Date

Larry Lambert
 Print Name

[Signature]
 Applicant's Signature

Feb 3, 2014
 Date

Larry Lambert
 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

Representative's Signature

Date

Print Name

APPLICATION CONTENTS:

Attached ALL ITEMS MUST BE INCLUDED - INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

Planned Unit Development Application – **11 copies**

Site Plan – **11 copies** The site plan, drawn to scale, which shows in detail the proposed use; property lines and setback lines; topography – slopes, drainage, ridges, etc.; existing and proposed buildings; location and type of landscaping; Vehicle, emergency and pedestrian access, traffic circulation and control, including pedestrian and bikeway linkages to existing and/or proposed trails beyond project boundaries; location and type of open space and common areas; fencing

Reduced copy of the site plan not to exceed 11" x 17" – **1 copy**

Narrative Addressing the Following - **11 copies**

- ✓ • Total acreage and present zoning classifications;
- ✓ • Zoning classification of all adjoining properties;
- ? • Density in dwelling units per gross acre;
- ✓ • Location, size, height and number of stories for buildings and uses proposed for buildings;
- ✓ • Location, size, height, color and materials of signs;
- ✓ • Location, height, and material of fencing and/or screening;
- ✓ • Proposed maintenance of common areas and open space;
- ✓ • Special design standards, materials and / or colors;
- ✓ • An overall description of the goals and objectives for the development of the project.
- ✓ • The extent to which the plan deviates from zoning, subdivision regulations and/or "Standards for Design and Construction" (public works standards). The standards that may be deviated from through the approval of a Planned Unit Development are listed in section 11-2S-5.A. Please describe the public benefit for such departures including how they further the intent and purpose of the Planned Unit Development as set forth in Sec. 11-2S-1.
- ✓ • The nature and extent of all open space in the project and the provisions for maintenance and conservation of the common open space; assess the adequacy of the amount and function of the open space in terms of the land use, densities, and dwelling types proposed in the plan.
- ✓ • The manner in which services will be provided such as water, sewer, storm water management, schools, roads, traffic management, pedestrian access, recreational facilities and other applicable services and utilities.
- ✓ • The relationship of the planned development upon the adjacent and surrounding neighborhoods. Specifically address any potential adverse impacts and how they may be avoided or effectively mitigated.
- ✓ • How the plan provides reasonable consideration to the character of the neighborhood and the particular suitability of the property for the proposed use.
- ✓ • How the development plan will further the goals, policies and objectives of the Whitefish Growth Policy.
- If affordable housing is a component of the project, describe how the project is implementing the standards in Section 11-2S-3.B.

- ___ Proposed schedule of completion and phasing of the development, if applicable – 11 copies
- ___ Covenants, conditions and restrictions (CC&Rs) – 11 copies
- ✓ Written description how the project meets the criteria in Section D – 11 copies
- ✓ Where new buildings or additions are proposed, building sketches and elevations shall be submitted – 11 copies
- ___ Electronic version of entire application such as .pdf
- ___ Certified adjacent owners list for properties within 150-feet of subject site (300-feet if accompanying a Major Subdivision request) – 1 copy
- ___ Any other additional information requested during the pre-application process
- ___ Any other information that may be deemed relevant and appropriate to allow for adequate review
- ___ If the project accompanies a Subdivision request, a preliminary plat shall be prepared in accordance with the requirements of the Subdivision Regulations (see applicable form)

When all application materials are submitted to the Planning & Building Department, the application will be scheduled for public hearing before the Planning Board and City Council.

Project Name: Hampton Inn & Suites, Whitefish

- Initial Planned Unit Development
- Amendment to an Approved/Existing Planned Unit Development

B. OWNER(S) OF RECORD:

Name: B2B Properties Limited Partnership Phone: (406) 261-4982

Mailing Address: Box 1207

City, State, Zip: Whitefish, MT 59937

Email: relentless@centurytel.net

APPLICANT (if different than above):

Name: Larry Lambert Phone: (406) 370-5987

Mailing Address: 4965 Taiden Ln

City, State, Zip: Missoula, MT 59803

Email: larry@lambert-hotels.com

TECHNICAL/PROFESSIONAL:

Name: Marc Liechti, Apec Engineering Phone: (406) 755-1333

Mailing Address: 111 Legend Trail

City, State, Zip: Kalispell, MT 59901

Email: marc@apec-mt.com

C. DESCRIBE PROPOSED USE:

75 room Hampton Inn & Suites hotel with pool, hot tub, exercise facility and conference space. We will incorporate an office building and/or multi-family housing unit into the project at some time in the future.

D. FINDINGS: The following criteria form the basis for approval or denial of the Planned Unit Development (§11-2S-1). The burden of satisfactorily addressing these criteria lies with the applicant. Review the criteria below and discuss how the proposal conforms to the criteria. If the proposal does not conform to the criteria, describe how it will be mitigated. Each criteria shall be addressed with an eye toward community benefit and how the project goes above and beyond the standard requirements.

1. Preserve and/or enhance environmentally sensitive areas of the site.

We will do what we can to keep trees on the western portion of the lot in place.

2. Preserve crucial wildlife habitat and/or daily or seasonal migration corridors.

We will do what we can to keep trees on the western portion of the lot in place.

3. Provide usable open space.

We have a large portion of the lot dedicated to landscaping and open space. The eastern portion of the narrow portion of the lot will be dedicated to a "park like" setting and grand entrance.

4. Preserve and protect the character and qualities of existing neighborhoods.

The lots adjacent to our lot are currently being used for commercial purposes.

5. Make efficient use of infill property.

Our lot will be designed to use land as efficiently as possible. We will incorporate the hotel into the lot to allow for an extraordinary amount of landscaping. The additional commercial buildings will be positioned on the western portion of the lot behind the hotel.

6. Provide effective buffers or transitions between potentially incompatible uses of land.

We will keep trees in place to shield the neighborhood to the west of the hotel. We have no control over the Baker Ave extension.

7. Facilitate street continuity and connectivity, and attractive high quality streetscapes.

By negotiating a right of way for Baker Ave we are allowing the City of Whitefish to create a new, attractive, high quality drive through the property.

8. Provide pedestrian and bicycle facilities and encourage transportation alternatives.

We will provide bicycle racks and incorporate bicycle and pedestrian friendly pathways into the development.

9. Provide affordable housing.

We do not have specific plans for any additional affordable housing at this time.

10. Provide a variety of residential product type while avoiding a monotonous and institutional appearance.

Our buildings will incorporate modern designs that meet the architectural requirements of the City of Whitefish

11. Compliance with and/or implementation of the growth policy.

The City of Whitefish would like another hotel in town. Our hotel will be an upper midscale Hilton Hotel product. Hampton Inn & Suites is currently one of the best upper midscale hotels in the country.

We will provide first class accommodations to visitors to Whitefish.

February 3, 2014

From: Larry Lambert
4965 Jaiden Ln
Missoula, MT 59803
406-370-5987
larry@lamberthotels.com

To: City County Planning Board
Planning & Building Department
510 Railway St
Whitefish, MT 59937

Ref: Planned Unit Development application

Dear: City County Planning Board

Please accept this application for a Planned Unit Development (PUD) overlay on a lot we are purchasing located at 6340 US Hwy 93 South in Whitefish. We are requesting the PUD overlay to construct a 75 room Hampton Inn & Suites hotel. The hotel will consist of 75 rooms and suites, pool, hot tub, exercise facility and meeting and conference space. The building will be approximately Forty Five (45) feet tall and have a footprint of approximately 18,702 square feet.

Our lot consists of 5.766 acres. There are currently 2.0 acres of commercial, WB2 zoning and 3.766 acres of WLR zoning. The adjacent lots are WB2 and WLR zoning. As part of our request, we will give the City of Whitefish an eighty (80) foot wide right of way through our lot for the future extension of Baker Ave. In return for the right of way, we are requesting that the WB2 zoning be extended to the eastern edge of the new right of way and we are given the approval to construct the building up to a maximum height of forty five (45) feet. The WB2 zoning will increase to approximately 3.926 acres after the requested PUD overlay is put in place. By increasing the WB2 zoning to 3.926 acres, we will be able to move the building to the west, allowing us to put the building on the wider portion of the lot. By moving the building to the wider portion of the lot, we will be able to design a much more attractive building, move it away from Highway 93 and make a much more appealing, landscaped entrance to the hotel. We are requesting the forty five foot height restriction variance to allow us to design a better looking hotel that is not a long tube. We tried designing a hotel that will meet the thirty five (35) foot restriction. It does not give us the ability to create a nice looking, appealing design.

We do not have plans to screen the lot or fence any portion of the lot. Our plan is to create a nice, landscaped, grand entrance into the hotel from Hwy 93. We will create a "park like" design that allows our guests to walk from the hotel to city sidewalks and walking paths. The design will consist of sidewalks, walking paths, lots of grass, flowers and trees. We will maintain all areas within our lots. As you will see on our preliminary drawings, we have a large portion of the eastern portion of our lot landscaped.

The typical Hampton Inn & Suites prototypical design consists of an EIFS exterior with some rock work. Our hotel design will consist of a combination of EIFS, Concrete siding, rock work and timbers. Our intent is create a design that will "meld" our hotel into the local community. We do not want to create a design that will clash with other buildings in the area.

Our future plans consist of adding one or two office buildings in the new WB2 zoning. We do not have any specific plan or design for these buildings. We expect that we will go through the design and construction process at some point in the future. We do not have any specific plan for the development of the WLR zoning portion west of the new right of way. We would like to leave that open for future development that meets the WLR zoning requirements.

We will have more than adequate water run off storage and storage area for snow. All City services are located in close proximity to the site which will make hooking up to City services easy and efficient.

Currently, the viewable neighborhood consists of commercial buildings. There is a subdivision to the west of the development currently shielded by trees. Our intent is to keep some trees in place to help shield the neighbors. This will help maintain their unique neighborhood feel. Our hotel and small commercial development plan will help the City of Whitefish bring in more guests to the community. Currently, Whitefish does not have enough room capacity to house guests at certain times of the year. Our hotel will add room supply and bring visitors to Whitefish that would have been required to stay in Kalispell.

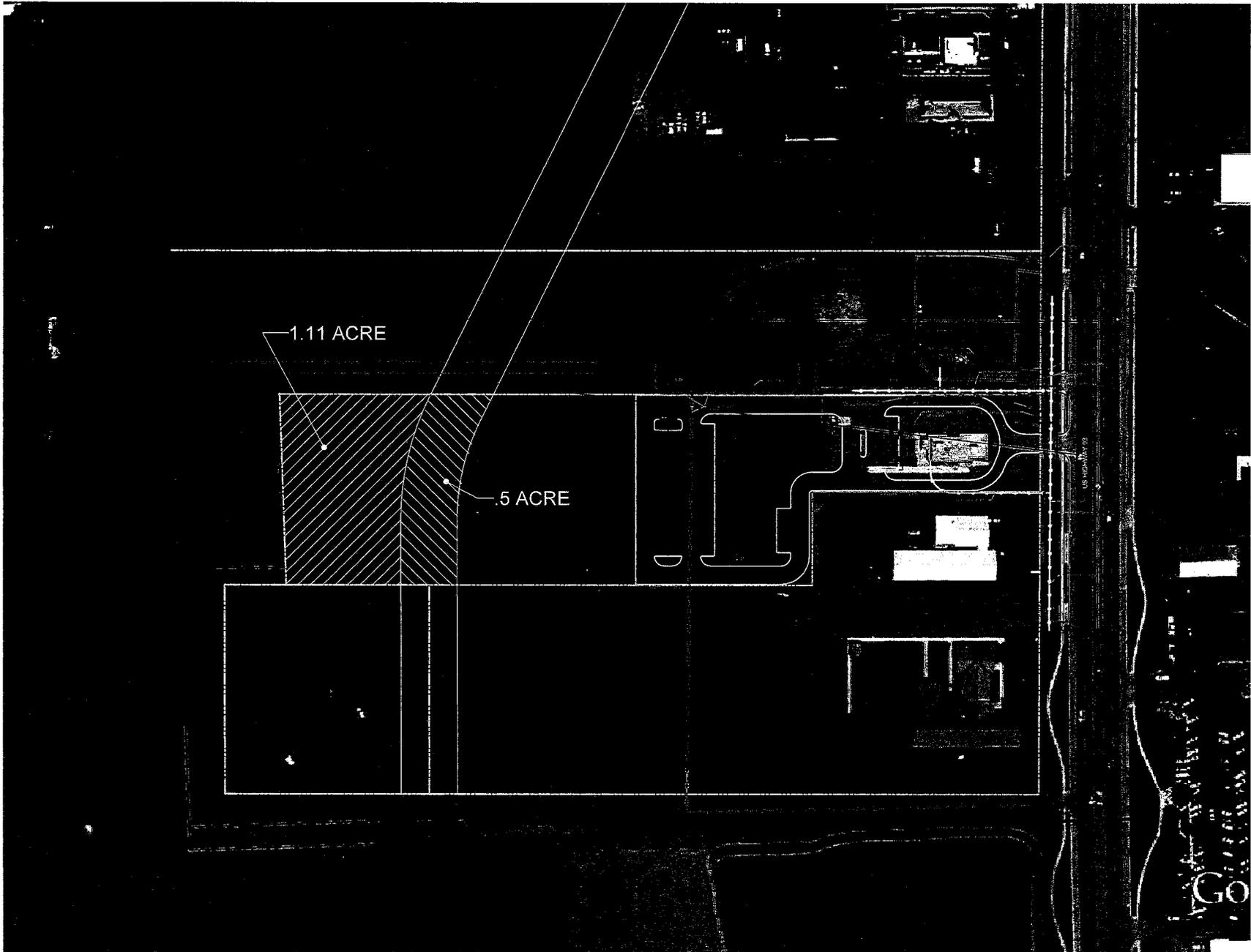
We would like to start construction of the hotel on June 1, 2014. We anticipate a ten (10) month construction schedule. Currently, we have no time schedule for the office building or future development area west of the Baker Ave right of way.

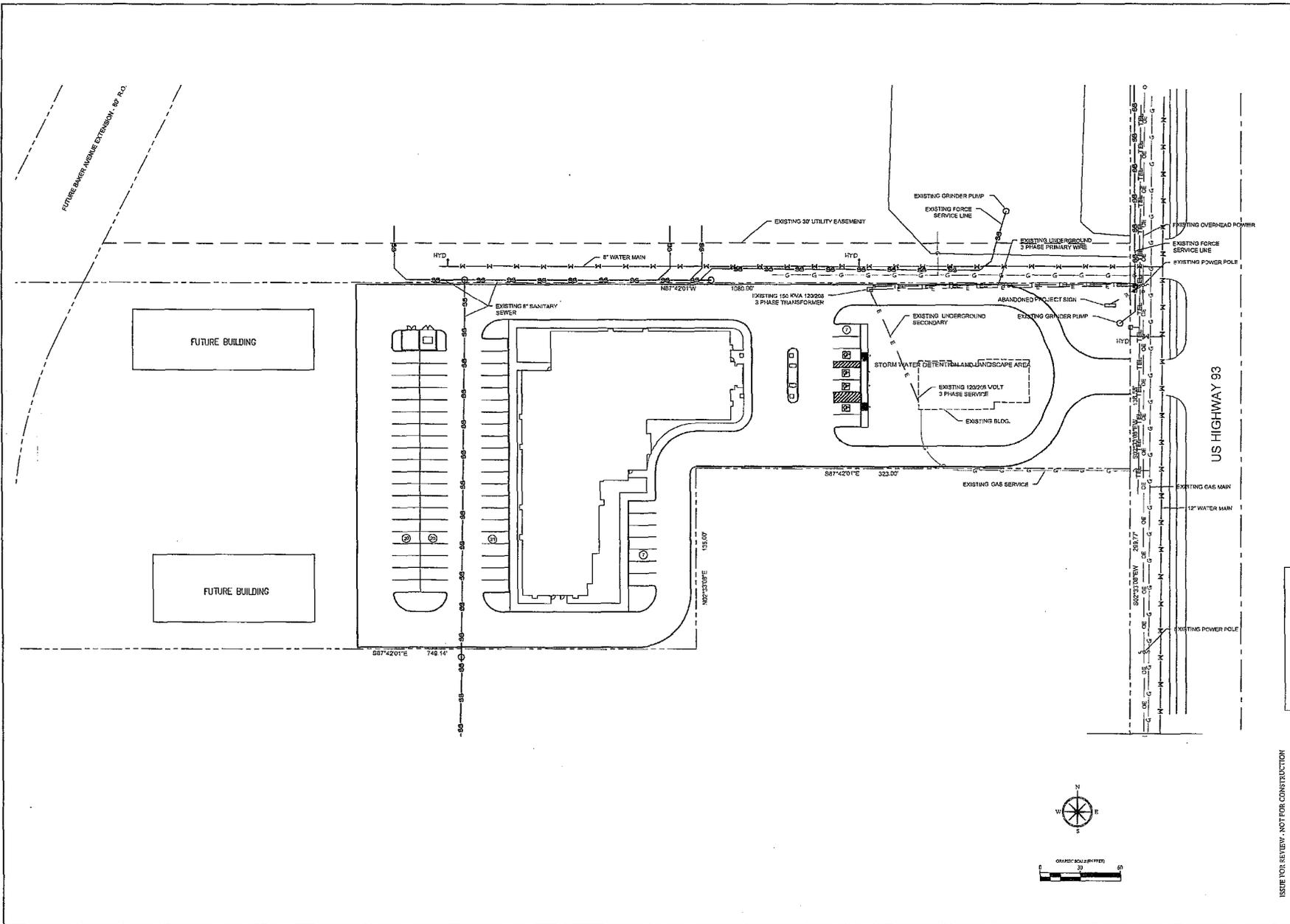
Thank you for the opportunity to submit this request for Planned Unit Development overlay. If you have any questions or need additional information I can be reached at the above phone number or e-mail address.

Sincerely,



Larry Lambert
President
Lambert Hotels





HAMPTON INN & SUITES
 6340 HIGHWAY 93 S
 WHITEFISH, MT

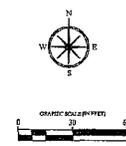


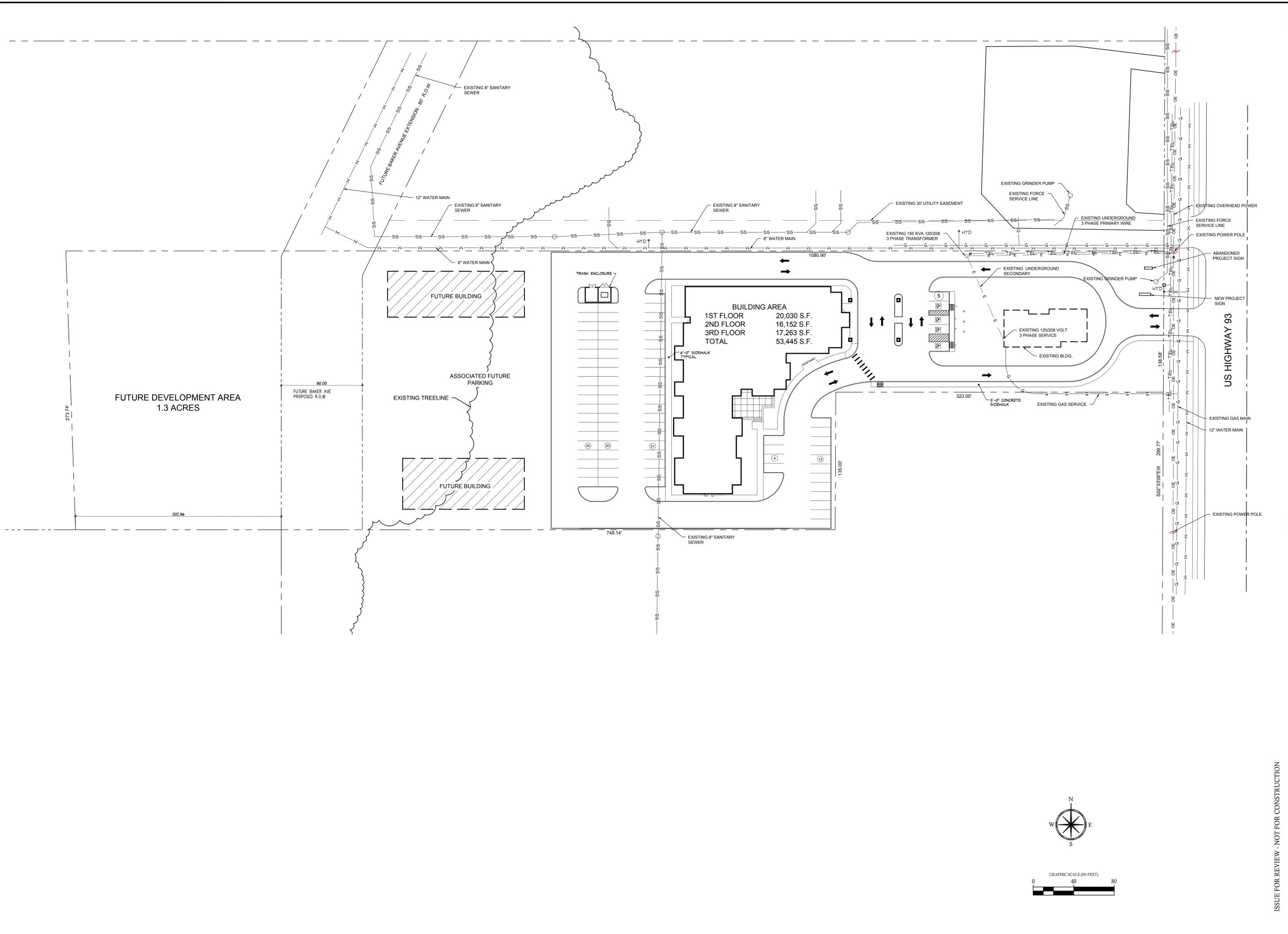
ISS NUMBER: 12020
 DRAWN BY: KJ
 DATE: 1/23/2014
 REVISIONS:
 X
 X
 X
 X

ISSUE FOR REVIEW, NOT FOR CONSTRUCTION

SITE PLAN
 1" = 30'

C
 1





HAMPTON INN & SUITES
 6340 HIGHWAY 93 S
 WHITEFISH, MT



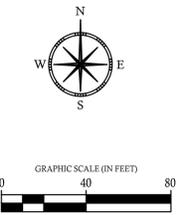
JOB NUMBER: 120320
 DRAWN BY: KL
 DATE: 3/4/2014
 REVISIONS:

- △ X
- X
- X
- X

OVERALL SITE PLAN
 1" = 40'

C
101

ISSUE FOR REVIEW - NOT FOR CONSTRUCTION





① 3D View 1



② 3D View 2



③ 3D View 3



④ 3D View 4

Revisions:

TED R. LOCKE, ARCHITECT

925 Main Street
Springfield, CO 81073
(719) 565-1100

HAMPTON INN & SUITES
6340 HIGHWAY 93 S
WHITEFISH, MT



Drawing Title:

Project Date: -
Project Number: 1401
Drawn By: KS

Sheet Number:

1



Legend

FMSN-1 FMSN Project	Study Boundary
MSN-1 MSN Project	City Boundary
	Urban Boundary



Whitefish Recommended Major Street Network Improvements

Figure 8-1

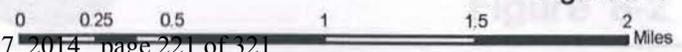




FIGURE 4-1
 PROPOSED TRANSPORTATION CORRIDORS
 City Council Packet, April 7, 2014 page 222 of 321
 WHITEFISH, MONTANA

WGM group
 ENGINEERING • SURVEYING • PLANNING
 3021 Palmer • (406) 728-4611
 P.O. Box 16027 • Missoula, MT 59808

PROJECT: 98-10-05
 FILE No: 981005PT.DWG
 SURVEYED: ---
 DESIGN: ---
 DRAFE: CEG
 APPROVE: NPK
 DATE: OCTOBER 11, 1999
 SHEET: 1 of 1 SHEETS

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March 31, 2014

Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

Mayor Muhlfeld and Councilors

Wastewater System Planning and Grant Applications

Introduction/History

The City retained Anderson Montgomery Consulting Engineers (AMCE) in 2012 to provide planning, grant writing and engineering services for the Wastewater Facility Improvements Project. While the ultimate focus of this project is to design and construct a new wastewater treatment plant, that facility is but one part of the City's overall wastewater system. Efficient operation of the wastewater collection system is crucial to the future plans for the treatment plant and an important aspect of that efficiency is a need to reduce the infiltration and inflow of clear water.

Current Report

Toward that end, AMCE and the Public Works Department have prepared a Preliminary Engineering Report (PER) and applied for grants in support of the Whitefish Wastewater Infiltration and Inflow Mitigation Project. These grant applications will be submitted to the Treasure State Endowment Program (TSEP) and the Department of Natural Resource and Conservation Renewable Resource Grant and Loan Program (RRGL) in May.

The Public Hearing on April 7th will be to present the PER findings and recommendations to the City Council and general public. Staff will be on hand to receive comments and answer any questions.

Attached please find a copy of the press release for a recent article in the Daily Interlake. This provides general information on the need and our efforts to reduce clear water entering the wastewater system. Copies of the Executive Summary, a project priority list and a proposed project budget from the PER are attached, as well. A full copy of the PER is available for review at the Public Works Department in City Hall.

Financial Requirement

None at this time.

Recommendation

We respectfully recommend the City Council review the attached information and be prepared with comments and questions for the April 7th Public Hearing.

Sincerely,

A handwritten signature in blue ink, appearing to read "John C. Wilson".

John C. Wilson
Public Works Director

City of Whitefish Wastewater System Planning for the Future

The City of Whitefish has hired a consulting team utilizing Anderson-Montgomery Consulting Engineers of Helena, in association with Robert Peccia and Associates of Kalispell, to assess the City's wastewater treatment plant and collection system. The age and condition of the wastewater facilities in the City, as well as new regulatory treatment standards, provides the impetus for the technical assessment. The City has over 58 miles of sewage main and 17 lift stations required to serve the homes and businesses found on the varied topography throughout the community. The treatment system utilizes a lagoon-based technology that has been modified and upgraded several times over the last 40 years including the inclusion of a mechanical process to remove the nutrient phosphorous. Both the wastewater collection facilities and the treatment plant will require improvements to make the system effective and capable of complying with new anticipated treatment standards.

The existing collection system allows clear water to enter the pipe network through leakage in the pipe joints, leakage in manholes, roof drains, sump pumps and inflow through manhole covers. During wet weather and snowmelt, it is estimated that over half of the flow to the plant may be clear water. On an annual basis, over 16% of the flow to the plant is clear water. When the treatment plant is upgraded in the future, the design of the system must be adequately sized to handle the extraneous water, significantly raising both the capital and operating cost of the pumps, basins, chemical feeders and other components required to make the system work.

In the past, the City has implemented several projects to reduce the infiltration and inflow of extraneous water into the system, generally with good results. Given the size the collection system, additional work is proposed to further remove infiltration and inflow. A Preliminary Engineering Report was completed in 2013 that estimated that over 200,000 gallons per day of clear water could be removed from the collection system with the implementation of a number of projects that would rehabilitate or replace specific portions of the collection system. To work towards this goal, the City is pursuing grants and low interest loans to support a proposed \$1.14 million dollar project that would primarily focus on repair of leaking manholes and connecting sewers.

The City is anticipating new regulatory standards to be implemented by the Montana Department of Environmental Quality within the next five years, limiting the discharge of ammonia, total nitrogen and phosphorous from the wastewater plant. These standards cannot be met with the existing City wastewater treatment system and a costly new treatment facility will be required under a mandated compliance schedule. Reduction in the average and peak flow volume to the plant by removal of clear water now could significantly reduce the future cost of the new plant, potentially resulting in a savings amount that will offset the cost of the current investment into the collection system repairs.

The proposed sewer system repair project will be discussed at the upcoming April 7, 2014 Council meeting. Comments from the public are welcome.

CHAPTER I EXECUTIVE SUMMARY

A. PURPOSE

The City of Whitefish has been the subject of two separate enforcement actions from the Montana Department of Environmental Quality (MDEQ); the primary elements of which are related to excessive hydraulic loads and/or collection system problems. The first action, brought in 2006, was the consequence of 10 individual sanitary sewer overflows, or “SSO’s”, largely resulting from excessive hydraulic loads. The second action, resolved by Consent Order in October 2012, included five individual SSO’s, among other alleged permit violations. Clearly, the indication is that Whitefish’s collection system has experienced and continues to experience problems that result in SSO’s to surface waters.

The City is currently considering upgrades to its wastewater treatment and disposal system in preparation for a new MPDES permit within the next 2-4 years. The City’s current MPDES permit expired June 30, 2013 and has been administratively extended. The new permit will likely include new limitations that will require the WWTP to remove ammonia and nutrients, as well as nitrates. Since the anticipated upgrades to comply with new limitations are likely to be significant and costly, it is in the City’s interest to minimize the amount of clear water that is entering the sewage collection system.

The purpose of this Preliminary Engineering Report (PER) is to:

- identify sources of clear water contributions into the Whitefish wastewater collection system;
- quantify and prioritize to the greatest extent possible, the most significant sources of clear water contributions into the collection system;
- identify and describe practical methods to reduce clear water contributions into the collection system;
- provide a methodology, cost estimate and schedule for implementing proposed clear water mitigation projects.
- Assess the potential impacts of implementing the mitigation projects recommended in the PER. This includes not only the potential negative environmental or economic impacts, but also the beneficial impacts to ultimate sizing of the future WWTP.

This PER is structured to be compliant with Federal and State wastewater system regulatory, design and planning standards for the City of Whitefish. Implementation of improvements for the wastewater system is recommended in Whitefish to comply with health, safety and discharge standards established under: Montana Water Quality Act; Montana Code Annotated Chapter 17.30; and Administrative Rules of Montana – Title 17. Furthermore, this document was prepared in accordance with the preliminary engineering requirements established by the funding agencies which provide financial assistance for public facilities.

Through the Preliminary Engineering Report, the existing wastewater collection and conveyance system is analyzed and potential problems identified. A cost effective

analysis of potential system improvement alternatives is completed to identify the least expensive and most environmentally sound option(s). Total cost requirements are evaluated in terms of resource costs in conjunction with social and environmental considerations. The PER includes an analysis of those alternatives considered to be technologically feasible for the City of Whitefish.

B. SCOPE

The scope of this report will include an evaluation of the wastewater collection system for the City of Whitefish. Infiltration and Inflow (collectively known as “I&I”) has been a pervasive problem for the City since the collection system was originally built. Old gravity collection pipes; short pipe segment lengths; poor service connections; foundation sumps and directly-connected roof drains, coupled with precipitation, snowmelt and high groundwater, result in I&I impacts that amount to over 55% of the WWTP influent flow during certain times of the year. The report will include alternatives to address these issues, including an analysis of capital and operating costs and identification of the most cost-effective options to mitigate I&I. A recommendation for alternative selection will be provided to assist the City in reaching a decision on how the improvements could be implemented. An assessment of environmental conditions in the study area will be provided, including positive and negative impacts associated with proposed projects.

The following specific system issues were addressed in this planning document:

- Hydraulic peaking events at the wastewater treatment plant (WWTP) following periods of intense rainfall and/or rapid snowmelt events. These hydraulic loads are referred to as “inflow” since they typically result from clear water conduits *directly connected* to the sanitary sewer. Inflow includes flow from: roof drains; foundation drains; sumps; pick holes; etc.
- Hydraulic load originating from the seepage of groundwater into the sanitary sewer through defects in the system piping. These loads are referred to as “infiltration” since the clear water takes a more circuitous route into the collection system. Infiltration, while affected by precipitation and runoff, is typically buffered and results in a delayed hydraulic impact upon the WWTP. Generally, infiltration does not cause abrupt increases in flow, but contributes more volume overall than inflow.
- Limited condition assessment of the collection system through closed-circuit TV (CCTV) inspection of specific “high-priority” pipe segments. Selection of the CCTV’d segments is based upon empirical evidence of hydraulic problems and/or excessive I&I.
- The City undertook an I&I mitigation project in 2011 wherein approximately 14,300 lineal feet of sewermain (largely identified in the City’s 2006 I&I study) was rehabilitated through cured-in-place pipe lining. This PER will endeavor to determine the effectiveness of the mitigation project.

The City Public Works Department procured Anderson-Montgomery Consulting Engineers, Inc. (AMCE) in 2013 to evaluate the system and identify viable options to

address technical and financial concerns through preparation of a PER. The planning period for the document extends from 2013 to 2033.

C. PLANNING AREA

Whitefish is located in northwestern Montana in Flathead County, roughly 12 miles north of the City of Kalispell. The community is located within the Flathead Lake drainage basin along the south end of Whitefish Lake with development also on both sides of the Whitefish River, which drains from Whitefish Lake. A map depicting Whitefish's planning area is shown in **Figure I-1**. The planning area for the PER includes those areas within the Whitefish City boundary that were previously identified as experiencing high Infiltration & Inflow. Further discussion of the specific planning is included in Chapter II and is included in Figure II-1. This PER provides a more focused evaluation of those areas with the goal of identifying specific pipeline segments that may be the highest contributors of I&I.

D. AUTHORIZATION

The Whitefish City Council has authorized the preparation of this PER for the City of Whitefish. Anderson-Montgomery Consulting Engineers of Helena, Montana was responsible for the engineering and related analysis involved in the study.

E. REFERENCES

The following sources of information were utilized in preparation of this report.

1. Wastewater Facilities Plan for Whitefish, Montana (Peccia) – May 1997
2. Infiltration and Inflow Investigation for the City of Whitefish (Billmayer) – April 1999
3. Preliminary Engineering Report, Whitefish Wastewater System (NCI) – April 2000
4. Preliminary Design Technical Memorandum for Aeration Improvements (AMCE) – January 2002
5. System Design Drawings provided by the City of Whitefish Public Works
6. City of Whitefish Sanitary Sewer Infiltration Mitigation Study (AMCE) – January 2006.
7. City of Whitefish 2010 I&I Reduction Project Plan (Great West Engineering) – implemented 2011.

F. CONCLUSIONS

The City of Whitefish wastewater collection system experiences significant inflow, base-line infiltration and rainfall-induced infiltration, estimated to account for up to 55% of total plant influent during the wetter periods of the year. It is estimated that with implementation of the recommended Infiltration Mitigation project, up to 100,000 gallons per day of infiltration/inflow could be removed from the system. This flow volume represents almost 10% of the current annual average daily flow to the plant and a reduction in this amount of flow could result in a commensurate cost savings when the plant is upgraded in the future. During wet weather conditions, a larger reduction in volume of extraneous flow can be anticipated.

The target combined water and sewer user rate as recently published by the funding agencies for the City of Whitefish is \$82.64 per month. Water and sewer users in the City of Whitefish currently pay a combined rate of approximately \$82.55 per month, expected to increase to \$84.62 per month with projects planned for the next year or two. A greater increase in the user rate paid for wastewater collection and treatment can be anticipated in the future as new regulatory standards come into effect. A grant request of approximately \$125,000 from the DNRC and \$ 500,000 from the TSEP program will be sought for the recommended project to address excessive infiltration and inflow.

G. RECOMMENDATIONS

The consultant's recommendations are as follows:

1. The City should begin the process of securing grant and loan funding from the available government sources. These include Montana Department of Commerce (TSEP Program), Montana Department of Environmental Quality (SRF Program), U.S. Department of the Interior (RD Program), and the Montana Department of Natural Resources. It is recommended that the City pursue grant assistance to construct the top three I&I Mitigation projects as identified herein (River Lakes; Suncrest and Iron Horse).
2. The work proposed in this planning document must be designed by a professional engineer and bid for construction by a general contractor. Plans and specifications for the work must be submitted to the MDEQ for regulatory review.
3. The City should obtain the appropriate easements or rights of way to allow access to sewer mains in the City Beach and Birch Point areas to enable future rehabilitation of these sewers to restore structural integrity and reduce I/I.
4. Wastewater plant inflow data should continue to be collected in an effort to further quantify inflow, base-line infiltration and rainfall-induced infiltration. This data can be incorporated into the grant application process to increase competitiveness of the City's grant applications. The City has pledged to install a continuous-reading flow recorder on the WWTP influent structure. This should be implemented as quickly as possible.
5. The City should continue a campaign of inspecting segments of sewer pipe where I&I is suspected. This would be particularly useful during periods of high rainfall, runoff or groundwater impacts.
6. The City should initiate a process by which basement sumps can be identified and homeowners can be incentivized to re-direct sump discharges away from the sanitary sewers. This process could eliminate an estimated 230,000 to 430,000 gpd during wet seasons.
7. The City should consider installing manhole lid gaskets and inflow dishes in manholes that are subject to surface runoff. This represents a relatively low-cost method to reduce the significant peaking events that occur every spring.

8. Currently 13 downtown buildings have roof drains that discharge directly to the sanitary sewer. While the overall clear water contribution of these roof drains is less than 1 MG/year, they can contribute significantly to the short-term hydraulic peaking events. It is recommended that the City continue with its efforts to eliminate these connections from the sanitary sewer.

Please see **Figure IV-1** in Chapter IV for the locations of all prioritized I&I mitigation projects. Anticipated total project cost for the top three project package is **\$1,141,000**, including design, construction, contingency, funding costs and administration.

These project packages are recommended due to the relative cost, the anticipated effectiveness of addressing infiltration, overall impacts and longevity of the mitigation projects.

The Whitefish City Commission should consider the findings of this plan and conduct a public hearing on the project. If in agreement with the findings, it should be resolved, at the public hearing, to accept the recommendations of the Preliminary Engineering Report and pursue financial assistance for construction of the needed improvements. Recommendations for improvements should also be incorporated into the City's Capital Improvement Planning process.

Table V-4 from PER - Modified by S Anderson
City of Whitefish - I&I Mitigation Project -- Revised Priorities
Sub-Basin Cost Details - Mitigation Projects

Sub-basin Name	Alternative Description	Construction	Contingency	Legal/Admin	Engineering	Total Cost	MG Removed (estimated)	Cost/MG I-I removed
1. River Lakes	Rehab MH's	\$324,450.00	\$32,400.00	\$19,460.00	\$60,600.00	\$436,910.00	8.5	\$51,401.18
City Beach*	Rehabilitate 2,300 LF & MH's	\$305,239.20	\$30,523.92	\$18,314.35	\$57,079.73	\$411,157.20	5.1	\$80,619.06
Birch Point*	Rehabilitate 2,600 LF & MH's	\$351,252.16	\$35,125.22	\$21,075.13	\$65,684.15	\$473,136.66	5.5	\$86,024.85
Sub-Basin 24	Rehabilitate 1,120 LF 12" & 18" plus MH's	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	15.8	\$0.00
2. Suncrest	Rehab MH's	\$263,664.00	\$26,366.00	\$15,820.00	\$49,300.00	\$355,150.00	12.9	\$27,531.01
Crestwood	Rehab MH's - Stormwater collection/retentior	\$621,987.52	\$62,198.75	\$37,319.25	\$129,995.39	\$851,500.91	6.1	\$139,590.31
Creekwood	Curb outlets/retention	\$264,803.84	\$26,480.38	\$15,888.23	\$55,344.00	\$362,516.46	6	\$60,419.41
3. Iron Horse	Rehab & seal MH's	\$258,800.00	\$25,880.00	\$15,530.00	\$48,395.00	\$348,605.00	15.2	\$22,934.54
Colorado	Rehab MH's & Stormwater collection/retentio	\$624,835.68	\$62,483.57	\$37,490.14	\$116,844.27	\$841,653.66	2.6	\$323,712.95
Total Cost of 3 most cost-effective projects								\$ 1,140,665.00
<i>* Eliminated from consideration due to access/easement issues</i>								

Whitefish I&I Mitigation Project
River Lakes; Suncrest, Iron Horse

Project Budget

City of Whitefish	SOURCE	SOURCE	SOURCE	SOURCE	April-14		
ADMIN/FINANCIAL COSTS	RRGL	TSEP	SRF	Local Res.	TOTAL		
Personnel Costs	\$0	\$0	\$0	\$0	\$0		
Office Costs	\$0	\$0	\$0	\$0	\$0		
Professional Services- Project Administration (General and Funding Agency)	\$0	\$11,000	\$11,000	\$0	\$22,000		
Legal Costs	\$0	\$0	\$0	\$0	\$0		
Audit Fees	\$0	\$0	\$0	\$0	\$0		
Travel & Training	\$0	\$0	\$0	\$0	\$0		
Loan Fees	\$0	\$0	\$0	\$0	\$0		
Loan Reserves	\$0	\$0	\$0	\$27,000	\$27,000		
Interim Interest	\$0	\$0	\$0	\$0	\$0		
Bond Cost	\$0	\$0	\$0	\$9,000	\$9,000		
CIP Preparation	\$0	\$0	\$0	\$0	\$0		
TOTAL ADMIN/FIN. COSTS	\$0	\$11,000	\$11,000	\$36,000	\$58,000		
					5.1%		
ACTIVITY COSTS:	RRGL	TSEP	SRF	Local Res.	TOTAL		
ROW - Easements	\$0	\$0	\$0	\$0	\$0		
Final Engineering Design	\$50,000	\$29,150	\$0	\$0	\$79,150		
Construction Inspection	\$0	\$0	\$79,150	\$0	\$79,150		
Construction	\$75,000	\$459,850	\$312,150	\$0	\$847,000		
Contingency	\$0	\$0	\$0	\$77,700	\$77,700		
TOTAL ACTIVITY COSTS	\$125,000	\$489,000	\$391,300	\$77,700	\$1,083,000		
					94.9%		
TOTAL PROJECT COSTS	\$125,000	\$500,000	\$402,300	\$113,700	\$1,141,000		
Percentage of TPC	11%	44%	35%	10%	100%		
			O&M Impact		Debt		
% Grant Funding	54.8%		\$0.00		Service		20-year SRF loan
			\$0.00		\$402,300		3% I= 0.0672
	EDU's:	4207	\$0.00	O&M/month	\$27,034.56		4207 EDU's
					\$6.43		12 months
TPC/2 =	\$570,500				\$0.54		Debt Svc.
	-\$70,500				\$0.13		25% Coverage
	\$530,350				\$0.67		Total Debt Service
							Estimated
					\$0.67		User Rate Increase

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March 31, 2014

Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

Mayor Muhlfeld and Councilors

**Recommendation to Award a Contract for
Phase II of the East 2nd Street Reconstruction Project**

Introduction/History

The Public Works Department opened construction bids for Phase II of the East 2nd Street Reconstruction Project on March 27th. This memo is to recommend the City Council approve a funding package for remaining work on the project and authorize the City Manager to execute a construction contract with the low bidder, Knife River Construction, in the amount of \$2,020,020. A copy of the bid tabulation is attached.

Current Report

We received four bids, ranging from a low of \$2,020,020 to a high of \$2,379,379. The difference between the two lowest bids was \$2970, or a mere 0.1%, indicating these to be reasonable values. The engineer's estimate for Phase II construction was somewhat conservative at \$2,547,622.

The scope of work on this project will provide infrastructure improvements along East 2nd Street from the alley west of Cow Creek to the BSNF railroad crossing. Those improvements will include road work with new curb and gutter; water, sewer and storm drainage improvements; a new bicycle/pedestrian path along the south edge of the right of way and new street lighting. Private utility companies will take advantage of this project to upgrade their infrastructure, as well. Overhead electric, TV cable and phone lines will be relocated underground.

Work is scheduled to begin in early June and be completed by the end of October.

Financial Requirement

Staff recommends the project be constructed with a combination of Resort Tax funds, CTEP grant money and Stormwater funds. The Resort Tax Fund has approximately \$2,170,000 available through the construction period. This is a conservative estimate based on balances in the current Resort Tax budget plus anticipated revenue in FY 2015. The CTEP grant program will contribute \$132,000 toward the trail construction, giving a potential total of \$2,302,000 from those two sources.

Outstanding obligations for this project include payment for the recently completed Phase I construction, the balance of our engineering services contract, reimbursement to CenturyLink for the relocation of their telephone infrastructure, plus the proposed contract with Knife River for Phase II construction; all for a total of \$2,330,450 without providing for contingencies.

This leaves us with obligations exceeding Resort Tax and CTEP resources by about \$28,450. To rely on only these two funds would also drain the Infrastructure portion of Resort Tax fund through June 2015, leaving no money to start design on the West 7th Street project. In any event, the status of the Resort Tax fund appears to be such that construction on West 7th Street project must wait until after 2015.

We reviewed Knife River's low bid on the East 2nd Street project to find stormwater improvements totaling \$364,800. In addition to immediate funding needs, the desire to move forward with design for the West 7th Street project leads staff to propose the Council approve up to \$350,000 from the Stormwater Fund for East 2nd Street.

The Stormwater Fund cash balance is expected to be over \$750,000 at the end of this fiscal year, without this allocation, and \$55,000 in additional revenue is predicted for FY 2015.

Public Works therefore recommends the following funding package for remaining payments to be made on the East 2nd Street Reconstruction Project, including Phase I and Phase II construction contracts, engineering services, and reimbursement to private utility companies for relocating their infrastructure. These obligations total \$2,330,450 plus contingencies.

That recommendation includes \$1,850,000 from the Resort Tax Fund, \$350,000 from the Stormwater Fund and \$132,000 from the CTEP grant program, with contingencies to be covered by the Resort Tax Fund. These resources total \$2,332,000 without providing for contingencies. This proposal includes revenue from the FY 2015 Resort Tax Fund Budget which has not been approved. A summary of this information is attached in spreadsheet form.

Recommendation

We respectfully recommend the City Council approve a funding package for the remaining work on the East 2nd Street Reconstruction project to include \$1,850,000 from the Resort Tax Fund, \$350,000 from the Stormwater Fund and \$132,000 from the CTEP grant program, with contingencies to be covered by the Resort Tax Fund.

We also recommend the City Council approve a construction contract for Phase II of the East 2nd Street Reconstruction Project to Knife River Construction in the amount of \$2,020,020, contingent upon approval by the CTEP grant program.

Sincerely,

A handwritten signature in blue ink, appearing to read "John C. Wilson".

John C. Wilson
Public Works Director

John Wilson

From: Brandon Theis [brandon@rpa-kal.com]
Sent: Thursday, March 27, 2014 5:16 PM
To: Karin Hilding
Cc: John Wilson; Ryan Mitchell; Chuck Stearns; publicworks@cityofwhitefish.org
Subject: 12103.000 - East Second Street Reconstruction Project - Phase II - Certified Bid Tabulations
Attachments: BID_TABS_ESS_II.pdf; CTEP Bid Reivew Cert.pdf

Karin,

The City of Whitefish received and publicly opened bids at 11:30 a.m. on March 27, 2014, for the East Second Street Reconstruction Project – Phase II, at the City Hall in Whitefish, Montana.

The Apparent Low Bidder for the Base Bid is **Knife River of Kalispell, Montana.**

Four (4) bids were received. The bids ranged from 20.7% lower to 6.6% lower than the Engineer's Estimate of \$2,547,622.50 for the Base Bid. No bid irregularities were found.

Attached are the Certified Bid Tabulations.

Per our project schedule, we will want to obtain Council approval for award on Monday, April 7th, 2014.

Secondly, please see the attached “Local and Tribal Government Bid Review Certification Form”. This will need to be sign by Chuck Stearns with the original being forwarded back to RPA.

Thanks and please let me know if you have any questions!



Brandon Theis, PE | Project Manager

Robert Peccia & Associates Inc. | PO Box 5100 | Kalispell, MT 59903

406.752.5025 (office) | 406.752.5024 (fax) | 406.212.4915 (cell) | brandon@rpa-kal.com

<http://www.rpa-hln.com>

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SUMMARY OF BIDS
EAST SECOND STREET RECONSTRUCTION PROJECT - PHASE II
WHITEFISH, MT

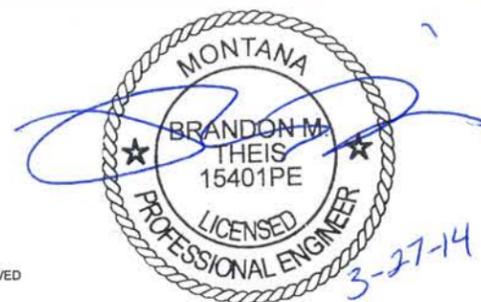
Bid Opening Date / Time / Location:
 March 27, 2014 @ 11:30 am
 City Hall, Whitefish, Montana

	Acknowledged Addendum No. 1 & No. 2	Bid Bond	MT Contractors Registration No.	BASE BID	Apparent Low Bidder
Engineer's Estimate	n/a	n/a	n/a	\$2,547,622.50	
Knife River	Yes	Yes	10089	\$2,020,020.00	X
LHC, Inc.	Yes	Yes	5459	\$2,022,979.84	
Noble Excavating Inc.	Yes	Yes	10518	\$2,272,929.20	
Schellinger Constructin Co. Inc.	Yes	Yes	4213	\$2,379,379.00	

SUMMARY OF BIDS
EAST SECOND STREET ROADWAY RECONSTRUCTION PROJECT - PHASE II
WHITEFISH, MT

RPA Robert Peccia & Associates, Inc.
 825 Custer Avenue * Helena * Montana * (406) 447-5000
 102 Cooperative Way, Suite 300 * Kalispell * Montana * (406) 752-5025

Item No.	Quantity	Unit	Unit Description	Engineer's Estimate		Knife River		LHC, Inc.		Noble Excavating Inc.		Schellinger Constructin Co. Inc.	
				Unit Price (Figures)	Total Price (Figures)	Unit Price (Figures)	Total Price (Figures)	Unit Price (Figures)	Total Price (Figures)	Unit Price (Figures)	Total Price (Figures)	Unit Price (Figures)	Total Price (Figures)
Phase Two													
1	5.6	ACRE	Site Preparation	\$12,000.00	\$67,200.00	\$3,000.00	\$16,800.00	\$12,842.17	\$71,916.15	\$7,500.00	\$42,000.00	\$3,000.00	\$16,800.00
2	1	LS	Excavation and Embankment	\$100,000.00	\$100,000.00	\$89,368.00	\$89,368.00	\$135,623.78	\$135,623.78	\$125,000.00	\$125,000.00	\$251,102.30	\$251,102.30
3	4,425	CY	Muck Excavation	\$25.00	\$110,625.00	\$3.00	\$13,275.00	\$10.36	\$45,843.00	\$10.00	\$44,250.00	\$8.40	\$37,170.00
4	5,250	TON	Rock Embankment	\$50.00	\$262,500.00	\$16.00	\$84,000.00	\$15.01	\$78,802.50	\$30.00	\$157,500.00	\$28.50	\$149,625.00
5	2,700	TON	Uncrushed Sub Base Course - 4" Minus	\$12.00	\$32,400.00	\$11.00	\$29,700.00	\$12.53	\$33,831.00	\$20.00	\$54,000.00	\$11.00	\$29,700.00
6	250	CY	Sub-Excavation and Stabilization	\$35.00	\$8,750.00	\$30.00	\$7,500.00	\$37.53	\$9,382.50	\$30.00	\$7,500.00	\$36.00	\$9,000.00
7	17,650	SY	Stabilization Fabric	\$1.15	\$20,297.50	\$1.00	\$17,650.00	\$2.58	\$45,537.00	\$2.00	\$35,300.00	\$1.40	\$24,710.00
8	6,080	CY	Crushed Base Course - 3/4" Minus	\$34.00	\$206,720.00	\$26.00	\$158,080.00	\$26.28	\$159,782.40	\$35.00	\$212,800.00	\$31.00	\$188,480.00
9	2.2	TON	Asphalt Tack Coat (Undiluted, SS-1)	\$2,000.00	\$4,400.00	\$650.00	\$1,430.00	\$1,018.38	\$2,240.44	\$2,300.00	\$5,060.00	\$1,000.00	\$2,200.00
10	2,805	TON	Asphalt Concrete Pavement	\$90.00	\$252,450.00	\$64.00	\$179,520.00	\$75.00	\$210,375.00	\$77.00	\$215,985.00	\$77.00	\$215,985.00
11	7,160	LF	Concrete Curb and Gutter	\$15.00	\$107,400.00	\$11.00	\$78,760.00	\$12.76	\$91,361.60	\$18.00	\$128,880.00	\$13.50	\$96,660.00
12	383	LF	Concrete Median Curb	\$25.00	\$9,575.00	\$8.00	\$3,064.00	\$10.75	\$4,117.25	\$22.00	\$8,426.00	\$14.60	\$5,591.80
13	79	SY	Concrete Median Cap	\$50.00	\$3,950.00	\$34.00	\$2,686.00	\$40.50	\$3,199.50	\$100.00	\$7,900.00	\$57.00	\$4,503.00
14	2,193	SY	4" Concrete Sidewalk	\$55.00	\$120,615.00	\$36.00	\$78,948.00	\$46.31	\$101,557.83	\$40.00	\$87,720.00	\$49.00	\$107,457.00
15	410	SY	6" Concrete Driveway	\$72.00	\$29,520.00	\$75.00	\$30,750.00	\$79.00	\$32,390.00	\$80.00	\$32,800.00	\$72.00	\$29,520.00
16	28	EA	New Sign	\$400.00	\$11,200.00	\$315.00	\$8,820.00	\$320.88	\$8,984.64	\$300.00	\$8,400.00	\$300.00	\$8,400.00
17	28	EA	New Delineator	\$300.00	\$8,400.00	\$173.00	\$4,844.00	\$175.76	\$4,921.28	\$165.00	\$4,620.00	\$165.00	\$4,620.00
18	469	LF	Epoxy Striping - 8" Solid	\$3.00	\$1,407.00	\$3.00	\$1,407.00	\$3.76	\$1,763.44	\$3.75	\$1,758.75	\$3.50	\$1,641.50
19	125	LF	Epoxy Striping - 24" Solid	\$6.00	\$750.00	\$16.00	\$2,000.00	\$9.67	\$1,208.75	\$10.00	\$1,250.00	\$9.00	\$1,125.00
20	1	LS	Epoxy Striping - Words, Symbols and Median Curb Paint	\$1,000.00	\$1,000.00	\$7,000.00	\$7,000.00	\$2,562.19	\$2,562.19	\$2,500.00	\$2,500.00	\$2,400.00	\$2,400.00
21	9	EA	Manhole - 48" Sanitary Sewer	\$4,000.00	\$36,000.00	\$3,900.00	\$35,100.00	\$3,120.35	\$28,083.15	\$3,500.00	\$31,500.00	\$4,250.00	\$38,250.00
22	1,289	LF	Pipe - Buried: 8" Sanitary Sewer Main - SDR 35 PVC Pipe	\$50.00	\$64,450.00	\$41.00	\$52,849.00	\$32.95	\$42,472.55	\$42.00	\$54,138.00	\$63.00	\$81,207.00
23	514	LF	Pipe - Buried: 12" Sanitary Sewer Main - SDR 35 PVC Pipe	\$65.00	\$33,410.00	\$45.00	\$23,130.00	\$35.16	\$18,072.24	\$48.00	\$24,672.00	\$66.00	\$33,924.00
24	700	LF	Pipe - Buried: 2" Sanitary Sewer Force Main - IPS HDPE SDR 7 Pipe	\$40.00	\$28,000.00	\$28.00	\$19,600.00	\$29.50	\$20,650.00	\$25.00	\$17,500.00	\$38.00	\$26,600.00
25	5	EA	Bentonite Trench Plug	\$1,000.00	\$5,000.00	\$340.00	\$1,700.00	\$764.96	\$3,824.80	\$250.00	\$1,250.00	\$775.00	\$3,875.00
26	8	EA	Pressurized Sanitary Sewer Service - 1 1/4" IPS HDPE SDR 7	\$1,500.00	\$12,000.00	\$1,350.00	\$10,800.00	\$855.46	\$6,843.68	\$1,750.00	\$14,000.00	\$2,225.00	\$17,800.00
27	9	EA	Sanitary Sewer Service with Cleanouts - Sch. 40 PVC Pipe	\$1,500.00	\$13,500.00	\$1,150.00	\$10,350.00	\$785.39	\$7,068.51	\$1,500.00	\$13,500.00	\$1,625.00	\$14,625.00
28	182	LF	Pipe - Buried: 8" Water Main - C-900 CL150 PVC Pipe	\$55.00	\$10,010.00	\$66.00	\$12,012.00	\$54.14	\$9,853.48	\$39.00	\$7,098.00	\$112.00	\$20,384.00
29	2,582	LF	Pipe - Buried: 12" Water Main - C-900 CL150 PVC Pipe	\$60.00	\$154,920.00	\$72.00	\$185,904.00	\$46.91	\$121,121.62	\$44.00	\$113,608.00	\$47.00	\$121,354.00
30	5	EA	Gate Valve - 8"	\$2,000.00	\$10,000.00	\$2,000.00	\$10,000.00	\$1,388.26	\$6,941.30	\$2,000.00	\$10,000.00	\$1,765.00	\$8,825.00
31	5	EA	Gate Valve - 12"	\$2,500.00	\$12,500.00	\$3,400.00	\$17,000.00	\$2,340.27	\$11,701.35	\$3,750.00	\$18,750.00	\$2,700.00	\$13,500.00
32	4	EA	Existing Water Main Connection	\$3,000.00	\$12,000.00	\$1,950.00	\$7,800.00	\$3,085.21	\$12,340.84	\$1,000.00	\$4,000.00	\$2,220.00	\$8,880.00
33	24	EA	Water Service - 1" IPS HDPE SDR 7	\$1,800.00	\$43,200.00	\$1,300.00	\$31,200.00	\$1,077.44	\$25,858.56	\$1,750.00	\$42,000.00	\$1,775.00	\$42,600.00
34	9	EA	Fire Hydrant Assembly	\$5,000.00	\$45,000.00	\$6,300.00	\$56,700.00	\$6,076.95	\$54,692.55	\$4,750.00	\$42,750.00	\$6,210.00	\$55,890.00
35	1	EA	Existing Hydrant Relocation	\$3,000.00	\$3,000.00	\$1,000.00	\$1,000.00	\$2,485.78	\$2,485.78	\$1,300.00	\$1,300.00	\$2,600.00	\$2,600.00
36	78	LF	Box Culvert - 10' x 4' Reinforced Concrete Box	\$900.00	\$70,200.00	\$1,700.00	\$132,600.00	\$1,535.61	\$119,777.58	\$1,500.00	\$117,000.00	\$1,560.00	\$121,680.00
37	56	LF	Pipe - Buried: 12" Corrugated Metal Pipe w/FETS	\$50.00	\$2,800.00	\$60.00	\$3,360.00	\$33.64	\$1,883.84	\$40.00	\$2,240.00	\$35.00	\$1,960.00
38	110	LF	Pipe - Buried: 24" Corrugated Metal Pipe w/FETS	\$80.00	\$8,800.00	\$83.00	\$9,130.00	\$60.71	\$6,678.10	\$50.00	\$5,500.00	\$58.00	\$6,380.00
39	4	EA	Manhole - 48" Storm Drain Manhole	\$3,000.00	\$12,000.00	\$3,775.00	\$15,100.00	\$2,191.97	\$8,767.88	\$2,700.00	\$10,800.00	\$3,133.00	\$12,532.00
40	13	EA	Manhole - 48" Combination Manhole Inlet	\$3,400.00	\$44,200.00	\$4,000.00	\$52,000.00	\$2,411.04	\$31,343.52	\$2,900.00	\$37,700.00	\$3,250.00	\$42,250.00
41	2	EA	Inlet - 30" Storm Drain Inlet	\$1,800.00	\$3,600.00	\$1,500.00	\$3,000.00	\$1,394.58	\$2,789.16	\$1,750.00	\$3,500.00	\$1,350.00	\$2,700.00
42	1	EA	Storm Water Treatment Device	\$16,000.00	\$16,000.00	\$20,000.00	\$20,000.00	\$15,688.83	\$15,688.83	\$35,000.00	\$35,000.00	\$17,000.00	\$17,000.00
43	2,881	LF	Pipe - Buried: 12" Storm Drain - SDR 35 PVC Pipe	\$45.00	\$129,645.00	\$45.00	\$129,645.00	\$24.65	\$71,016.65	\$34.00	\$97,954.00	\$32.00	\$92,192.00
44	4,582	LF	4" Curb Underdrains	\$4.50	\$20,619.00	\$2.00	\$9,164.00	\$2.17	\$9,942.94	\$4.00	\$18,328.00	\$3.20	\$14,662.40
45	1,000	CY	Imported Trench Backfill	\$30.00	\$30,000.00	\$16.00	\$16,000.00	\$37.15	\$37,150.00	\$25.00	\$25,000.00	\$23.00	\$23,000.00
46	2,077	LF	Conduit - 1-1/4" PVC Sch 40	\$3.00	\$6,231.00	\$4.00	\$8,308.00	\$4.03	\$8,370.31	\$1.85	\$3,842.45	\$1.30	\$2,700.10
47	1,037	LF	Conduit - 2" PVC Sch 40	\$5.00	\$5,185.00	\$5.00	\$5,185.00	\$5.11	\$5,299.07	\$2.25	\$2,333.25	\$1.80	\$1,866.60
48	69	LF	Conduit - 3" PVC Sch 40	\$7.00	\$483.00	\$16.00	\$1,104.00	\$13.44	\$927.36	\$4.25	\$293.25	\$4.70	\$324.30
49	6	EA	Pull Box - Type I	\$500.00	\$3,000.00	\$300.00	\$1,800.00	\$322.49	\$1,934.94	\$225.00	\$1,350.00	\$200.00	\$1,200.00
50	16	EA	Street Light Base	\$800.00	\$12,800.00	\$700.00	\$11,200.00	\$698.73	\$11,179.68	\$1,250.00	\$20,000.00	\$710.00	\$11,360.00
51	1	EA	Street Light Service Assembly Complete	\$4,000.00	\$4,000.00	\$3,500.00	\$3,500.00	\$3,869.89	\$3,869.89	\$4,200.00	\$4,200.00	\$3,750.00	\$3,750.00
52	1	LS	Electrical Wiring and Misc. Items	\$15,000.00	\$15,000.00	\$12,000.00	\$12,000.00	\$12,362.16	\$12,362.16	\$17,500.00	\$17,500.00	\$13,200.00	\$13,200.00
53	31	EA	New Mailbox	\$250.00	\$7,750.00	\$180.00	\$5,580.00	\$204.24	\$6,331.44	\$200.00	\$6,200.00	\$190.00	\$5,890.00
54	419	LF	New Fence	\$4.00	\$1,676.00	\$5.00	\$2,095.00	\$5.37	\$2,250.03	\$7.50	\$3,142.50	\$5.00	\$2,095.00
55	41	LF	Relocate Existing Fence	\$4.00	\$164.00	\$12.00	\$492.00	\$12.90	\$528.90	\$15.00	\$615.00	\$12.00	\$492.00
56	270	LF	Handrail	\$45.00	\$12,150.00	\$50.00	\$13,500.00	\$50.52	\$13,640.40	\$55.00	\$14,850.00	\$47.00	\$12,690.00
57	1	LS	Wetland Mitigation - Excavation & Plantings	\$40,000.00	\$40,000.00	\$28,000.00	\$28,000.00	\$30,618.35	\$30,618.35	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00
58	1	LS	Imported Topsoil (3" Thick)	\$37,400.00	\$37,400.00	\$14,000.00	\$14,000.00	\$17,310.19	\$17,310.19	\$20,000.00	\$20,000.00	\$42,000.00	\$42,000.00
59	1,430	SY	Sod	\$9.00	\$12,870.00	\$7.00	\$10,010.00	\$7.20	\$10,296.00	\$8.50	\$12,155.00	\$13.00	\$18,590.00
60	1	LS	Hydroseeding, Fertilizer and Mulch	\$10,000.00	\$10,000.00	\$18,500.00	\$18,500.00	\$17,909.00	\$17,909.00	\$18,000.00	\$18,000.00	\$16,660.00	\$16,660.00
61	1	LS	New Landscaping	\$30,000.00	\$30,000.00	\$40,000.00	\$40,000.00	\$48,588.65	\$48,588.65	\$47,000.00	\$47,000.00	\$45,200.00	\$45,200.00
62	1	LS	Traffic Control	\$47,600.00	\$47,600.00	\$64,000.00	\$64,000.00	\$50,679.21	\$50,679.21	\$25,000.00	\$25,000.00	\$45,000.00	\$45,000.00
63	1	LS	Mobilization, Bonding and Submittals (5% Max)	\$121,300.00	\$121,300.00	\$100,000.00	\$100,000.00	\$58,435.10	\$58,435.10	\$113,710.00	\$113,710.00	\$115,000.00	\$115,000.00
TOTAL BASE BID:				4.76%	\$2,547,622.50	4.95%	\$2,020,020.00	2.89%	\$2,022,979.84	5.00%	\$2,272,929.20	4.83%	\$2,379,379.00



TRUE TABULATION OF BIDS RECEIVED
 Robert Peccia & Associates
 Today's Date: March 27, 2014

**East 2nd Street Reconstruciton Project
Proposed Project Budget - March 31, 2014**

Obligations

LHC - Phase I Construction (completed)	85,158
Reimbursement for Relocation of Private Utilitie	62,000
RPA - Engineering Services	163,265
Knife River - Proposed Phase II Construcion	<u>2,020,020</u>
Total	\$ 2,330,443

Recoommended Funding Package

Resort Tax Funds Available in FY 2014 Budget	1,000,000
Proposed Allocation of FY 2015 Resort Tax Revenue	850,000
Stormwater Fund	350,000
CTEP Grant	<u>132,000</u>
Total	\$2,332,000

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MANAGER REPORT

April 2, 2014



FWP PUBLIC HEARING NOTICE

Montana Fish, Wildlife, and Parks (FWP) has issued a public notice for the April 10th public hearing on our proposed petition to modify the limits and regulations on a section of the Whitefish River. The public hearing will be held at the Whitefish City Hall, 418 Second Street East.

The Whitefish River currently has a no wake restriction from the outlet of Whitefish Lake to the JP Bridge. This amendment would further restrict the river as follows:
--The Whitefish River is limited to manually and electric powered watercraft from its confluence at the railroad trestle south of Whitefish Lake outlet to the bridge on JP Road.

A copy of the FWP public notice is attached to this report in the packet.

RESORT TAX

Resort Tax collections for January were \$128,169 which is 8.18% or \$9,691 higher than the January, 2013 figure of \$118,478. For the year to date, we are 5.5% or \$70,766 higher than last year at this time. A chart and graph of Resort Tax collections is attached to this report in the packet.

QUARTERLY REVIEW OF MAYOR AND COUNCIL GOALS

I do a quarterly review of the status of the goals of the Mayor and City Council with both Department Directors, at a staff meeting, and in my Manager Report for the Mayor and City Council. Below is that review. The City Council will work on goals for the next fiscal year at the April 7th work session.

Hwy 93 South Corridor Plan – This plan is budgeted in the FY14 budget. Dave says this project will have to follow behind the Hwy 93 West Corridor project because of workload. The City Council extended the Hwy 93 West Corridor Plan Steering Committee to June 30, 2014, so the start of the Hwy 93 South Corridor Plan will depend on when the Hwy 93 West Corridor plan is completed.

Downtown Parking – We held a work session with the City Council at the March 17th meeting and got direction on several items related to the assessment district, leases, and the City Hall architectural contract. The City Council also gave direction not to evaluate the “raft” or “bathtub” design for one level of underground parking. However, the “raft” or “bathtub” design for a foundation for an above ground parking structure may still be a possibility in order to avoid pilings of up to 150 feet deep being required.

City Hall Planning – At the March 17th work session, the City Council said that we could bring forward a contract for architectural and engineering work for Phase 1 of planning and programming. I am working on the City Hall architectural contract with Mosaic Architecture currently.

Depot Park Phase II – The restroom addition to the O’Shaughnessy Center is out to bid and we will open bids on April 16th.

Possible Amendments to the Sign Code – There may be some minor code amendments coming forward, but it does not appear that any major changes will be coming from the Planning Board.

New Cemetery Development – We are going to install 5 more groundwater monitoring wells at the possible site at the south end of the Wastewater Treatment Plant site on April 1st – no fooling. These additional wells at the south end of the site will help determine whether or not a 5 acre site at the south end would be feasible for a new Cemetery location.

Address Aquatic Invasive Species (AIS) problem – At the March 3rd meeting, Mayor Muhlfeld proposed and the City Council approved a preliminary budget commitment for AIS work in FY15. It will provide \$15,000 to the Flathead Basin Commission for partial funding of the Coram inspection station plus funding for Whitefish Lake Institute to continue and expand their AIS efforts.

Code Enforcement Improvements – no new notable issues.

Maintenance Plans for parks, facilities, Riverside Park, Whitefish River erosion – The maintenance plans were part of the Parks Master Plan which was adopted last fall. Karl is working on a budget proposal for the FY15 budget for some bank stabilization projects along the Whitefish River in Riverside Park.

Whitefish River Waterway Development and Improvement – The Montana Fish and Game Commission approved starting the process to consider an administrative rule change for limiting a portion of the Whitefish River to electric and manual powered craft only on February 13th. The Montana FWP public meeting on this proposal will be held on Thursday, April 10th at 6:00 p.m. in the City Council Chambers. There is a proposed resolution on the April 7th agenda to support this change and limitation to the Whitefish River.

Economic Development – Public/Private Partnerships and Targeted Business Assistance – There was not much activity in this area in the last quarter.

BNSF – CECRA site cleanup, Whitefish River, overall relationship – There was an update in the last quarterly report. DEQ officials may come to Whitefish during the spring to provide an update on the status of this project.

Whitefish Trail & work with Whitefish Legacy Partners – Karl Cozad sent DNRC a draft Operations Plan and other documents before he left.

Water Quality Improvements (water rights, City Beach, stormwater projects) – The City Beach bilge catchment area is part of the engineering project that was awarded to Robert Peccia and Associates. WGM Group was awarded conceptual planning for stormwater projects including Monegan Road, the Crestview area, and some other projects. We are still working with BNSF on ownership of the north end the Riverside Park stormwater detention pond. Karin Hilding is going to do an evaluation of all of our stormwater outfalls into the Whitefish River to look for possible improvements. On water rights, our joint application with the Whitefish Lake Golf Club for additional pumping out of Whitefish Lake was recently approved. There were also no adverse comments submitted on our application for additional pumping out of Whitefish Lake for drinking water piped up to our Water Treatment Plant.

Affordable Housing – On November 18, 2013, the City Council approved using \$86,895 of Tax Increment Funds to allow the Whitefish Housing Authority to renovate the two dilapidated houses on 1st Street that were donated by BNSF to the Housing Authority. Those renovations are currently underway.

MDT – Hwy 93 West Project - We are working with MDT on the planning for Phase II of this project which is from Karrow Avenue to Mountainside Drive. It does not appear construction for Phase II will begin until July.

Parks Master Plan – This plan was approved by the City Council last November. The Mountain Trails Park Master Plan committee was established last fall and will soon begin work.

Explore extent of annexation waivers for utility contracts – The City Council held a work session on March 3rd on annexation and moved the Jennings Landing annexation project down to 3rd priority which elevated the Houston Drive annexation up to #1 priority. The City Council wanted to see the service and fiscal impact report before deciding whether to proceed with that annexation. I have begun work on that report, but other priorities have started to interfere with progress on that project.

Long term financial planning and sustainability – Not much occurred in this area in the last quarter.

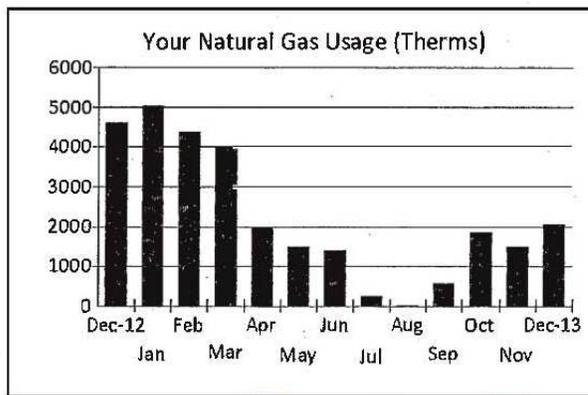
Green Initiatives – This past year the Public Works Department completed an energy conservation project at the water treatment plant. The scope of work included replacement of aging, inefficient HVAC equipment, as well as new HVAC controls. They evaluated the results at year's end to find natural gas consumption was reduced approximately 60% for the period June through December 2013. Our Northwest Energy billing for December alone (see below) indicates a 52% reduction from the same month in 2012, and at 10 degree lower average daily

temperatures.

The project cost was approximately \$77,000. Two thirds of that amount was for software, instrumentation and control equipment. The remainder was used to upgrade and replace heating and dehumidifying equipment. As the project progressed, we also incurred costs to replace ventilation and access equipment that was unsafe or in disrepair.

We can confidently predict continued savings in the 60% range as we continue to fine tune the heating and ventilation control system. The cost recovery period for this project is just over four and a half years, with a projected annual savings at approximately \$16,250.

Service Address: 335 RESERVOIR RD PLNT, WHITEFISH MT



	Dec 2012	Nov 2013	Dec 2013
Days of Service	30	28	29
Therms Used	4612.00	1487.00	2050.00
Avg. Therms per day	153.7	53.1	70.7
Avg. cost per day	\$115.98	\$40.70	\$55.54
Avg. daily temp (°F)	32	37	22

Records Management/Imaging Phase II – Nothing underway at this point.

Redesign City website - The new website was deployed on January 2nd. Some departments are still adding content and filling out some pages.

MEETINGS

Building Active Communities conference (3/18 – 3/20) – Karin Hilding, Dave Taylor and I attended a two and a half day conference in Bozeman on Building Active Communities. Greg Gunderson from the Planning Board and Catherine Todd from North Valley Hospital also went with us. The travel expenses for this trip were paid by a state grant. This conference focused on an initiative from national, state, and local public health agencies and departments to link human exercise and fitness to transportation and “active transportation” choices such as mass transit, walking, and bicycling. It is in response to the burgeoning obesity problem in the U.S. with some estimates predicting that 1/3 of the U.S. population in the future will have adult onset diabetes if we don’t become more active.

Our five representatives will work on some initiatives in the next year to work on this problem – I put our initial five step strategic plan into the packet.

UPCOMING SPECIAL EVENTS

REMINDERS

City Council Annual Goal Setting work session – Monday, April 7th
City Hall closed on Friday, April 18th for the Good Friday holiday.

Respectfully submitted,

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

Chuck Stearns, City Manager



Montana Fish, Wildlife & Parks

NEWS

490 N. Meridian Road, Kalispell, MT. 59901

CONTACT: John Fraley 406-751-4564 (office)

EMAIL: jfraley@mt.gov

REGION ONE: FOR IMMEDIATE RELEASE

March 14, 2014

Whitefish River Boating Restrictions Public Meeting Set for April 10

The Montana Fish and Wildlife Commission will hold a public hearing on April 10 at 6 p.m. to consider amending boating rules on the Whitefish River. The meeting will be held at the Whitefish City Hall, 418 Second Street East.

The Whitefish River currently has a no wake restriction from the outlet of Whitefish Lake to the JP Bridge. This amendment would further restrict the river as follows:

--The Whitefish River is limited to manually and electric powered watercraft from its confluence at the railroad trestle south of Whitefish Lake outlet to the bridge on JP Road.

The City of Whitefish submitted the petition to restrict motorized boating to the Fish and Wildlife Commission in part to “provide a unique quiet and safe refuge for locals and visitors who are seeking an alternative recreational experience.”

Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing on April 10. People can also submit comments from now through April 18 to: FWP, Region 1 Office, 490 North Meridian Road, Kalispell, MT 59901; FAX: 257-0349; or email at cjust@mt.gov.

To view the proposed amendment in its entirety, go to the following link:
http://fwp.mt.gov/news/publicNotices/armRules/pn_0150.html

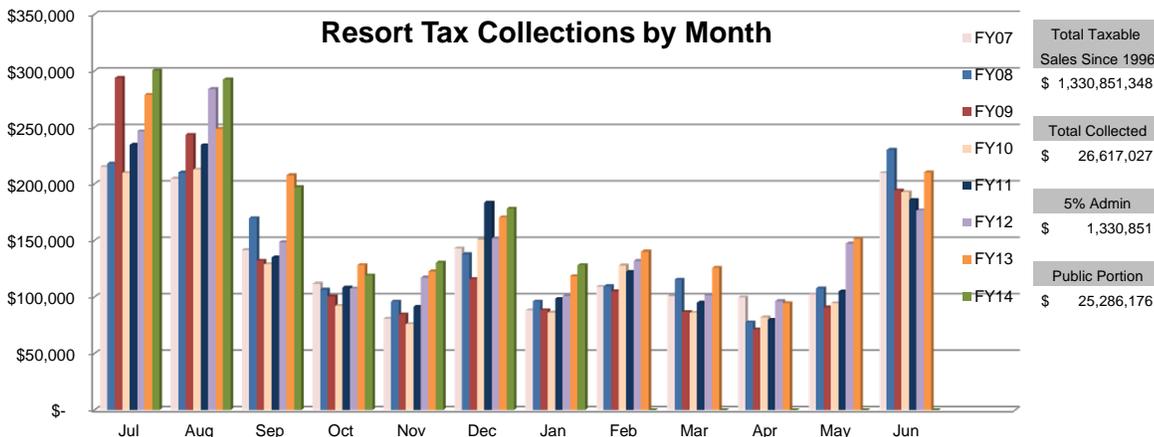
The FW Commission will analyze comments and make a final decision on the petition at their June 12 meeting.

---fwp---

Resort Tax Report
Reported in the Month Businesses Paid Tax

Month/Year	Lodging	Bars & Restaurants	Retail	Collected	% Chng Mnth to Pr Yr Mnth	% Chng Quarter to Pr Yr Quarter	Interest	Total
Jul-08	57,424	80,928	155,462	293,814	35%		\$ 3,040	\$ 296,854
Jul-09	41,463	71,552	96,808	209,823	-29%		\$ 5,828	\$ 215,652
FY09 vs FY10	-9.0%	-4.1%	-2.6%	-4.2%	or \$	(67,489)	TaxableSalesFY10	\$ 81,019,064
Jul-10	54,499	81,857	98,267	234,624	12%		\$ 2,423	\$ 237,047
Aug-10	69,698	79,873	84,842	234,413	10%		1,023	235,436
Total FY11	\$ 274,688	\$ 651,321	\$ 747,615	\$ 1,673,624	Compared to Prv Yr		\$ 38,004	\$ 1,711,629
FY10 vs FY11	12.0%	15.5%	2.4%	8.7%	or \$	134,262	TaxableSalesFY11	\$ 88,085,492
Jul-11	56,106	90,212	100,325	246,642	5%		\$ 979	\$ 247,621
Aug-11	85,621	91,408	106,860	283,889	21%		7,833	291,722
Sep-11	28,154	58,830	61,535	148,519	10%	12.4%	593	149,112
Oct-11	17,944	45,919	43,610	107,473	-1%		496	107,969
Nov-11	14,351	39,054	63,758	117,162	28%		479	117,641
Dec-11	16,531	51,195	84,000	151,726	-17%	-1.9%	526	152,252
Jan-12	10,032	44,089	46,905	101,026	3%		515	101,541
Feb-12	14,585	56,427	60,780	131,793	8%		578	132,371
Mar-12	11,008	42,952	47,682	101,643	7%	5.9%	557	102,200
Apr-12	9,353	39,367	47,657	96,377	21%		610	96,987
May-12	15,461	51,207	80,526	147,194	40%		6,993	154,187
Jun-12	35,584	68,403	72,472	176,460	-5%	13.44%	625	177,085
Total FY12	\$ 314,731	\$ 679,063	\$ 816,110	\$ 1,809,903	Compared to Prv Yr		\$ 20,785	\$ 1,830,688
FY11 vs FY12	15%	4%	9%	8%	or \$	136,279	TaxableSalesFY12	\$ 95,258,076
Jul-12	69,418	94,341	115,149	278,908	13%		\$ 643	\$ 279,551
Aug-12	53,361	92,463	102,812	248,636	-12%		444	249,080
Sep-12	57,000	77,503	73,232	207,734	40%	8.3%	533	208,267
Oct-12	24,519	54,631	49,137	128,288	19%		434	128,722
Nov-12	8,099	40,326	74,122	122,547	5%		393	122,941
Dec-12	15,490	66,046	88,956	170,492	12%	11.9%	363	170,855
Jan-13	13,152	51,930	53,396	118,478	17%		413	118,891
Feb-13	18,023	55,180	66,995	140,198	6%		405	140,603
Mar-13	16,171	56,231	53,318	125,720	24%	14.9%	465	126,185
Apr-13	10,105	42,230	42,325	94,660	-2%		427	95,087
May-13	19,009	52,303	80,090	151,402	3%			
Jun-13	41,222	74,833	94,085	210,140	19%	8.6%		
Total FY13	\$ 345,570	\$ 758,018	\$ 893,617	\$ 1,997,205	Compared to Prv Yr		\$ 4,520	\$ 1,640,183
FY12 vs FY13	10%	12%	9%	10%	or \$	187,301	TaxableSalesFY13	\$ 105,116,040
Jul-13	81,828	98,642	120,028	300,497	8%		488	300,986
Aug-13	77,809	108,131	106,422	292,362	18%		496	292,858
Sep-13	50,377	77,416	69,328	197,120	-5%	7.4%	434	197,555
Oct-13	16,851	48,015	54,271	119,137	-7%		434	119,571
Nov-13	6,831	47,701	75,780	130,312	6%		434	130,746
Dec-13	21,782	64,884	91,585	178,251	5%	1.5%	25,945	204,196
Jan-14	16,848	54,481	56,839	128,169	8%			128,169
Total FY14	\$ 272,326	\$ 499,270	\$ 574,252	\$ 1,345,849	YTD Compared to Last Year		\$ 28,232	\$ 1,374,081
YTD vs Last Year	13.0%	4.6%	3.1%		or \$	189,243	TaxableSalesFY14	\$ 70,834,135
FY14 % of Collections	20%	37%	43%				\$ 771,200	\$ 19,510,104
Grand Total	\$ 4,515,231	\$ 9,399,379	\$ 11,371,566	\$ 25,286,176				
% of Total Collections	18%	37%	45%					3.0% Average / since '96

Should be \$70,766



Our Strategic Plan

Step 1 – Education and community outreach

Step 2 – Fund update to Active Transportation Plan – includes a walking audit

Step 3 – Commit TIF funding to filling in trail gaps before TIF expires in 2020

Step 4 – Establish trail legacy program for contributors

Step 5 - Policy change – require multi-modal transportation impact study instead of just a traffic study

Target Audiences

- *Community leaders*
- *Kids*
- *Seniors*
- *Developers*
- *Parents*
- *Business owners*
- *School system and teachers*
- *User groups*

RESOLUTION NO. 14-_____

A Resolution of the City Council of the City of Whitefish, Montana, approving a Real Estate Purchase and Sale Agreement with respect to Lots 13, 14, 15, 16, 17, and 18, of Block 58, of Whitefish, Montana.

WHEREAS, the City of Whitefish owns real estate at the current location of City Riverside Park, available to the public for recreational uses along Whitefish River; and

WHEREAS, the City of Whitefish has the opportunity to purchase additional real property, Lots 13, 14, 15, 16, 17, and 18, of Block 58, of Whitefish, Montana, located adjacent to Riverside Park for the public's use; and

WHEREAS, the City of Whitefish believes the purchase of the six lots adjacent to Riverside Park and along the Whitefish River as a storm detention pond, additional park land and location for an extension of the City Bicycle and Pedestrian trail will add value to the public's recreational use of City Riverside Park, park lands, bicycle pedestrian trails and the City's stormwater and utility system; and

WHEREAS, the purchase of the property qualifies as an eligible activity for the use of Tax Increment Funds under Section 7-15-4288, MCA:

Costs that may be paid by tax increment financing. The tax increments may be used by the local government to pay the following costs of or incurred in connection with an urban renewal area ... as identified in the urban renewal plan ...:

(1) land acquisition;

* * *

(4) the acquisition, ... and improvement of public improvements or infrastructure, including ... sidewalks, pedestrian malls, ... storm sewers, waterways ... and any public improvements authorized by ... Title 7, Chapter 13, parts ... 43 (Municipal Sewage and/or Water Systems).

; and

WHEREAS, this acquisition is consistent with and helps to implement the City's 1987 Urban Renewal Plan, especially Redevelopment Objective #8 which provides that Tax Increment Funds may be used for:

8. The expansion and redevelopment of the City Parks in an effort to improve the recreational resources of the city that attract tourists and attract permanent residents to Whitefish.

; and

WHEREAS, the City has proposed a Real Estate Purchase and Sale Agreement for the purchase of the six lots, for the purchase price of \$54,500 and \$2,000 administrative fee, dependent upon its approval by the Whitefish City Council; and

WHEREAS, the entire Real Estate Purchase and Sale Agreement is attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, the terms contained in the Buy-Sell Agreement are acceptable to the BNSF Railway Company, reasonable, and represent less than the fair market value of the property being sold.

NOW, THEREFORE, BE IT RESOLVED 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: The City Council hereby approves all of the terms of the Buy-Sell Agreement attached as Exhibit "A", and approves the purchase of the property described therein according to such terms.

Section 3: The City Manager or his designated official is authorized and directed to negotiate and to complete the sale of the property identified herein according to the terms of the Buy-Sell Agreement attached as Exhibit "A", and in connection therewith is authorized to execute any additional documents necessary in order to close the sale.

Section 4: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

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

John M. Muhlfeld, Mayor

ATTEST:

Necile Lorang, City Clerk

BNSF RAILWAY COMPANY

REAL ESTATE PURCHASE AND SALE AGREEMENT

This Real Estate Purchase and Sale Agreement ("**Agreement**") is entered into as of the Effective Date (defined below) between the City of Whitefish ("**Buyer**") and **BNSF RAILWAY COMPANY** ("**Seller**"). This Agreement shall not be binding upon either party unless and until both parties have executed and delivered this Agreement. The submission of this document by Seller to Buyer shall not constitute an offer to sell by Seller.

In consideration of the mutual covenants set forth in this Agreement and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

GENERAL TERMS AND DEFINITIONS

1. The following terms shall have the meanings set forth below:

Closing. The consummation of the transaction contemplated by this Agreement, which shall be deemed to have occurred when both parties have delivered the items contemplated in Section 4 of this Agreement.

Closing Date. Notwithstanding anything else herein to the contrary, the sale contemplated by this Agreement shall close on or before April 17, 2014. Seller shall have the right to extend the closing up to ninety (90) days, at Seller's sole judgment.

Earnest Money. The cash sum of Five Thousand Four Hundred and No/100 Dollars (\$5,400.00) made payable to BNSF Railway Company.

Effective Date. The date of Seller's execution of this Agreement as indicated below Seller's signature hereto.

Property. That parcel of land situated in or near the City of Whitefish, County of Flathead and State of Montana, shown hatched black on the map marked Exhibit A dated December 20, 2013 attached hereto and made a part hereof, subject to revision as set forth below in Section 3.

Purchase Price. The sum of Fifty Four Thousand Five Hundred and No/100 Dollars (\$54,500.00)

Review Period. The period commencing on the Effective Date and expiring at 5:00 p.m. central time on the date that is 5 days after the Effective Date.

PURCHASE AND SALE

2. (a) Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase and accept from Seller, for the Purchase Price, all of Seller's right, title and interest (if any), in and to the Property.

(b) Seller may assign its rights (but not its obligations) under this Agreement to Goldfinch Exchange Company LLC, (Goldfinch) an exchange intermediary, in order for Seller to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Seller shall provide Buyer with a Notice of Assignment, attached as **Exhibit C**, and Buyer shall execute an acknowledgement of receipt of such notice. Buyer may also assign its rights (but not its obligations) under this Agreement to an exchange intermediary in order for Buyer to effect an exchange under Section 1031 of the Internal of Revenue Code.

(c) Upon submission by Buyer to Seller of this Agreement signed by Buyer, Buyer shall deposit the Earnest Money with Goldfinch as escrow agent. Goldfinch shall hold the Earnest Money in escrow pursuant to the terms and conditions of this Agreement. The Earnest Money shall be refunded to Buyer if this Agreement is not executed and delivered by Seller within forty-five (45) days after the date Buyer delivers this Agreement fully executed by Buyer and deposits the Earnest Money. Buyer shall not be entitled to any interest on the Earnest Money held by Goldfinch pursuant to this Agreement. Buyer acknowledges that receipt by Goldfinch of the Earnest Money shall not constitute acceptance of this Agreement or Buyer's offer provided, however, that Goldfinch shall return the Earnest Money to Buyer if Seller does not execute and deliver this Agreement within forty-five (45) days after Buyer deposits the Earnest Money. Goldfinch shall deliver the Earnest Money to the party entitled thereto pursuant to this Agreement, provided, however if there is a dispute between Buyer and Seller as to who is so entitled, Goldfinch may deposit the Earnest Money with a court of competent jurisdiction pending resolution of such dispute.

(d) The balance of the Purchase Price shall be paid at Closing as provided below.

INSPECTION

3. (a) Seller will prepare a legal description of the Property and will forward such description to Buyer for Buyer's review. Buyer shall have ten (10) days following such delivery to notify Seller in writing if Buyer objects to such description. If Buyer does not so object then the description of the Property prepared by Seller shall be the definition of the Property for all purposes under this Agreement. If Buyer does so object then Buyer shall cause to be prepared a survey of the Property certified to Seller, Buyer and such other parties as Buyer may choose showing the boundaries of the Property and any improvements located thereon (the "**Survey**"). If Seller does not agree that the description of the Property contained on the Survey is the Property Seller wishes to sell or otherwise objects to the Survey, then Seller may terminate this Agreement by written notice to Buyer, in which case the Earnest Money shall be refunded to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination. If Seller agrees in writing that the Survey description is accurate then the description thereon shall be the definition of the Property for all purposes under this Agreement. In the event a city, county, or other governing authority where the Property is located (a "**Municipality**") requires a survey or plat to convey the Property (a "**Plat**"), the Buyer shall obtain, at Buyer's sole cost and expense, such Plat and the approval of such Municipality. Seller's obligations hereunder are conditioned upon Seller's approval of the Plat approved by the Municipality. Buyer shall provide the proposed Plat to Seller prior to submission to the Municipality and prior to the expiration of the Review Period.

(b) Buyer shall have until the end of the Review Period to examine title to the Property. If Buyer elects to obtain a title commitment for the Property, Buyer may deliver to Seller no later than the expiration of the Review Period written notice of any objections to the status of title or matters reflected on the Survey that Buyer may have together with a copy of such title commitment, Survey and all matters referenced therein. Seller shall have no obligation to cure any such objection. If Seller notifies Buyer in writing that Seller will cure any such objection, Seller (a) shall make good faith efforts to cure such matter by the Closing Date and if not cured by such date Buyer may terminate this Agreement in which case the Earnest

Money shall be refunded to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination, and (b) may effect such cure by causing the title company issuing the title commitment to remove such matter as an exception from coverage by paying additional premium therefor or otherwise. If Seller at any time notifies Buyer in writing that Seller is not willing or able to cure any of the such objections (including those which Seller has previously endeavored to cure) then Buyer or Seller may terminate this Agreement by written notice to the other delivered within five (5) days after Seller so notifies Buyer that Seller is unwilling or unable to cure such objection. In the event of such termination, the Earnest Money shall be refunded to Buyer and neither party shall have any further obligation hereunder except those that expressly survive termination. If this Agreement is not so terminated, the parties shall proceed to Closing according to the remaining provisions of this Agreement.

(c) Buyer agrees not to enter the Property prior to Closing.

(d) Notwithstanding the foregoing provisions of Section 3(b), Buyer shall not be entitled to object to any judgment against Seller which may appear of record as a lien against the Property. Seller shall pay such lien if and when it is judicially determined to be valid, and Seller hereby indemnifies the Buyer for all loss arising out of Seller's failure to have a judgment lien so settled and satisfied.

(e) Buyer shall not be entitled to object to any lien of any of Seller's mortgages. Seller shall deliver to Buyer, who shall place of record, good and sufficient releases of the liens of any mortgages on the Property securing indebtedness to which Seller is obligated to pay within one hundred eighty (180) days after the first meeting of Seller's Board of Directors held after the Closing. In the event Seller shall be unable to obtain said releases for any reason, Seller shall have the right to repurchase the Property from Buyer for the Purchase Price and Buyer shall reconvey the Property to Seller free and clear of defects or objections arising after the Effective Date, upon which this Agreement shall terminate and neither party shall have any further rights or obligations hereunder except those that expressly survive termination.

CLOSING

4. (a) Subject to the terms of this Agreement, the Closing shall occur on the Closing Date. On or before the Closing Date, Buyer shall (1) pay the Purchase Price, less the Earnest Money to Seller in cash, by certified check made payable to **BNSF Railway Company** or by wire transfer to Seller's account as designated by Seller and the Earnest Money shall become the property of Seller and no longer subject to the terms of this Agreement, and (2) complete such other affidavits or certificates as is reasonably necessary or customary to consummate the transaction. After Buyer has delivered the foregoing items, Seller shall deliver to Buyer (1) a Quitclaim Deed in recordable form, subject to all matters of record and restating the exceptions and reservations set forth in Section 8 (the "**Deed**") conveying to Buyer Seller's interest, if any, in and to the Property, (2) counterparts of the Exchange Assignment, and (3) such other affidavits and certificates as is reasonably necessary or customary to consummate the transaction in form and substance acceptable to Seller.

PRORATIONS AND CLOSING COSTS

5. (a) Real estate taxes and assessments payable or paid in the year of Closing shall be prorated by Seller and Buyer as of the Closing Date on the basis of the most recent ascertainable taxes assessed against the Property. If the Property is not separately assessed for tax purposes then there shall be no proration of taxes between Buyer and Seller, the parties shall cooperate post-Closing to cause the Property to be separately assessed and each party shall indemnify the other for any failure to pay real estate taxes and assessments due with respect to the properties constituting the tax parcel to which the Property is a part. Notwithstanding the foregoing, there shall be no proration for taxes to the extent the payment of

same has been assumed by a tenant under an existing lease to be assigned to Buyer. All outstanding assessments on the Property levied or due in the year of Closing and afterward shall be paid by Buyer.

(b) The parties shall cooperate so that utilities serving the Property that are not the responsibility of a tenant under a lease to be assigned to Buyer at Closing, to the extent feasible, shall be switched into the name of Buyer as of the Closing Date, so that a final statement can be issued to Seller for the billing period ending on the Closing Date, and so that the first day of the first billing cycle in Buyer's name can begin on the Closing Date. If, however, the final statement covering the final period of ownership by Seller also includes periods of ownership by Buyer, Buyer shall pay Seller at Closing the amount attributable to Buyer's period of ownership. Buyer shall be responsible to pay all utilities serving the Property due after Closing.

(c) Buyer shall pay all closing costs associated with Closing including, but not limited to, any escrow fees, documentary stamps and other recording costs associated with this transaction, excise taxes, the cost of any state, county or local transfer taxes, the cost of the Survey, and the costs associated with any title insurance obtained by Buyer.

(d) If any real estate broker or agent can establish a valid claim for commission or other compensation as a result of Buyer having used their services in connection with the purchase of the Property, all such commission or other compensation shall be paid by Buyer. Seller shall not be liable for any real estate commissions or finders fees to any party with respect to the sale of the Property, except amounts due to Jones Lang LaSalle Brokerage Inc. ("Broker") pursuant to a separate agreement. Buyer acknowledges that Broker has advised, and hereby advises, Buyer that the Broker is acting as such on behalf of the Seller, with the duty to represent Seller's interest, and Broker is not the agent of the Buyer. If a policy of title insurance is to be obtained, Buyer should obtain a commitment for title insurance which should be examined prior to closing by an attorney of Buyer's choice. Prior to the execution of this Agreement, Broker has advised and hereby advises the principals of this transaction, that this Agreement is binding on them, and the principals hereby acknowledge that they have been so advised. Broker has no authority to execute any document on behalf of Seller, make representations on behalf of Seller or bind Seller in any manner.

(e) The obligations of the parties in this Section 5, to the extent incurred, shall survive any termination of this Agreement.

DEFAULT AND REMEDIES

6. (a) In the event of a default by Buyer under the terms of this Agreement, Seller's sole and exclusive remedies shall be to: (i) terminate this Agreement, whereupon the parties shall have no further obligations hereunder except those that expressly survive termination, or (ii) waive such default and proceed to Closing, or (iii) obtain specific performance of this Agreement. If Seller terminates this Agreement as provided in the previous sentence Seller shall be entitled to retain the Earnest Money. Notwithstanding the foregoing, nothing contained herein shall waive or diminish any right or remedy Seller may have at law or in equity for Buyer's default or breach of any obligation hereunder to be performed by Buyer after Closing. It is hereby agreed that Seller's damages in the event of a default by Buyer hereunder are uncertain and difficult to ascertain, and that the Earnest Money constitutes a reasonable liquidation of such damages and is intended not as a penalty, but as liquidated damages.

(b) In the event of a default by Seller under the terms of this Agreement, Buyer's sole and exclusive remedies hereunder shall be to (i) terminate this Agreement and receive a refund of the Earnest Money, or (ii) waive such default and proceed to Closing. Upon such termination the parties shall have no further obligations hereunder except those that expressly survive termination.

NATURE OF SALE

7. Buyer has been allowed to make an inspection of the Property. **BUYER IS PURCHASING THE PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING THOSE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY, AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM SELLER AS TO ANY MATTERS CONCERNING THE PROPERTY**, including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, under, or in proximity to the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the leases, easements, permits, orders, licenses, or other agreements, affecting the Property (collectively, the "**Condition of the Property**"). Buyer represents and warrants to Seller that Buyer has not relied and will not rely on, and Seller is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, Property information packages distributed with respect to the Property) made or furnished by Seller, the manager of the Property, or any real estate broker or agent representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing. Buyer assumes the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by Buyer's inspection and indemnifies, holds harmless and hereby waives, releases and discharges forever Seller and Seller's officers, directors, shareholders, employees and agents (collectively, "**Indemnitees**") from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort or asserting a constitutional claim) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown, arising from or in any way related to the Condition of the Property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Property. Losses shall include without limitation (a) the cost of any investigation, removal, remedial, restoration or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) capital expenditures necessary to cause the Seller remaining property or the operations or business of the Seller on its remaining property to be in compliance with the requirements of any Environmental Law, (c) losses for or related to injury or death of any person, (d) losses for or related to injury or damage to animal or plant life, natural resources or the environment, and (e) losses arising under any Environmental Law enacted after transfer. The rights of Seller under this section shall be in addition to and not in lieu of any other rights or remedies to which it may be entitled under this document or otherwise. This indemnity specifically includes the obligation of Buyer to remove, close, remediate, reimburse or take other actions requested or required by any governmental agency concerning any Hazardous Substances on the Property. The term "**Environmental Law**" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law relating in any way to human health, occupational safety, natural resources, plant or animal life or the environment, including without limitation, principles of common law and equity, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law. The term "**Hazardous Substance**" means any

hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

The provisions of this Section 7 shall be binding on Buyer, and its heirs, successors and assigns, shall be included in the Deed and shall be covenants running with the land.

RESERVATIONS AND RESTRICTIONS

8. The obligations in this Section 8 shall be binding upon Buyer and its heirs, successors and assigns, shall be included in the Deed and shall be covenants running with the land benefiting Seller and Seller's successors and assigns. For purposes of this Section 8, Grantor shall mean Seller and Grantee shall mean Buyer. Buyer may object to the reservations set forth in Section 8(a) below in accordance with the provision of Section 3 and if Seller is unwilling or unable to cure such objection either party may terminate this Agreement as set forth in Section 3.

(a) Grantee's interest shall be subject to the rights and interests of Grantor, Grantor's licensees, permittees and other third parties in and to all existing driveways, roads, utilities, fiber optic lines, wires and easements of any kind whatsoever on the Property whether owned, operated, used or maintained by the Grantor, Grantor's licensees, permittees or other third parties and whether or not of public record. Grantor shall have a perpetual easement on the Property for the use of such existing driveways, roads, utilities, fiber optic lines, wires and easements by Grantor and Grantor's licensees, permittees and customers.

(b) Grantee's interest shall further be subject to, and Grantor does hereby specifically reserve, all coal, oil, gas, casing-head gas and all ores and minerals of every kind and nature excluding sand and gravel underlying the surface of the Property, together with the full right, privilege and license at any and all times to explore, or drill for and to protect, conserve, mine, take, remove and market any and all such products in any manner which will not damage structures on the surface of the Property herein conveyed, provided, however that Grantor expressly waives any right to use the surface or the first one hundred (100) feet of the subsurface of the Property to explore for the minerals herein reserved.

(c) Any improvements constructed or altered on the Property after the date Grantor quitclaims its interest to Grantee shall be constructed or altered in such a manner to provide adequate drainage of water away from any of Grantor's railroad tracks on nearby property.

(d) Grantee covenants and agrees that it shall retain the Property in perpetuity and that the property shall only be used for municipal or public purposes.

(e) Grantee acknowledges and affirms that Grantor may not hold fee simple title to the Property, that Grantor's interest in all or part of the Property, if any, may rise only to the level of an easement for railroad purposes. Grantee is willing to accept Grantor's interest in the Property, if any, on this basis and expressly releases Grantor, its successors and assigns from any claims that Grantee or its successors may have as a result of an abandonment of the line of rail running over or adjacent to any portion of the Property. In light of Grantor's disclosure that it may not hold a fee interest in all or part of the Property, Grantee agrees to indemnify, defend and hold Grantor harmless from any suit or claim for damages, punitive or otherwise, expenses, attorneys' fees, or civil penalties that may be imposed on Grantor as the result of any person or entity claiming an interest in any portion of the Property or claiming that Grantor did not have the right to transfer all or part of the Property to Grantee.

REPRESENTATIONS

9. Buyer represents and warrants to Seller that if Buyer is other than a natural person or persons that it is a validly formed Municipal Corporation under the laws of the State of Montana; that it is in good standing in the state of its organization and in the state in which the Property is located; that it has all requisite authorizations to enter into this Agreement; and that the parties executing this Agreement on behalf of Buyer are duly authorized to so do. Buyer represents and warrants to Seller that it is not subject to any bankruptcy proceeding. Seller represents and warrants to Buyer that it is a validly formed corporation under the laws of the State of Delaware; that it is in good standing in the state of its organization and in the state in which the Property is located; that it is not subject to any bankruptcy proceeding; that it has all requisite corporate authorizations to enter into this Agreement; and that the parties executing this Agreement on behalf of Seller are duly authorized to so do. It shall be a condition of each party's obligations to close this transaction that the representations and warranties of the other party contained herein are true and accurate as of Closing, provided, however that if one party waives such condition by proceeding to close with knowledge that any of the second party's representations or warranties are inaccurate, the second party shall have no liability with respect to such inaccuracy known by the first party.

MISCELLANEOUS

10. (a) Any notice under this Agreement must be written. Notices must be either (i) hand-delivered; (ii) placed in the United States certified mail, return receipt requested, addressed to the recipient; (iii) deposited with a nationally recognized overnight delivery service, addressed to the recipient as specified below; or (iv) telecopied by facsimile transmission to the party at the telecopy number listed below, provided that such transmission is followed with a copy sent by overnight delivery or regular mail to the address specified below. Any notice is effective upon deposit with the U.S. Postal Service or with the overnight delivery service, as applicable; all other notices are effective when received. All notices shall be addressed to the address of the recipient indicated below the signature of such party below. Either party may change its address for notice by proper notice to the other party.

(b) If the approval of any governmental agency is required for the sale of Seller's interest (if any) in the Property, it is understood and agreed that Seller's obligations under this Agreement are conditioned upon obtaining such approval and that both parties shall use good faith efforts to obtain such approval. If such approval cannot be obtained by the Closing Date, Seller may elect to extend the Closing Date to a date no later than ninety (90) days after the original Closing Date. In the event said approval cannot be obtained by such extended date, either party may terminate this Agreement without liability to the other, except that the Earnest Money shall be refunded to Buyer and thereafter neither party shall have any obligation hereunder except those that expressly survive termination.

(c) Nothing in this Agreement shall prevent Seller from discontinuing service over any railroad line or lines by which rail service may be provided to the Property.

(d) If, prior to Closing, the Property or any portion thereof is destroyed or damaged, or becomes subject to a taking by virtue of eminent domain to any extent whatsoever then either party may terminate this Agreement by written notice to the other within thirty (30) days after notice of such fact (but in any event prior to Closing). If so terminated, the Earnest Money shall be refunded to Buyer and neither party shall have any further obligations hereunder except those that expressly survive termination. If not so terminated the parties shall proceed with the Closing.

(e) Time is of the essence of each of the party's respective obligations under this Agreement. Whenever a date specified in this Agreement falls on a Saturday, Sunday, or federal holiday, the date will be extended to the next business day.

(f) This Agreement contains the entire Agreement between Seller and Buyer with respect to the Property. Oral statements or prior written matters not specifically incorporated into this Agreement are superseded hereby. No variation, modification, or change to this Agreement shall bind either party unless set forth in a document signed by both parties. No failure or delay of either party in exercising any right, power or privilege hereunder shall operate as a waiver of such party's right to require strict compliance with any term of this Agreement. The captions above the section numbers of this Agreement are for reference only and do not modify or affect this Agreement. Each party has had the opportunity to have counsel review this Agreement and, therefore, no rule of construction that any ambiguities are to be resolved against the drafting party is to be employed to interpret this Agreement or any closing document. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute the same Agreement. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any term or provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement (to the extent executed) shall continue in full force and effect, but without giving effect to such term or provision.

(g) Buyer may not assign its interest in this Agreement without Seller's prior written consent. The provisions of this Agreement shall bind Seller, the Buyer, and their heirs, executors, administrators, successors and assigns and shall inure to the benefit of the Seller, the Buyer and their heirs, executors, administrators, permitted successors and assigns. If Buyer is more than one person or entity, Buyer's obligations under this Agreement shall be joint and several.

(h) This Agreement relates only to land. Unless otherwise herein provided, any conveyance shall exclude Seller's railroad tracks and appurtenances thereto, Seller's buildings and any other improvements on the Property, all of which may be removed by Seller within 90 days following conveyance of the Property, and if not removed, shall be deemed abandoned by the Seller without obligation on the Seller's part and shall thereafter be and become the property of the Buyer in place. Notwithstanding the foregoing, Seller shall not have to remove any improvements or fixtures for which an easement has been reserved hereunder or in the Deed.

(i) Seller is not a foreign person as the term is used and defined in Section 1445 of the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder. Seller shall, upon request of Buyer, complete an affidavit to this effect and deliver it to Buyer on or before closing of said sale.

(j) The provisions of Sections 5-8 and Section 10 of this Agreement shall survive Closing and shall not be merged into the Deed or any other document delivered at Closing. The provisions of Section 9 of this Agreement shall survive Closing for a period of one year and shall not be merged into the Deed or any other document delivered at Closing. Nothing in this section shall alter any requirement in any other Section of this Agreement for the provisions of such section to be incorporated into the Deed, such as Sections 7 and 8.

(k) If any action at law or in equity is necessary to enforce or interpret this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, costs, and discovery or investigation expenses in addition to any other relief to which that party may be entitled.

(l) SELLER AND BUYER IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO, THIS AGREEMENT.

ADMINISTRATIVE FEE

11. Buyer acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Buyer and Seller, that the Buyer shall pay upon return of this Agreement signed by Buyer to Seller's Broker a processing fee in the amount of \$2,000.00 over and above the agreed upon Purchase Price. Said fee shall be made payable to BNSF Railway Company by a separate check.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement to be effective as of the Effective Date.

BUYER:

City of Whitefish
Buyer's name as it is to appear on Deed
(PRINTED/TYPED)

By: _____
Print Name: _____
Title: _____

Buyer's Address:

Attn: _____
Fax: _____
Phone: _____

Buyer's SSN or EIN: _____

SELLER:

BNSF RAILWAY COMPANY

By: _____
Print Name: _____
Title: _____

Seller's Address:

c/o Jones Lang LaSalle Brokerage Inc.
4300 Amon Carter Blvd., Ste. 100
Fort Worth, TX 76155
Attn: Transaction Manager
Fax: 817-306-8129
Phone: 817-230-2604

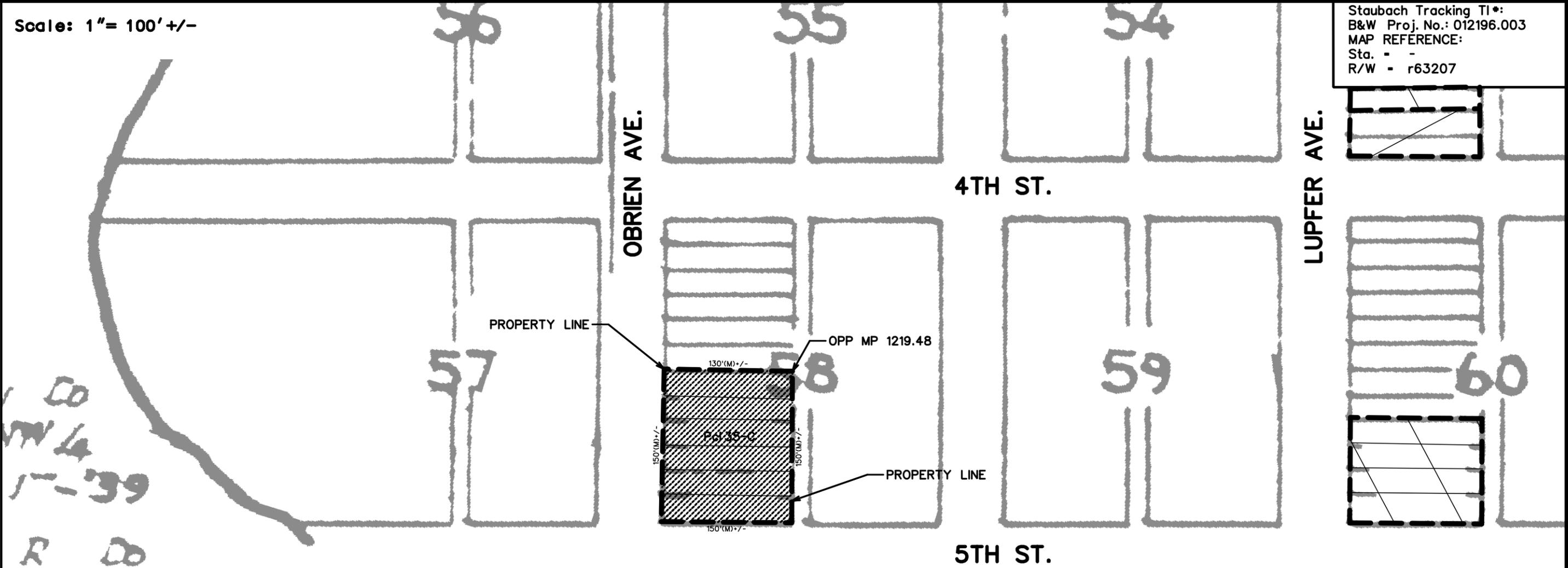
Date of Seller's Execution (Effective Date)

EXHIBIT "A"

Staubach Tracking TI*:
 B&W Proj. No.: 012196.003
 MAP REFERENCE:
 Sta. - -
 R/W - r63207

Scale: 1" = 100' +/-

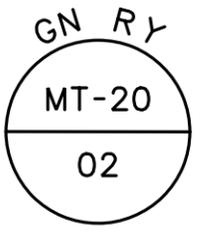
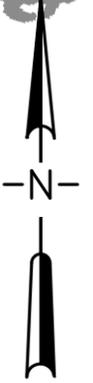
This map used by BNSF RAILWAY COMPANY in the ordinary course of business, but it is subject to audit and should be used only with the expressed understanding the BNSF make no representations whatsoever about the quality, accuracy, errors or omissions relating to this map.



*CO
NW 1/4
1-39
RD
NW 1/4*

*The Whitefish Town of Co to City of Whitefish
 Q.C.D. 9 3 53 - SR 8620*

*The Whitefish Town of Co to City of Whitefish
 Q.C.D. 2 18 57 SR 9173*



To: Spokane →

To: Pacific Jct. →

To: City of Whitefish
At: Whitefish
Flathead County
Montana

Legend:
 Sale Area

MEASUREMENTS BASED ON PROVIDED SURVEYS
 (S) MEASUREMENTS TAKEN OFF SURVEY
 (M) MEASUREMENT

Montana Division
 Kootenai River Subdiv. - L.S. 0036-4
 Val. Sec. 86020
 GN RY MT-20, Map 02
 Sec. 36, T3N, R22W PRM
 December 20, 2013
 OPP M.P. 1219.48 JNC

Goldfinch Exchange Company LLC

A Delaware limited liability company

40 Lake Bellevue Drive, Suite 275

Bellevue, WA 98005

425-646-4020

425-637-2873 fax

NOTICE OF ASSIGNMENT

TO: _____
and any assignees or exchange intermediaries of Buyer

You and BNSF Railway Company (“BNSF”) have entered into the Real Estate Purchase and Sale Agreement, dated _____, 2014 for the sale of the real property described therein. You are hereby notified that BNSF has assigned its rights as Seller, but not its obligations, to Goldfinch Exchange Company LLC for the purpose of effecting a tax deferred exchange under Internal Revenue Code Section 1031. This is an assignment of rights only and BNSF will deed the property directly to you.

ACKNOWLEDGED:

By: _____

Print Name: _____

Title: _____

MEMORANDUM

#2014-011



To: Mayor John Muhlfeld
City Councilors

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

From: Chuck Stearns, City Manager

Re: Staff Report – Resolution for purchase of six lots from BNSF by Riverside Park

Date: March 26, 2014

Introduction/History

Several years ago, when we budgeted for the possible dredging of Riverside Pond in Riverside Park, the Mayor and City Council members had more concerns about Riverside Pond beyond just dredging. There were concerns about algae in the pond and possible aeration options, possible ways to improve the storm drainage outflow from the pond to the river, noxious weeds around the pond, and ownership of the pond because it was known that BNSF owned some land under the pond. Since that time, we have worked on a number of these areas and most recently we have had discussions with BNSF about the possible purchase of their land under part of Riverside Pond.

Riverside Pond (see attached maps) is not really an original pond, but a storm drainage detention pond which takes much of the street runoff from downtown and the east side and lets stormwater accumulate there and sediment settle out before flowing into the Whitefish River. As I understand it, the pond was constructed a number of years, possibly by the Montana Department of Highways, for the storm drainage runoff of Hwy 93 South.

Over the past year, the Real Estate advisors of Mayor Muhlfeld, Frank Sweeney, Rich Knapp, and I have discussed the acquisition of the lots from BNSF as we knew it was property that BNSF did not really want. The history of their ownership of six lots under part of the pond (see attached two maps) is uncertain, but it may even have dated back to the checkerboard ownership of lands the railroads got from the federal government in the mid-1800's. Anyway, we had heard from local BNSF representatives that they didn't really know they owned it and they really weren't interested in the six lots.

So I contacted BNSF's Montana administrators in Billings and they had me contact their real estate brokerage company, Jones Lang LaSalle about these six lots. At first we thought BNSF might just give us the lots in order to rid themselves of the lots, much of which are under water or encumbered by Riverside Pond and to rid themselves of possible liability

concerns. However, when we contacted them and they investigated the six lots, they felt that the two northernmost lots had enough value to sell them. After some discussions and negotiations, they responded with the following offer for all six lots:

2 Lots = 6,500 SF @ \$8.00/SF = \$52,000
Remaining 4 Lots = \$2,500 (under water or the slope to the water)
Administrative Fee = \$2,000
Total = \$56,500

We felt that this proposal was a very good deal given that most people think that this land is already part of Riverside Park. If you look at the attached LIDAR map, you can see that our existing trail goes through lots 16 and 17 and we currently do not have an easement or lease with BNSF for that trail. The six lots are 19,500 square feet or .45 acres, so the purchase price is \$2.90 per square foot or \$9,416.66 per lot overall.

Current Report

The Mayor and Frank Sweeney, as Real Estate advisors to me, felt that we should go ahead with this purchase and recommend it to the City Council. I have worked with BNSF's real estate broker at Jones Lang LaSalle on a purchase agreement. A few aspects of this purchase are:

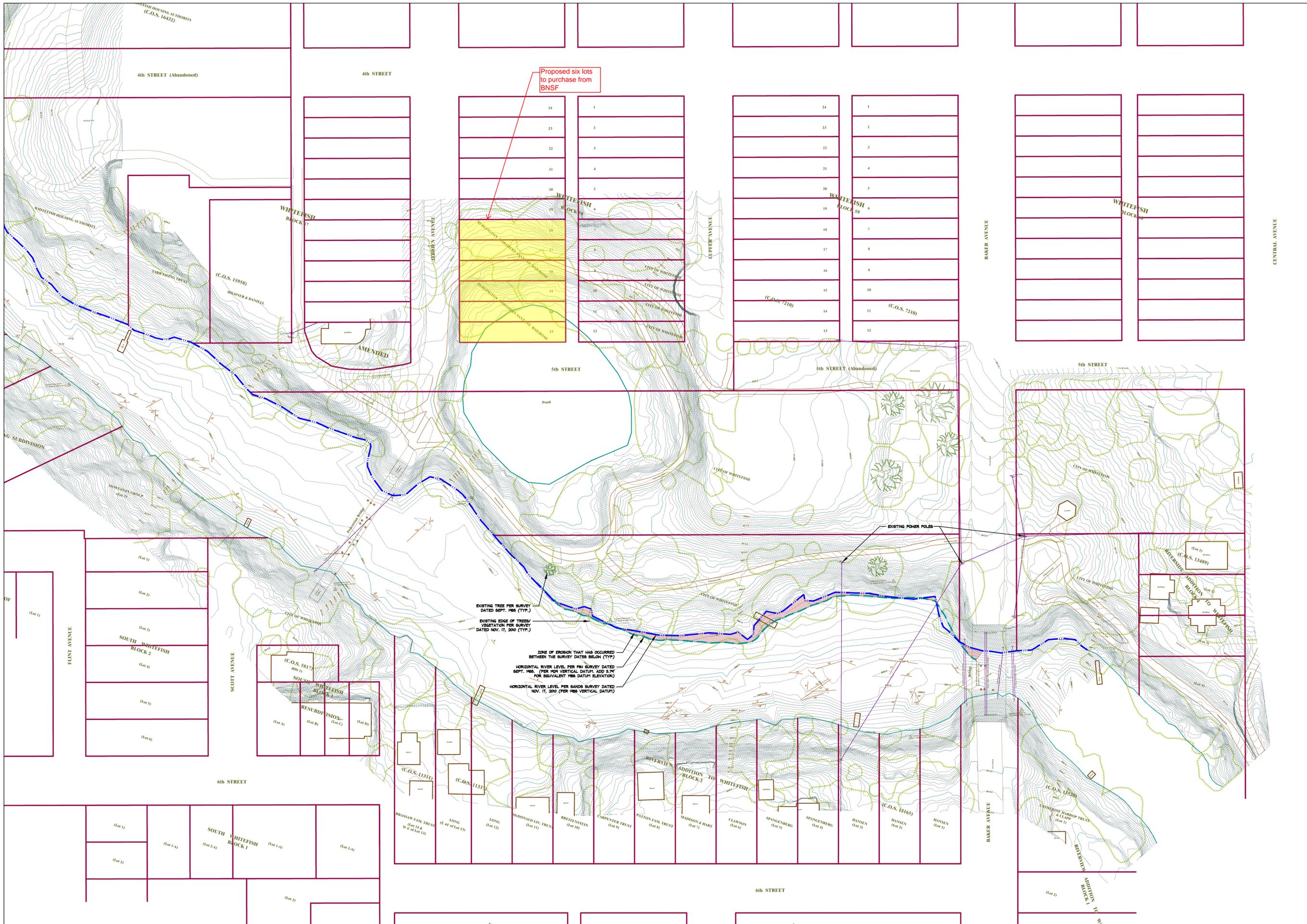
1. We would only be getting a quitclaim deed. While not as good as a warranty deed, the broker from Jones Lang LaSalle (JLL) said that BNSF only sells property by quitclaim deed. In talking with Mary VanBuskirk, I don't feel that there is much risk that a quitclaim deed could or would be challenged by anyone else. Mary and I reviewed an Ownership and Encumbrance (O&E) report from First American Title Company and it did not reveal any problems we might have in accepting a quitclaim deed.
2. For tax purposes, BNSF wants to do an IRS 1033 Tax Exchange with other property, so they would also want from us an offer letter on Whitefish letterhead stating something to the effect: The City of Whitefish is attempting to acquire land across BNSF Railway Company property in Whitefish, MT. Whitefish may use its powers of eminent domain to condemn your property if we are unable to reach a voluntary agreement with you. The offer letter allows BNSF to take the consideration in under the IRS 1033 Tax Exchange program.
3. BNSF would not agree to include mineral rights under the land in the transaction, even though we asked several times. However, we did get some mitigating language in the purchase agreement that they won't extract sand and gravel from the site and they won't disturb the top 100 feet of surface. See paragraph 8 (b) in the Purchase Agreement.
4. We have to retain all six lots as land for municipal or public purposes – we tried to get them to eliminate this restriction, but they would not agree to do so. Therefore, we diminished their restrictions as far as we could. See paragraph 8 (d) in the Purchase Agreement.

Financial Requirement/Impact

The money would have to come from the Tax Increment Fund as parkland acquisition and development is an eligible activity for TIF expenditures and we really don't have funding anywhere else for this acquisition.

Recommendation

Staff respectfully recommends the City Council approve Resolution No. 14-___; A Resolution approving a Real Estate Purchase and Sale Agreement with respect to Lots 13, 14, 15, 16, 17, and 18, of Block 58, of Whitefish, Montana.



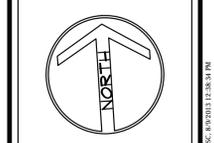
BRUCE BOODY
 Landscape Architect Inc.
 381 Second Street
 Whitefish, MT 59937
 phone 406.862.4755
 fax 406.862.9755
 boody@bruceboody.com

SURVEY BY:
 SANDS SURVEYING, INC.
 TOM SANDS
 2 VILLAGE LOOP
 KALISPELL, MT 59901
 (406) 755-6481

Revisions:

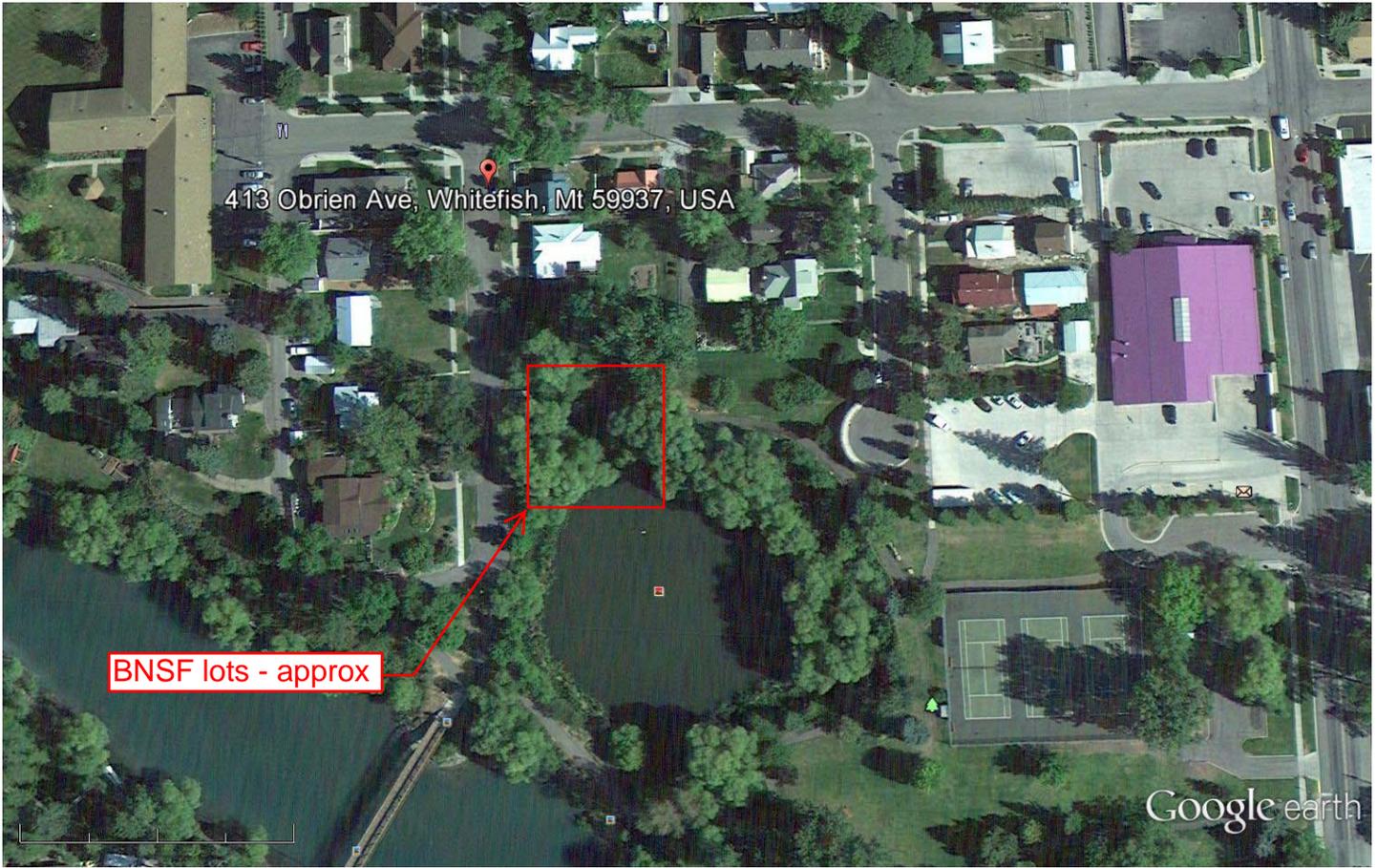
RIVERSIDE PARK
 LEGAL DESCRIPTION
 ADDRESS
 CITY, STATE, ZIP
 TOWNSHIP/RANGE

SCALE: 1"=50'
DATE: 08-09-13
JOB #: 13-XX



BASE

SHEET 1 OF 1



Google earth

feet
meters



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MEMORANDUM

#2014-012



To: Mayor John Muhlfield
City Councilors

From: Chuck Stearns, City Manager

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

Re: Staff Report – Consideration of approving a revised Interlocal Agreement with the Whitefish Housing Authority to revise the Payment-In-Lieu-of-Taxes (PILT) procedures

Date: March 26, 2014

Introduction/History

Last November, the City Council approved a request from the Whitefish Housing Authority (WHA) regarding appropriating an amount equal to the Payment-In-Lieu-of-Taxes (PILT) which the WHA pays to the City for Mountain View Manor. WHA requested that, given the federal cutbacks in their funding, they would continue to pay the City the PILT money, but asked that the City appropriate an equal amount in their annual appropriations and return that amount to the WHA for use in their programs. The City Council approved that request last November 18th and a copy of the minutes from that meeting are in the packet.

Current Report

Since that meeting, I have drafted, Mary VanBuskirk has reviewed, and the WHA Board has approved a revised Interlocal Agreement which is contained in the packet. The only changes made to the agreement were to revise the PILT provisions in Section 4 and to change the name of WHA's Executive Director.

Financial Requirement/Impact

The City would be returning approximately \$6,900.00 per year to the WHA in addition to the one-time payment of their amount in arrears of \$38,717.30 as of January 1. The \$6,900 per year formerly went into the General Fund.

Recommendation

Staff respectfully recommends the City Council approve a revised Interlocal Agreement with the Whitefish Housing Authority to revise the Payment-In-Lieu-of-Taxes (PILT) procedures.

Lori said the contractor will apply for building permits and should get started in a couple weeks.

4b. Consideration of a request from Whitefish Housing Authority to return Payment In Lieu of Taxes (PILOT) payments to the Whitefish Housing Authority to help support their programs (p. 39)

Lori Collins said this proposal is to ask for redistribution of their payment in lieu of taxes. She said they aren't asking for direct subsidies, but they are looking for ways that they can support themselves without always asking for funds. She said they realize their obligation to pay their taxes, but they would like them to be placed into the General Fund Appropriations, so they could be earmarked and allocated back to the WHA towards sustainability of their mission and programs. They could use them for their other programs like rental, home ownerships and rehab opportunities in the City. That would give them a guaranteed fund that they could use for those allowable costs. WHA took on a large task in 2004 by providing opportunities for affordable housing. They have not had any direct funding from the City for operations. They would ask that the PILOT funds could be reallocated back to them for rental, rehab and home ownership expenses.

Mayor Muhlfeld asked and Manager Stearns reported that the WHA tax contribution was about \$6,900 per year and noted that there is some money that is owed in arrears. Manager Stearns said his first thought was that it didn't make sense for them to write a check to the City and then have the City write it back; and it could be handled with an agreement. Now he realizes if WHA pays the taxes and the City appropriates it back to WHA, it gives their Board more flexibility when it comes back to them. Lori Collins said funds aren't received from HUD; they are an allocation of the percentage of the rent of units at Mountain View Manor. Councilor Mitchell said it really means that they aren't paying taxes. Lori Collins said they have a rehabilitation fund they draw from in the City for approved costs. Councilor Mitchell asked and Lori Collins said they owe \$16,000 in arrears and Sue Ann Carlson worked out a payment plan with the City. Councilor Anderson asked and Lori Collins said the current fund is for rehabilitation and the funds come from homes that sell or from past grants. Councilor Anderson thanked her for the details on the first proposal. He said he is a little concerned with tying up the funds and the hands of future Councilors. Councilor Hildner said a future Council could rescind that action. Councilor Mitchell asked and Councilor Anderson said he would rather look at it each year as part of the budget process instead of making it an annual expectation for the City. Councilor Hildner said he doesn't see the tax base growing much for the WHA.

Councilor Hildner made a motion, seconded by Councilor Hyatt, to approve a request from Whitefish Housing Authority that Payments In Lieu of Taxes (PILOT) are collected by the City and allocated back to the Whitefish Housing Authority to help support their programs.

The motion passed 4-2 with Councilors Anderson and Mitchell voting in opposition.

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

5a. Minutes from the November 4, 2013 Council regular session (p. 42)

5b. Consideration of a request to extend the preliminary plat for 93 LLC subdivision for 24 months (p. 65)

INTERLOCAL AGREEMENT

This Agreement is entered into as of the ____ day of _____, 2014 pursuant to §7-11-101, et seq., MCA, by and between the City of Whitefish, a municipal corporation ("City") and Whitefish Housing Authority, a public agency formed pursuant to §7-15-4401, et seq., MCA ("Housing Authority").

1. Purpose. The purpose of this Agreement shall be to provide for the Housing Authority to serve as the Housing Rehabilitation and Affordable Housing Coordinator and provide other requested services on behalf of the City.

2. Term. This Agreement shall be for two (2) years, from January 1, 2014, through December 31, 2015, and shall automatically renew from year to year thereafter unless either party gives written notice of termination to the other on or before the first (1st) day of January of any year (beginning January, 2016).

3. Compensation. In return for the services to be performed by the Housing Authority, as described herein, the City shall act as the pass-through agent and conduit for grant applications including, but not limited to CDBG, HOME, USDA, and any other housing grants or loans which Housing Authority can obtain. The City shall provide and pass on all program income generated by such housing projects to Housing Authority.

4. Payment In Lieu of Taxes (PILT) – As required by prior federal funding grant agreements for the development of affordable housing, the Housing Authority agrees to pay 5% of shelter rent on its Mountain View Manor project and any other applicable federally funded low income housing projects as a Payment In Lieu of Taxes (PILT). Housing Authority agrees to keep such PILT payments current on an annual, fiscal year basis. The City agrees to appropriate an amount equal to all such PILT funds paid to the City to be paid to the Housing Authority for funding other Housing Authority programs.

5. Property. There shall be no property that is jointly owned by the parties.

6. Coordination. The Housing Authority shall coordinate with the Whitefish City Manager, or his designee, which respect to this Agreement and other housing issues.

7. Services to be Performed. The Housing Authority shall perform the following services for the compensation set forth above.

A. The Housing Authority shall administer two housing rehabilitation grant programs, the Montana Department of Commerce HOME Program and the United States Department of Agriculture Rural Development Housing Preservation Grant. The Housing Authority shall also handle the revolving funds associated with such programs, and as money is returned to those programs it shall be administered and loaned out again by the Housing Authority. The parties acknowledge that as of January 1, 2014, a total of \$38,717.30 was outstanding in loans supporting housing rehabilitation.

B. The Housing Authority shall write and administer all federal, state and/or private sector grants and other funds, in accordance with funding source agreements and regulations, in support of affordable housing and other community development projects.

C. The Housing Authority shall implement housing programs in accordance with funding source rules and federal and state regulations.

D. The Housing Authority shall endeavor to participate in housing projects/developments that may include developer selection; property acquisition; site preparation; coordination with financing institutions, granting agencies and developers; development agreement negotiations; and overall implementation of various housing developments and programs.

E. The Housing Authority shall provide and/or coordinate acquisition of analytic support (market analysis, etc.) for various programs including single-family housing, multi-family housing, senior housing, and related affordable housing programs.

F. The Housing Authority shall conduct/coordinate interviews, public hearings and town meetings as necessary to support affordable housing programs and projects.

G. The Housing Authority shall make presentations and communicate official plans, policies and procedures to community and civic groups and the general public as needed.

H. The Housing Authority shall work with local non-profits or municipalities in gathering input or encouraging direct partnerships related to housing programs and projects.

I. The Housing Authority shall maintain files on projects, programs and housing applicants and create and maintain statistical data on the same.

J. The Housing Authority shall cooperate fully with the City to ensure that all state and federal requirements associated with grant programs or other housing programs are complied with fully.

7. Reports to City. The Housing Authority shall provide quarterly reports to the City Finance Director, identifying the status of all programs and the condition of all accounts.

8. Funds and Expenses. All funds associated with grant programs shall be retained by the City until needed, and shall be drawn down by the Executive Director of the Housing Authority with the cooperation and oversight of the City Finance Director.

9. Cooperation with Housing Authority. The City shall cooperate with the Housing Authority in reviewing and considering any grants for which City approval is required, and will exercise its best, good faith efforts to assist the Housing Authority in obtaining such grants. The Whitefish City Council shall have the final determination of whether the City applies for any particular grant.

10. Approval of Expenditures. With respect to City-sponsored grants, all income and expenses shall be processed through the City, and the City Manager shall be in charge of approving all

expenditures of funds. Requests for expenditure of funds shall be presented to the City on a form identifying the expenditure, the source of funds, and bearing the signature of the Housing Authority Executive Director.

11. Indemnification. The Housing Authority shall indemnify, defend, and hold the City harmless from any and all claims and liabilities resulting from the acts or omissions of employees or agents of the Housing Authority. The City shall indemnify, defend, and hold the Housing Authority harmless from any and all claims and liabilities resulting from the acts or omissions of employees or agents of the City.

12. Records to be Open and Available. All financial records of the Housing Authority relating to this Agreement shall be open at all reasonable times and available for inspection by the City of Whitefish. All financial records of the City relating to this Agreement shall be open at all reasonable times and available for inspection by the Housing Authority. The parties acknowledge and agree that Exhibit "A," attached hereto and incorporated herein by reference, accurately depicts the amount and source of funds in the City's housing rehabilitation program as of January 1, 2014.

13. Entire Agreement. This Agreement contains the entire agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein.

14. 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.

15. Attorneys' Fees. In the event of any litigation or arbitration to enforce or interpret the provisions of this Agreement, or to remedy a breach thereof, the prevailing party shall be entitled to reasonable attorneys' fees as fixed by the court or arbitrator.

16. Governing Law. The construction of this Agreement, and the rights and liabilities of the parties hereto, shall be governed by the laws of the State of Montana.

17. Forum. Any litigation to enforce or interpret the provisions of this Agreement or the parties' rights and liabilities arising out of this Agreement or the performance hereunder shall be maintained only in the courts in the County of Flathead, Montana.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals the date opposite their respective names.

WHITEFISH HOUSING AUTHORITY,
a nonprofit corporation

CITY OF WHITEFISH,
a municipal corporation

By: _____
Lori Collins, Executive Director

By: _____
Charles C. Stearns, City Manager

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RESOLUTION NO. 14-_____

A Resolution of the Whitefish City Council in support of the proposed amendment to ARM 12.11.645 pertaining to the Whitefish River before the Fish, Wildlife and Parks Commission of the State of Montana.

WHEREAS, the Montana Department of Fish, Wildlife and Parks (FWP) is the responsible agency to determine recreation rules, and permitted and restricted recreational use on Montana's waterways in the interests of public health and safety, and protection of the State's natural resources; and

WHEREAS, despite the "no wake" speed restriction on the Whitefish River enacted in 1989, the continued operation of motorized watercraft on Whitefish River creates white water in its track or path and waves immediate to the vessel, which have not been eliminated, have proven difficult to enforce, and usage of non-motorized watercraft is expected to increase; and

WHEREAS, the City of Whitefish recognizes the Whitefish River as an essential, but fragile natural resource and an important habitat for a wide variety of territorial life in need of protection, for the quality of life and recreational use of all Montanans, and visitors to our community; and

WHEREAS, at publicly noticed hearings on September 3, 2013, and November 4, 2013, public comment was taken and following discussion, the City Council adopted Resolution No. 13-34 to petition the Fish, Wildlife and Parks Commission (Commission) to limit watercraft to manually powered or electric motors on a portion of the Whitefish River from its confluence with Whitefish Lake at the railroad trestle located between Edgewood Place and Birch Point Drive to the JP Road Bridge; and

Whereas, at its February 13, 2014 meeting, the Commission considered the City's petition requesting limiting a portion of the Whitefish River from its confluence with Whitefish Lake to the bridge on JP Road to manually powered or electric motors, found the City's petition met the requirements of ARM 12.4.104(2), 12.4.105(2), and 12.4.106(2), and decided to initiate the rulemaking process to amend boating rules on a portion of the Whitefish River; and

Whereas, the Commission scheduled a public hearing for April 10, 2014, at the Whitefish City Council Chambers, City Hall, to consider the proposed amendment to ARM 12.11.645 pertaining to the Whitefish River, attached as Exhibit "A"; and

Whereas at a publicly noticed meeting on April 7, 2014, the City Council considered the proposed amendment to the boating rules, Exhibit "A", and voted to express its support for the proposed rule amendment and its adoption by the Commission because the proposed amendment to the boating rules will protect the riverbed, shoreline, and banks on a portion of the Whitefish River and will provide an unique and safe refuge for the community members and visitors who are seeking an alternative recreational experience, and will be in the best interests of the City of Whitefish, its community, and visitors for the Commission to adopt the proposed rule amendment.

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

Section 1: The City Council of Whitefish adopts this Resolution as an expression of its support for the Commission to adopt the proposed rule amendment, attached as Exhibit "A" to this Resolution.

Section 2: On behalf of the City, the City Clerk will prepare a certificate as to this Resolution of support for the rule change and adopting vote for presentation at the Commission's April 10th hearing.

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

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 12.11.645 pertaining to) PROPOSED AMENDMENT
Whitefish River)

TO: All Concerned Persons

1. On April 10, 2014, at 6:00 p.m., the Fish and Wildlife Commission (commission) will hold a public hearing at the Whitefish City Hall, 418 Second Street East, Whitefish, Montana, to consider the proposed amendment of the above-stated rule.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on March 28, 2014, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, PO Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

12.11.645 WHITEFISH RIVER (1) Whitefish River is located in Flathead County.

(2) Whitefish River is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), ~~in the following areas:~~ from its confluence with Whitefish Lake to the bridge on JP Road.

~~(a) Whitefish River from its confluence with Whitefish Lake to the bridge on the JP Road.~~

(3) Whitefish River is limited to manually and electric powered watercraft from its confluence at the railroad trestle south of Whitefish Lake outlet to the bridge on JP Road.

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-106, 87-1-303, MCA

REASON: On December 5, 2013, the City of Whitefish submitted a petition to the Fish and Wildlife Commission to limit a portion of the Whitefish River to manually and electric powered watercraft only. The city's reasoning in the petition for limiting the use on this portion of the river is to provide a unique, quiet, and safe refuge for locals and visitors who are seeking an alternative recreational experience.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be

submitted to: Department of Fish, Wildlife and Parks Region 1 Office, 490 North Meridian Rd., Kalispell, MT 59901; fax (406) 257-0349; or e-mail cjust@mt.gov, and must be received no later than April 18, 2014.

5. Jim Satterfield or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to: Fish, Wildlife and Parks, Legal Unit, PO Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

/s/ Dan Vermillion
Dan Vermillion
Chairman
Fish and Wildlife Commission

Certified to the Secretary of State March 3, 2014.



December 5, 2013
Letter #2013-119

Jeff Hagener
Director
Montana Fish, Wildlife & Parks
P.O. Box 200701
Helena, MT 59620-0701

Dear Mr. Hagener:

On Monday, November 4, 2013, the Whitefish City Council passed Resolution No. 13-34 entitled "A Resolution of the City Council of the City of Whitefish, Montana, to approve a petition to the Montana Department of Fish, Wildlife & Parks to limit a portion of the Whitefish River to manually powered or electric motors only in order to protect public safety and provide resource protection in the riparian zone."

I am enclosing a copy of that Resolution No. 13-34 along with this letter and some other documentation along with the City of Whitefish's petition to the Montana Fish and Wildlife Commission to designate a portion of the Whitefish River for use only by manual powered watercraft and electric motors. In support of this petition, I am enclosing the following documents:

1. Exhibit A – Copy of Resolution No. 13-34.
2. Exhibit B - Two maps showing the limits of the proposed restricted waterway, from the railroad trestle south of the Whitefish Lake outlet to JP Road.
3. Exhibit C - Minutes of the November 4, 2013 City Council meeting with the public hearing and City Council deliberations on the matter and the City Council vote.
4. Exhibit D - Minutes of the September 3, 2013 City Council meeting with the public hearing and City Council deliberations on the matter.

5. Exhibit E – document from City Councilman Richard Hildner, the sponsor of the request to the City Council, providing a timeline and history of the issue.
6. Exhibit F – document from City Councilman Richard Hildner describing the issue and the public safety and environmental or riparian need for this additional restriction.
7. Exhibit G – pictures demonstrating the hazards posed by jet skis and internal combustion engine powered watercraft on Whitefish River.
8. Exhibit H – pictures demonstrating bank erosion along the Whitefish River despite the current no-wake regulation.
9. Exhibit I – letters submitted from the public for the public hearing on November 4, 2013.

Please let me know if you or the Commission have any questions on this proposal or if there are additional forms or documents we need to provide. Also, please let us know if there is a hearing on this proposal scheduled before the Commission that we could be present for and present testimony.

Sincerely,



Chuck Stearns

City Manager

cstearns@cityofwhitefish.org

enclosures

cc: James Satterfield, Regional Supervisor, FWP Region 1 Headquarters,
490 N. Meridian Road, Kalispell, MT 59901
Lee Anderson, Warden Captain, FWP Region 1 Headquarters,
490 N. Meridian Road, Kalispell, MT 59901
Mayor and City Council, City of Whitefish
Mary VanBuskirk, City Attorney

**BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA
FISH AND WILDLIFE COMMISSION**

**In the matter of the
Amendment to ARM §12.11.645
adding the limitation on the use of
internal combustion boat motors on
that portion of the Whitefish River
from the BNSF trestle south of the
Whitefish Lake outlet to the bridge
on JP Road.**

PETITION

TO: All Concerned Persons

1. Petitioner's name and address is:

City of Whitefish
PO Box 158
Whitefish, Montana 59937-0158
Attention: Charles C. Stearns, City Manager
Phone: 406-863-2406
Email: cstearns@cityofwhitefish.org

2. Facts showing the proposed agency action:

Petitioner City of Whitefish, a municipal corporation, files this Petition under ARM §12.11.117, to change the water safety restrictions for a portion of the Whitefish River, namely that portion of the Whitefish River from the BNSF trestle south of the Whitefish Lake outlet to the bridge on JP Road, to manually powered and electric motor powered watercraft only. Petitioner further requests to have the proposed rule change be included on the Montana Fish and Wildlife Commission's agenda.

In 1989, the same portion of the Whitefish River was limited to a no wake speed, as defined in ARM §12.11.101(1), by the Montana Fish, Wildlife and Parks Commission following the Whitefish City Council's petition in response to citizen's safety concerns caused by speeding jet skis and motor boats on the river. ARM §12.11.645.

This Petition is timely because over the past four years the upper reach of the Whitefish River has been closed to all users while BNSF completed an EPA mandated clean-up of diesel sheen on the river. Over the past year, the City Council has scheduled public work sessions and hearings to gather the community's input concerning a non-motorized waterway on the same portion of the Whitefish River. Believing the use of motorized watercraft will increase once the upper portion of the Whitefish River is opened again to all users, the Whitefish City Council enacted Resolution No. 13-34 to approve a

petition to the Montana Fish and Wildlife Commission to limit this portion of the river to manually powered and electric motors in order to protect public safety and provide resource protection. A copy of Resolution No. 13-34 is attached as Exhibit A. As authorized by Resolution 13-34, by this Petition the City of Whitefish seeks a restriction on the use of internal combustion watercraft motors from the portion of the Whitefish River beginning from the BNSF train trestle near the outlet of Whitefish Lake to JP Road. Two maps showing the limits of the proposed restricted waterway, from the railroad trestle south of the Whitefish Lake outlet to the bridge on JP Road, are attached as Exhibits B-1 and B-2. The river near the outlet of Whitefish Lake to JP Road is approximately 3 miles in length and is accessible by powered watercraft only from the Whitefish Lake outlet and the Highway 40 bridge, located to the south of JP Road.

In support of its Petition the City of Whitefish has also attached Minutes of the November 4, 2013 City Council meeting with the public hearing and City Council deliberations on the matter, Exhibit C; Minutes of the September 3, 2013 City Council meeting with the public hearing and City Council deliberations on the matter, Exhibit D; timeline and history of the matter prepared by City Councilor Richard Hildner, sponsor of Resolution 13-34, Exhibit E; memorandum describing the issue and the public safety and riparian need for additional restrictions prepared by City Councilor Richard Hildner, Exhibit F; pictures demonstrating the hazards posed by jet skis and internal combustion engine powered watercraft on the Whitefish River, Exhibit G; pictures demonstrating bank erosion along the Whitefish River despite the controlled no wake speed, Exhibit H; and a copy of communications received for the City Council's public hearing on November 4, 2013, Exhibit I.

Despite the FWP designation and limitation to a controlled no wake speed, as defined in ARM §12.11.101, the current use of such motorized watercraft has not met the demands of public health and safety and the protection of the river's natural resources. Due to the geographical characteristics of the river corridor and its limited sight distances, the no wake restriction has not eliminated the earlier concerns for public health and safety due to the variety of shared uses and inherent conflict among swimmers, floaters, non-powered watercraft and powered watercraft. The no wake designation has not eliminated whitewater in the track or path of the vessel, and the waves immediate to the vessel have not been eliminated. Enforcement of the no wake speed has proven difficult to enforce, and the use of motorized vessels is expected to increase.

Also, the City of Whitefish desires to protect the stream bottom and shore immediately adjacent to the Whitefish River which is characterized by glacial outwash deposits, glacial till and lacustrine deposits, which are highly erodible. By this Petition, the City seeks to protect the water quality of the Whitefish River by limiting sedimentation, disturbance of the shore and river bottom, and the amount of hydrocarbon pollution resulting from internal combustion boat motors.

Therefore, the City of Whitefish petitions for a further restriction on the use of internal combustion watercraft motors because the operation of internal combustion boat motors on the designated no wake portion of the Whitefish River creates the potential for serious conflict and the risk of personal injury, the continuing visible disruption to the river

resource, the erodible impact to the river bed, shoreline and banks, and hydrocarbon pollution.

3. Reasons for the proposed agency action:

- a) Protection of public health and safety;
- b) Prevention of degradation of the shore and river bottom due to watercraft propellers;
- c) Prevention of sedimentation caused by interaction between watercraft wakes and the shore of the Whitefish River.
- d) Reduction of the noise level on the Whitefish River for other users of the river and residents along the Whitefish River.
- e) Reduction of the amount of chemical toxins released into the Whitefish River by internal combustion outboard motors.

4. The rule as proposed to be amended would read as follows (new matter underlined):

12.11.645 Whitefish River

(1) Whitefish River is located in Flathead County.

(2) Whitefish River is limited to a controlled no wake speed, as defined in ARM §12.11.101(1), in the following areas:

(a) Whitefish River from its confluence with Whitefish Lake to the bridge on the JP Road.

(3) Whitefish River is limited to manually powered watercraft and electric motor powered watercraft, in the following areas:

(a) Whitefish River from its confluence at the railroad trestle south of the Whitefish Lake outlet to the bridge on the JP Road.

5. (Option 2) Persons known to Petitioner to have an interest in the proposed agency action are:

Mike Fitzgerald, 412 Lupfer Avenue, Whitefish, MT 59937, 406-862-7426
Leonard Howke, 180 JP Road, Whitefish, MT 59937, 406-862-4091
Leo Keane, 514 Pine Place, Whitefish, MT 59937, 406-862-5807
Glenwood F. Kerestes, 752 Tepee Trail, Billings, MT, 406-248-4098
Miriam Lewis, 367 Blanchard Lake Drive, Whitefish, MT, 406-862-5224
Rebecca Norton, 530 Scott Avenue, Whitefish, MT, 406-862-8175
Michael Park, 1219 7th Avenue West, Columbia Falls, MT, 406-892-2458
Sonny Schierl, 4185 US Highway 93 West, Whitefish, MT 59937
Chris Schustrom, 504 Spokane Avenue, Whitefish, MT 59937, 406-862-3440

6. (Option 1) Petitioner requests a hearing for expression of Petitioner's and other interested persons' views. X

WHEREFORE, Petitioner requests that the Fish, Wildlife and Parks Department and Fish and Wildlife Commission adopt a rule restricting that portion of the Whitefish River located from the railroad trestle south of the Whitefish Lake outlet to the bridge at JP Road to manually powered or electric motor powered watercraft only, and to prohibit internal combustion boat motors.

DATED this 5th day of December, 2013.

CITY OF WHITEFISH, Petitioner

By: Charles C. Stearns
Charles C. Stearns, City Manager

ADDENDUM TO WHITEFISH RIVER STAFF REPORT-SOCIAL ASPECTS
FEBRUARY 6, 2012

The community of Whitefish is fortunate to have a clear, clean river flowing through the center of town. Over the past four years Burlington Northern Santa Fe Railroad has undertaken a massive cleanup of the river, removing thousands of cubic yards of oil-contaminated river silts, replacing them with clean gravel. A restored river has resulted from these efforts and the river has once again become a centerpiece of the community.

During the four-year closure for cleanup the river experienced little to no use. However, during this period an interesting phenomenon occurred; the standup paddleboard (SUP) became a popular recreational craft. Now, in addition to the traditional canoe, kayak, float tube, raft, and inner tube, the SUP has joined the river flotilla. As a result, more individuals and families than ever before are enjoying the safe, slow, shallow confines of the Whitefish River.

Recognizing the importance of the Whitefish River to the Whitefish community, and in response to the resurgence of recreational activities on the river, BNSF Railway donated an easement for, and constructed at their expense, a dedicated "non-motorized" boat launch to the City at the conclusion of their cleanup efforts. This new park was dedicated in July of 2013.

Now that the cleanup is complete, non-motorized use has proliferated. Several companies specializing in non-motorized water craft, namely SUPs, have opened up in Whitefish. These locally owned and operated businesses, in addition to sales and rentals, now conduct paddleboard classes and guide users along the river corridor. For example, the Whitefish Parks and Recreation Department sponsors paddleboard classes that use the river as their classroom. The community's concern is that an unrestrained jet ski or power boat would accidentally run through a group of floaters or paddle boarders.

Limiting the three-mile stretch of river between the BNSF trestle and the JP Road to manually powered craft and electric motors not only provides a safe and secure environment for family waterborne recreation, it also complements the City's bike and pedestrian path which parallels the river.

The Whitefish City Council held two public hearings on the proposed use restriction for the Whitefish River. Public support was overwhelming. At the first hearing only two persons spoke in opposition. Between the first and second hearings the Council revised the resolution to shorten the length of river under consideration from five to three miles and to include electric motors. With those revisions in place, only one person spoke in opposition at the second public hearing. Interestingly, one of the people who had been opposed at the first hearing came to the second and spoke in favor of the revised manually powered/electric motor restriction.

Whitefish has a strong tourist component to its economy. During the summer months locals and visitors alike have access to the full range of uses on Whitefish Lake: wake boarding, skiing, sailing, fishing, jet skiing, and leisure craft. A manually powered/electric motor restriction on the Whitefish River would provide a unique, quiet, and safe refuge for locals and visitors who are seeking an alternative recreational experience from that provided on Whitefish Lake.

RESOLUTION NO. 13-34

A Resolution of the City Council of the City of Whitefish, Montana, to approve a petition to the Montana Department of Fish, Wildlife & Parks to limit a portion of the Whitefish River to manually powered or electric motors only in order to protect public safety and provide resource protection in the riparian zone.

WHEREAS, in the interest of public safety and protection of public health and the river resource, in 1989 after public notice and hearing, the Montana Department of Fish, Wildlife & Parks (FWP) implemented a "no wake" restriction on all watercraft operating on the Whitefish River from its confluence with Whitefish Lake to the JP Road Bridge by ARM §12.11.645, whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel; and

WHEREAS, despite the "no wake" speed restriction on the Whitefish River, the continued operation of motorized watercraft on Whitefish River creates white water in its track or path and waves immediate to the vessel, which have not been eliminated, have proven difficult to enforce, and usage of non-motorized watercraft is expected to increase; and

WHEREAS, due to the geographical characteristics of the river corridor and limited sight distances, recreational use by swimmers and operators of motor-propelled watercraft and traditional non-motorized craft creates the potential for serious conflict and the risk of personal injury, if not restricted; and

WHEREAS, the City of Whitefish recognizes the Whitefish River as an essential, but fragile natural resource, in need of protection, for the quality of life and recreational use of all Montanans, and visitors to our community, and as an important habitat for a wide variety of territorial life; and

WHEREAS, the City has an essential interest in the Whitefish River, as its headwaters originate at the outlet from Whitefish Lake, the lake bed up to the low water mark having been annexed into the City by Resolution No. 05-25 on August 15, 2005; and

WHEREAS, beginning from its headwaters at Whitefish Lake, the Whitefish River corridor continues through the City's jurisdictional area to the bridge at Highway 40, a distance of almost six miles. The river depth is approximately four feet, the upper reach of the river narrows to approximately 46 feet with an average of less than 80 feet in width. The maximum sight distance is 549 feet and the minimum is 103 feet, averaging less than 278 feet; and

WHEREAS, the stream bottom and shore immediately adjacent to the Whitefish River is characterized by glacial outwash deposits, glacial till and lacustrine deposits, which are highly erodible; and

WHEREAS, due to its highly erodible geography, the river corridor continues to experience erosion and disruption of the river bed, shoreline, and banks, visible along the river corridor; and

WHEREAS, realizing the importance of protecting water quality, waterways, vegetation, wildlife and fish, the City Council enacted the Water Quality Protection Ordinance, Ordinance No. 12-04 on February 6, 2012; and

WHEREAS, in order to protect the unstable river bank and reduce rotational slumping along the Whitefish River corridor, and the risk of transporting the phosphate absorbed alkaline silts downstream toward Flathead Lake, wave action and motorized disturbance needs to be minimized and controlled; and

WHEREAS, FWP is authorized under Montana law as the responsible agency to determine recreation rules, and permitted and restricted recreational use on Montana's waterways in the interests of public health and safety, and protection of the State's natural resources. State law provides the process to petition the FWP Commission for river recreation management decisions and the restriction of use on waterways; and

WHEREAS, at publicly noticed hearings on September 3 and November 4, 2013, public comment was taken and following discussion, the City Council approved the resolution to petition FWP to limit watercraft to manually powered or electric motors on a portion of the Whitefish River from the railroad trestle at Edgewood Place and Birch Point Drive to the JP Road Bridge; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to petition for and be granted FWP's approval for such designation.

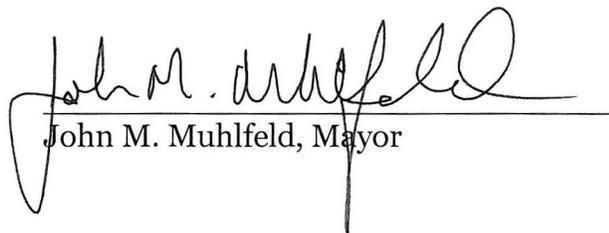
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: The City of Whitefish adopts this Resolution as an expression of its support for the Petition to the FWP Commission to limit a portion of the Whitefish River from the railroad trestle at Edgewood Place and Birch Point Drive to the JP Road Bridge to manually powered or electric motors only.

Section 2: On behalf of the City, the City Manager will Petition the FWP Commission seeking such restriction and designation for a portion of the Whitefish River, and to take such further action to have the restriction and designation approved by FWP.

Section 3: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

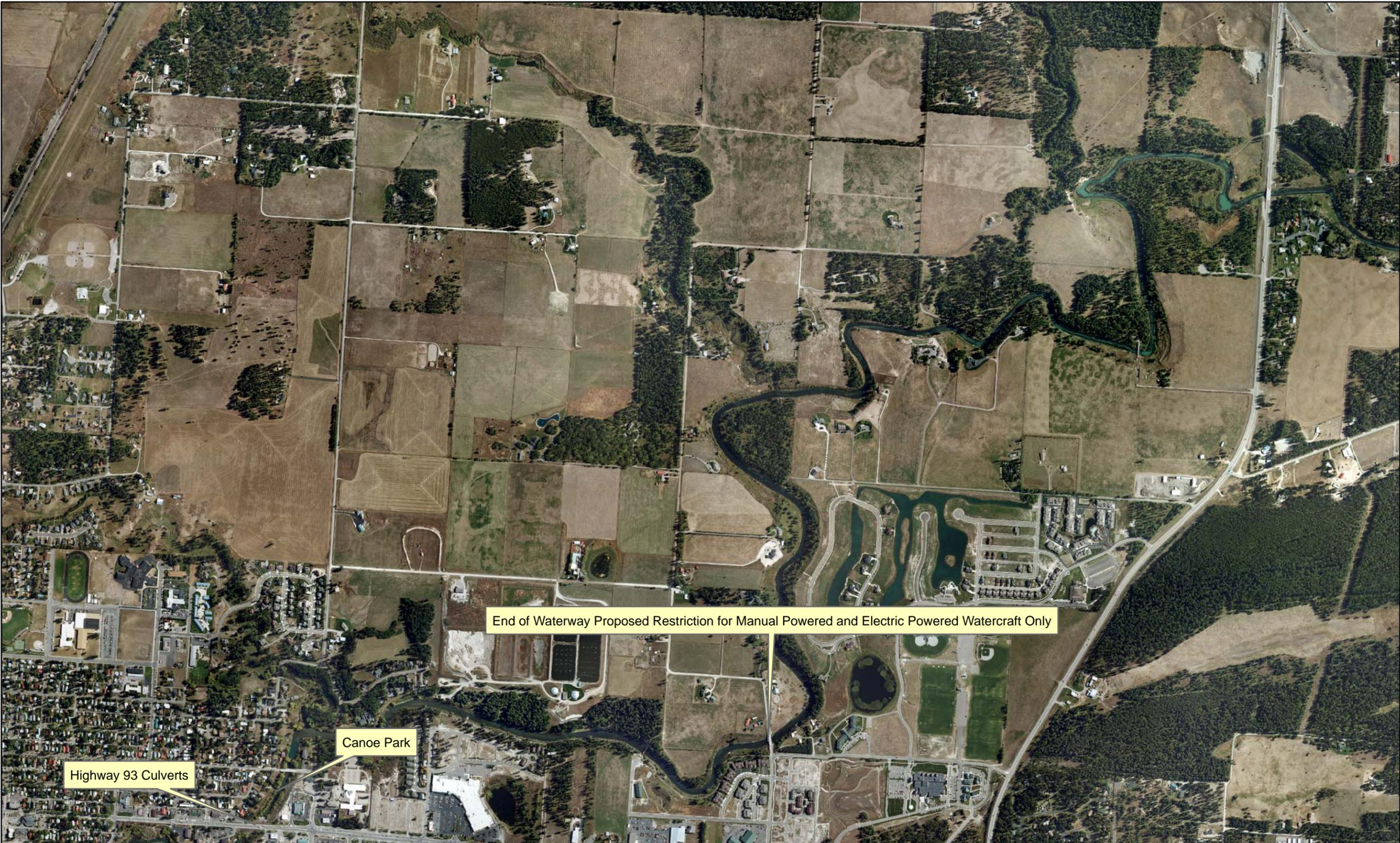
PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, THIS 4TH DAY OF NOVEMBER, 2013.


John M. Muhlfeld, Mayor

ATTEST:


Necile Lorang, City Clerk





plan. Councilor Hyatt said he sits on the Park Board and he thinks the staff did a great job. He said Applied Communications and Bruce Boody did a great job and it is not easy to pull something like this together. He said the Parks and Recreation staff kept their offices open every Tuesday to get public input. Councilor Hildner thanked Director Cozad and his staff and said it is an excellent plan.

The motion passed 5-1 with Councilor Mitchell voting in opposition.

- 7f. **Resolution 13-34; A Resolution to approve a petition to the Montana Department of Fish, Wildlife & Parks to limit a portion of the Whitefish River to manually powered or electric motors only in order to protect public safety and provide resource protection in the riparian zone (p. 336)**

City Councilor Richard Hildner said after listening carefully to the public comment at the previous public hearing he met with Attorney VanBuskirk and talked to FWP. The Resolution tonight is a major modification from the October 9, 2013 meeting. He took the language from the FWP boating manual to come up with the term “manually powered or electric motors.” He said there are 12 bodies of water in Montana that have this restriction. He said this is just one step in the process and then it goes to FWP for consideration, study and hearings, then the Commission holds more public hearings and makes a decision. He said his report describes the situation on the Whitefish River regarding resource protection and public safety.

This Resolution is revised from the prior Resolution under consideration and would now allow small electric motor powered craft on the river. Councilor Mitchell asked why he wouldn't allow something with 3-5 horsepower motors. Councilor Hildner said enforcement is easier if they are limited to electric motors. He said this meets the concerns expressed by the public at the last public hearing about using electric motors. Councilor Mitchell said some folks wanted to use small gas-powered motors. Councilor Hildner said he doesn't think they can address everyone's concerns entirely. He said under 12.1.1.4.0 the FWP says that management plans must not compromise long term conservation. Councilor Anderson thanked Councilor Hildner for his foresight in bringing this before them. He would rather recommend low horsepower motors rather than just electric motors. He also questioned going all the way down to Highway 40. He would like to make the protected zone end at JP Road, which is where the no wake regulations currently end. It would also resolve the comments from folks who occasionally use higher powered boats below JP Road.

Mayor Muhlfeld opened the public hearing.

Michael Park, 1219 7th Avenue West in Columbia Falls, said he attended the September meeting. He said he can't hold an oar or a paddle due to a disability, so he uses an electric motor. He appreciates that Councilor Hildner listened to his concerns. He knows some people would like higher horsepower. He has a 30 thrust electric motor on his pontoon boat and he would appreciate being able to continue using the river.

Leonard Howke, 180 JP Road, said they allow motorized boats from the mouth of the river to the railroad trestle. He asked and Councilor Hildner said no wake is allowed on that section of river. Mr. Howke said they could leave it as no wake all the way down to JP Road. He said if they can have motors and boats up there and he can't then he feels discriminated against. He doesn't feel that is right. Mr. Howke said not all jet skis go fast and not all boats go fast.

Mike Fitzgerald said he has been on the river for the last 36 years and about 15 years ago they tried a no-wake zone but it didn't work. They can't control it. He said a 5 horsepower engine can still stir up the river a lot. They have seen how Whitefish Lake goes crazy in the summer. It would be nice if there was a body of water where they could enjoy it without motorized vehicles. He said they have seen a tremendous increase in boats zooming up the river and you can't run a jet ski without wakes. He said they tried helping the minority in the past who wanted to use their outboard engines, but they are seeing more and more people who abuse the river. It would be nice if they didn't have to put up with motorized traffic on the river.

Mayor Muhlfeld closed the public hearing.

Councilor Sweeney asked if the proposal requests that they change the regulation for non-motorized vehicles from the mouth of the river all the way to JP Road. Councilor Hildner said under this proposal they would ask FWP to consider a restriction from the trestle to Highway 40 to manual and electric motors only. He said the no-wake regulation to the trestle would remain in place. In 2007 the idea to eliminate motors was opposed by those who lived at the mouth of the river and wanted to get into the lake. Councilor Mitchell asked Councilor Anderson to repeat what he had said earlier and Councilor Anderson said he would like to allow small horse power or electric motors. Councilor Hildner said battery size is the issue for electric motors—it would take huge battery to get much speed for an electric motor.

Michael Park said his is a 30 thrust electric motor and uses a battery similar to a riding lawn mower. Councilor Kahle asked about enforcement and Councilor Hildner said FWP will be the enforcer, backed up by the City police. He said it is the responsibility of the operator to know about the boating laws. Councilor Kahle said he thinks they can achieve the objective of safety and protecting resources by limiting the horsepower. They can all share the river as long as it is being respected. He thought the proposal was too restrictive. Councilor Hildner said one of the advantages for restricting it to electric motors is that you don't hear them and you do hear internal combustion engines, so you know they are in violation. He said it would simplify law enforcement. Councilor Kahle said if the river is being treated with respect and there is no wake allowed, then that is adequate. Councilor Mitchell said he would be willing to make it 5 horse power and stop it at JP Road, not Highway 40.

Councilor Anderson said he would prefer to see this restriction from the trestle to JP Road and to allow low powered or electric motors. Councilor Hyatt agreed with the trestle to JP Road since it is a zone that is already restricted and he is in favor of 5 HP or less combustion motors. Mayor Muhlfeld asked if this ordinance would affect emergency response teams on the river. Councilor Hildner said he expected them to be able to respond appropriately. Mayor Muhlfeld said the Whitefish Lake Institute may need to use motorized boats for their research. Councilor Hildner said he would guess it would be part of the FWP research and decision after they go through the public process. Councilor Hyatt said the clean-up barges have to run high horse power as well.

Councilor Hildner offered a motion, seconded by Councilor Anderson, to approve Resolution 13-34; A Resolution to approve a petition to the Montana Department of Fish, Wildlife & Parks to limit a portion of the Whitefish River to manually powered or electric motors only in order to protect public safety and provide resource protection in the riparian zone from the railroad trestle to JP Road.

Councilor Mitchell asked about the exceptions and Councilor Anderson said this has no effect on law, it is just asking FWP to consider the request.

Councilor Hyatt offered an amendment, seconded by Councilor Mitchell, to also allow up to 5 horsepower combustable engines.

Councilor Sweeney asked if the concern was enforcement or the depth of the engine or turbulence. Councilor Hildner said he believes it would facilitate enforcement and to protect the resource. The electric motor won't create a wake so they reduce stream bank erosion and contamination.

The vote on the amendment was tied with Councilors Hyatt, Mitchell and Kahle voting in favor. Councilors Sweeney, Anderson and Hildner voted in opposition. Mayor Muhlfeld voted in opposition and the amendment failed.

The vote on the original motion was tied with Councilors Sweeney, Anderson and Hildner voting in favor. Councilors Hyatt, Mitchell and Kahle voted in opposition. Mayor Muhlfeld voted in favor and the motion passed.

8. COMMUNICATIONS FROM FIRE CHIEF

8a. Contract award for Fire Water Tender apparatus (p. 355)

The Fire Department currently operates one (1) 2,500 gallon water tender. This unit was purchased in 1982 by the Whitefish Rural Fire Service Area and donated to the City. This vehicle has had been in front line service for 31 years.

In March of this year, the Fire Department advertised for bids for the manufacture of a 3,000 gallon tender. In addition to advertising, the bid specifications were mailed to the 8 major manufacturers of fire apparatus as listed in the packet. At that time only one manufacturer, Rosenbauer, chose to submit a proposal and price quote. The \$344,603 price quote was \$69,603 above our projected cost of \$275,000. At the May 20, 2013, City Council meeting the Council rejected this bid and authorized staff to revise the specifications and re-bid the tender. The approved FY14 budget includes a financial provision of \$285,000 to replace this unit during FY14.

During late September and early October, the Fire Department advertised for bids for manufacture of a 3,000 gallon tender based on the revised specifications compiled by staff. In addition to advertising, the bid specifications were again mailed to the 8 major manufacturers of fire apparatus). Two manufacturers, Danko Emergency Equipment Co. and Rosenbauer, chose to submit proposals and price quotes of \$294,571 and \$280,855, respectively.

Both proposals were carefully compared with the published tender specifications. Rosenbauer's proposal was found to be compliant in all aspects with the published specifications. Danko's proposal has some deviations from the specifications, specifically, with the Peterbilt chassis. In addition to the chassis differences, Danko's proposal excludes significant pieces of loose equipment called for in the specifications. These items will have to be purchased prior to placing the vehicle in-service; adding approximately \$5,000 to the cost of Danko's bid.

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 August 19, 2013 Council regular session (p. 34)**
- 6b. Consideration of approving application from Houston Point Homeowners for Whitefish Lake Lakeshore Variance (#WLV-13-W28) at Houston Drive to Variance to add 24 square feet/8’ feet in length to existing gangways on 4 docks at a private marina to extend the length of the existing docks to 78 feet and subject to 10 conditions (p. 58)**
- 6c. Consideration of approving application from Westridge Investments, LLC for Whitefish Lake Lakeshore Permit (#WLP-13-W25) at 2454 Birch Glen Road for replacement of wooden stairs subject to 6 conditions (p. 92)**
- 6d. Consideration of approving application from State of Montana for Whitefish Lake Lakeshore Permit (#WLP-13-W30) at the Montana State Park on State Park Road to replace the public boat launch subject to 16 conditions (p. 106)**
- 6e. Consideration of application for final plat approval – Papp subdivision – 2 lot re-subdivision of Lot 42 Mountain Park subdivision (p. 119)**

Councilor Kahle offered a motion, seconded by Councilor Hyatt, to approve the consent agenda. 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. Resolution 13-___; A Resolution to approve a petition to the Montana Department of Fish, Wildlife & Parks to restrict motorized watercraft from a portion of the Whitefish River and designate a portion of the Whitefish River as Montana's first urban non-motorized waterway (p. 145)**

Mayor Muhlfeld said this is a resolution to approve a petition to the Montana Department of Fish, Wildlife & Parks (FWP) to restrict motorized watercraft from a portion of the Whitefish River and designate a portion of the Whitefish River as Montana's first urban non-motorized waterway. He said they had a work session on this topic preceding the meeting tonight. He turned the meeting over to Councilor Hildner. Councilor Hildner said for the last two years at the annual goal setting sessions the City Council set a goal to create a non-motorized waterway on the Whitefish River. There is currently a No-Wake restriction from the outlet at the lake down to the JP Road Bridge. In 2007 the Council voted to create a non-motorized waterway but it was rescinded when a couple of landowners complained that they wouldn’t be able to bring their boats from the lake to their docks just north of the trestle. The new proposed resolution won’t place the restriction until after the trestle. He said public safety and resource protection are the issues. The river has been closed for 5 years during the BNSF clean-up, so now there is an opportunity to be pro-active for any kind of management. He said paddle boarders and kayaks are not always compatible with powered craft. He said the silts are highly erodable and it might have some impact on the City’s ability to deal with the water quality issues. He said the river is now as clean as most people can ever remember seeing it. He showed a slide presentation demonstrating various uses on the river and expressed his concerns with jet skis interacting with the non-motorized vehicles on the river. He said the site distances are less than 300 feet and it takes approximately 300 feet to stop a jet ski according to the Kawasaki owner’s manual. He said it is important to protect this resource for the community.

Mayor Muhlfeld opened the public hearing.

Michael Park, who lives in Columbia Falls but owns a business in Whitefish, said the idea of “no motors” means they eliminate electric motors which allow those who are physically handicapped to access the river. He said his little boat isn’t safe on Whitefish Lake, but he is able to use it on the river. He said an electric motor has no wake. He asked them not to take away the right to use a part of the river that he currently has, and is able, to use.

Leonard Howke, 180 JP Road, said a lot of garbage floats down the river and he appreciates the wake because it takes it away. He said if he wanted to go on Whitefish Lake he would have to have a trailer, but right now he can just go up the river. He talked about the safety issues on the bike trail. He said visibility is an issue on those trails, too. He said Whitefish River is considered navigable waters and they can use a boat on it.

Sonny Schierl, 105 Wisconsin Avenue, owns Paddlefish Sports; and said he does a lot of stand up paddling. He said he takes a lot of people paddling up the river. He is in support of making this 6-mile stretch of river non-motorized except for the use of electric motors. He said wakes cause silt erosion and damage the river. He thinks that if they are proactive on this they can protect the river and make it work for a lot of people. He said many people are interested in silent sports; and more will come to Whitefish to paddle if this is a protected river way.

Mike Fitzgerald, 412 Lupfer Avenue, said he was involved in 1989 when they worked to create a non-motorized standard and they changed it to a no-wake designation, but it hasn’t worked. He said most of the traffic he sees comes from the lake down the river, not upstream. He agreed that perhaps electric motors should be allowed. He said they have lost 25 feet of shoreline at Riverside Park and if they allow the jet skis and other motorized traffic to have their way then it will get ruined again after the latest clean-up.

Rebecca Norton, 530 Scott Avenue, said she loved this proposal and she thanked Richard Hildner for all of his efforts. She likes the safety parts of this, but she also likes the preservation part of it.

Leo Keane, 514 Pine Place, said he fully supports the proposal. He thinks they should pass it and enforce it as soon as possible. He is a motor boat enthusiast, but there are 7 miles of lake to boat in. He agreed that electric motors are smaller with low impact. He wondered if they can grandfather a few folks who already live on Whitefish River and want to come up to the lake. He said the river is too special to lose it.

Chris Schustrom, 504 Spokane Avenue, supports the proposal. He encouraged the City to consider the use of electric motors and consideration for the use of small horse power watercraft for sporting pursuits. He said in October 2011 Montana FWP and the commission enacted motorized regulations on certain stretches of the Clark Fork River near Missoula while still allowing motorized uses for waterfowl hunting. He said the Whitefish River is a popular resource that they all can enjoy.

Mayor Muhlfeld closed the public hearing.

Councilor Kahle said he agreed with Chris Schustrom that what they’re concerned about is the wake. He agreed that they could allow low horse power gasoline and electric motors. He would favor

restricting high horse power motors and personal motor craft. Councilor Hildner said the public has given them grounds for thought and there might be things they can change in the resolution to make it more acceptable to more people. It may also enhance their chances of getting it through Fish, Wildlife and Parks. Councilor Anderson said the use of electric motors from the trestle to JP Road might need a little more thought. He said he wondered about the uses south of the bridge at JP Road. He said he learned tonight that there are a couple of assertions that have to accompany a petition like this for Montana Law. He said the data on erosion at Riverside Park might need to be developed before they go forward with this. Councilor Hyatt said he loves the river and wants to protect it. He said FWP has a restriction for allowing the use of motors under 10-HP they might want to consider. Councilor Hildner suggested that they postpone the vote on the resolution to allow more research and consideration of the concerns of the community expressed here tonight. He talked to the warden and there should still be time to get it in for this year's consideration

Councilor Hildner offered a motion, seconded by Councilor Hyatt, to postpone a Resolution to approve a petition to the Montana Department of Fish, Wildlife & Parks to restrict motorized watercraft from a portion of the Whitefish River and designate a portion of the Whitefish River as Montana's first urban non-motorized waterway to November 4, 2013.

Councilor Anderson offered an amendment, seconded by Councilor Kahle, to re-open and continue the hearing. The amendment passed unanimously.

The original motion, as amended, passed unanimously.

Councilor Hildner requested he be allowed to introduce John Swanson in the audience; he and Mr. Swanson served together in the Pease Corps forty years ago.

7b. Consideration of an application from Marty Beale for a Conditional Use Permit for a professional office and tri-plex at 118 W. 2nd Street subject to 11 conditions (p. 152)

Senior Planner Compton-Ring said that Marty Beale, on behalf of the Eighth Street llc, is requesting approval of a Conditional Use Permit to have multiple primary uses on one lot – a professional office and triplex at 118 W 2nd Street. The property is currently developed with a single family home. The property is zoned WR-3 (Low Density Multi-family Residential District). The Whitefish Growth Policy designates this property as “High Density Residential”. The Whitefish Zoning Regulations, §11-2-3B(12), permits only one primary use per lot unless a Conditional Use Permit is obtained.

The proposed project will convert an existing single family home into a professional office. The WR-3 (Low Density Multi-family Residential District) along Highway 93 W allows the conversion of existing single family homes to professional offices once a Conditional Use Permit is obtained. This is an area of town where one is able to obtain a Conditional Use Permit administratively; however, since a Conditional Use Permit is required for the multiple uses, staff is reviewing these two permits concurrently.

The other aspect to this project is a triplex on the north part of the property. Parking for the residential use and the office will be located in the center of the property. Three spaces for the residential units will be covered and one customer space for the professional office will be located in front of the professional office. A walking trail for the triplex is being designed to access the Whitefish

EXHIBIT E
**Timeline and history of Whitefish
River motorized restriction issue**

A RESOLUTION TO PETITION MONTANA FISH WILDLIFE AND PARKS
TO RESTRICT MOTORIZED WATERCRAFT ON THE
WHITEFISH RIVER BETWEEN THE OUTLET
FROM WHITEFISH LAKE TO HIGHWAY 40

TIMELINE:

June 5, 1989: Councilor Hanson “wondered if the City could do anything about a speed limit on (the) Whitefish River. There are jet skis and motor boats speeding up and down too fast and endangering people in canoes and on their docks.”

June 19, 1989: City Council votes unanimously to petition FWP to designate the Whitefish River from the lake through the City as “No Wake.”

September 17, 2007: City Council votes unanimously “to petition FWP to prohibit internal combustion motors on the portion of the Whitefish River that is within the City limits.”

October 2007: The previous action of the City Council is rescinded when property owners between the outlet and the BNSF trestle objected.

April 2012: City Council agrees to include pursuit of a “non-motorized waterway on the Whitefish River between the outlet and Highway 40” during their annual goal setting session.

April 2013: City Council reaffirms its commitment to creating a “non-motorized waterway on the Whitefish River between the outlet and Highway 40”

August 19, 2013: City Council schedules a work session and public hearing to gather input on a “non-motorized waterway on the Whitefish River between the outlet and Highway 40” and petition FWP for a non-motorized designation.

Why create a non-motorized section of the Whitefish River?

The primary concern is public safety. Non-motorized use on the River is increasing including swimming, fishing, stand-up paddleboarding (SUP), floating and boating. The River presents several challenges to motorized users such as limited sight distances, narrow waterway, and speed. As a consequence of the BNSF River clean up, River use appears to be increasing.

A secondary concern is resource protection: The shoreline of the Whitefish River is highly erodible and this is exacerbated by wave action from motorized craft. Increased siltation contributes to the eutrophication of the River and Flathead Lake. Eroded silts carry phosphorus to the river. The Whitefish River is home to a wide variety of plants, animals, and fishes.

Why now?

For the past five years the upper reach of the Whitefish River has been closed to all users while BNSF completed an EPA mandated cleanup of diesel sheen on the River. Non-motorized use of the River appears to be increasing, particularly the use of stand-up paddleboards, now that the River has reopened to the public. Now is a good time to provide for public safety and resource protection. High speed watercraft are incompatible with more passive activities such as floating, paddling, swimming, and bridge jumping in the confined space of the Whitefish River.

EXHIBIT F
Proposal and description of need -
Richard Hildner, Whitefish City Council

Whitefish River Non-motorized Waterway

Proposal

Introduction:

In order to protect human safety and preserve the natural resource values afforded by the Whitefish River, it is the desire of the City of Whitefish to call upon the Montana Department of Fish, Wildlife, and Parks to designate the Whitefish River from the BNSF trestle below the outlet from Whitefish Lake to the bridge at Highway 40 as Montana's first urban non-motorized waterway.

The Whitefish River traverses the Whitefish community from its origin at the outlet from Whitefish Lake to the bridge at Highway 40. This headwaters segment makes it an ideal candidate to become Montana's first urban non-motorized waterway. Such a designation would protect public safety and protect an impaired river.

A draft resolution to accomplish this goal is attached.

Description:

The Whitefish River from the outlet at Whitefish Lake to the Highway 40 Bridge is approximately 5.95 miles in length and is accessible by powered watercraft only at

these two locations. In addition, non-motorized craft currently have unimproved public access at Kay Beller Park (Hwy 93 West Bridge), Riverside Park at Baker Street, and a City-owned unimproved site near the corner of Riverside and Columbia Avenues. The river itself is currently on Montana's 303(d) list as threatened for partial support for aquatic life and cold water fishery—trout (Relyea).

For the past three years the upper reach of the River has seen no recreational use due to the closure necessitated by the cleanup of petroleum sheen by Burlington Northern Santa Fe Railroad. Cleanup is scheduled to conclude in July, 2013. The lower reach saw only limited floater traffic during this same period because of limited access due to cleanup operations.

Safety:

Historically the Whitefish River has been shared by a variety of uses including swimming, floating, paddle boarding, fishing, and power boating. The foot bridge at Riverside Park is a popular venue for bridge jumping. Use is generally limited to that period of time when water temperature permits extended periods of emersion—mid June through August. Large water craft are limited to a short period of high water that permits ingress and egress from Whitefish Lake. Personalized watercraft, however,

have the same use period as non-motorized recreationists due to the shallow draft of these craft.

As the popularity of personalized watercraft grew in the late 1980s so did the conflict with traditional non-motorized users. In 1989, after a public hearing in Whitefish, Fish Wildlife and Parks implemented a No Wake restriction on the Whitefish River from the outlet at the Lake to the JP Road Bridge. There is no put-in/take-out access at this point. The No Wake restriction has proven difficult, if not impossible, to enforce. A jet ski at full throttle can be down the river and back into the lake before law enforcement can respond. Likewise, hull numbers are impossible to read at these speeds.

As use increases so does the potential for serious conflict between motorized and non-motorized uses. The upper reach of the Whitefish River, in places, narrows to about 46 feet and averages approximately 80 feet in width through this 1.37 mile stretch (Hagler). The maximum site distance is 549 feet and the minimum is 103 feet. Average site distance in this reach is no more than 278 feet; less than the length of a football field.

The lower reach, from the culverts under Highway 93 to the Highway 40 Bridge, currently receives no motorized traffic. The River below the culverts is narrow and is

similarly characterized by limited sight distances. The maximum sight distance on this reach is 1,010 feet, however the minimum is reduced to only 51 feet or an average of 271 feet.

At this point it is important to note that the stopping distance of a Kawasaki Jet Ski at full throttle is 328 feet (Kawasaki) and the average operating speed of a Personal Water Craft (PWC) is 35-40 mph. Interestingly, due to the nature of water-jet propulsion systems, a PWC must sustain forward thrust in order to maintain steerage. That is, more power, not less, is necessary for directional control.

Information on water depth is limited but it is instructive to note that the average depth over 27 cross sections from upstream of the foot bridge to below the Baker Street Bridge, at low flow, is less than four feet (Cross). The result is a very narrow navigable river channel. Downstream information is not available but ocular estimates reveal a similar condition.

Summary:

In order to be proactive in protecting and promoting safe use of the Whitefish River the most prudent course of action is to prohibit the use of motorized watercraft between the

BNSF train trestle near the outlet from Whitefish Lake to the bridge crossing at Highway 40. Limited sight distance, a narrow river, and increased float/paddle use are incompatible with motorized use.

Resource Protection:

The stream bottom and shore immediately adjacent to the Whitefish River is characterized by “glacial outwash deposits, glacial till, and lacustrine deposits (Critical, p.28).” It is this last group that dominates the fine sediments most commonly found in and next to the Whitefish River. These lacustrine silts are highly erodible.

In an effort to protect water quality in the Whitefish jurisdiction the City passed a Water Quality Protection Ordinance in 2012. This ordinance provides for buffers and setbacks along the Whitefish River to protect water quality and provide vegetative protection on steep slopes which frequently exceed 30%. There is ample evidence of instability and rotational slumping on these slopes. For the most part, riparian vegetative cover is currently intact along this section of the Whitefish River.

Silts are a major component of sediment load in the Whitefish River and “controlling sediment yield will control phosphate loading of water bodies in the Whitefish

jurisdictional area as well (Critical, p. 31).” Because silts travel further than sands and gravels, it stands to reason that the phosphate-absorbed alkaline silts are easily transported downstream toward Flathead Lake. Sediments also play a role in the “transporting anthropogenic contaminants that sorb to sediment, including organic compounds, such as but not limited to, pesticides and herbicides, products of incomplete combustion or PICs (principally from vehicles), and heavy metals (Critical, p.31).”

It has been observed that even minimal wave action disturbs these fine silts and causes the river to go “off color.” This condition is particularly evident as silts become subject to wave action during the summer months as the river transitions from high to low flow. Sediment loading is, however, a natural occurrence during spring runoff. Average stream flows go from a seasonal high of 929 cfs during spring runoff to an August low of 150 cfs (WLI).

As previously mentioned, the riparian vegetation regime along most of the river corridor is intact giving rise to a sense of seclusion and solitude, particularly in the lower reach below the site of the old North Valley Hospital. A partial listing of observed wildlife includes, deer, moose, beaver, otter, bear, and a plethora of birdlife including, ducks,

geese, great horned owls, bald and golden eagles, osprey, hawks, herons, and a wide variety of songbirds (Hildner).

The Whitefish River contains, depending upon location and season, cutthroat trout, northern pike, suckers, rainbow trout, mountain whitefish and the occasional migratory bull trout (FWP). Increasing water temperature has limited, in recent years, bull trout migration between Flathead and Whitefish lakes.

Summary:

Fine, easily erodible silts line the edge of the Whitefish River. These silts often contain a variety of pollutants that are easily carried downstream when disturbed by wave action. Wave action exacerbates shoreline erosion which contributes to loss of riparian vegetation and bank instability. The net result is further degradation of water quality in the Whitefish River and ultimately, Flathead Lake.

Conclusion:

The Whitefish River is an important recreation resource and provides important habitat for aquatic plants, animals, and fish as well as riparian habitat for a wide variety of terrestrial life. As such it is a natural resource worthy of protection. The very nature of

the geography of the river with its limited sight distances and narrow width make conflict with motorized use inevitable. We are presented, here, with a rare opportunity to take proactive action to prevent serious injury or death among users of this waterway. Use by floaters, paddlers, paddle boarders, and tubers will surely increase once the closure imposed by the EPA during the BNSF river clean up is lifted.

In order to reduce the likelihood of polluted sediments being released from the shore of the Whitefish River between the high and low water marks it seems wise to reduce, to the extent possible, the mechanical disturbance (wave action) to the river shoreline. Increased wave action will continue to erode the river bank, degrade riparian vegetation, and release polluted silts downstream. Motorized use will not only exacerbate wave action but will also contribute to the loss of solitude and potential disturbance of wildlife habitat.

Sources:

Critical Lands Report City of Whitefish, Montana. Steward and Associates, Snohomish, WA and RLK Hydro Inc., Kalispell, MT. August 31, 2007

Cross. Cross Sections 15+50 thru 29+00, Whitefish River Lower Reach Remedial Action (2011) prepared by Jenks Consultants, 32 Second Ave., Suite 100, Whitefish, MT 59937.

Flathead County GIS. 800 South main St., Kalispell, MT 59901

Flathead-Stillwater Sediment and Temperature TMDLs. <http://montana.tmdlflathead.pbworks.com/w/page/46768378/Flathead%20-%20Stillwater%20...> . 3/5/20013

FWP, Montana Fish Wildlife and Parks. <http://fwp.mt.gov/fishing/mFish/>. 3/11/2013

Hagler, Rob. Kennedy/Jenks Consultants, 32 Second Ave., Suite 100, Whitefish, MT 59937. Personal communication 27 February 2013.

Hildner, Richard. Personal observation

Kawasaki Operating Instructions, p.89. www.kawasaki-techinfo.net/showOM_Detail/Index.php?. March 3, 2013

Relyea, S. E. 2005. A synoptic study of the water quality of Whitefish River. Flathead Lake Biological Station Report 187-05. Prepared for Montana Division of Environmental Quality, Helena, Montana by Flathead Lake Biological Station, Polson, Montana. 42 pp.

WLI. Whitefish Lake Institute Whitefish River Flow Data provided by WLI on 3/7/2013.











RIVERSIDE PARK 1986



RIVERSIDE PARK 2013
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RIVERSIDE PARK DOCK AREA 3/31/13



RIVERSIDE PARK DOCK AREA 3/31/13
City Council Packet April 7, 2014 page 316 of 321



CITY IRRIGATION LINE RIVERSIDE PARK
BOAT DOCK AREA 3/31/13

Chuck Stearns

From: miriam@zaneray.com on behalf of Miriam Lewis [lewis@acrossmontana.net]
Sent: Thursday, September 05, 2013 11:34 AM
To: Chuck Stearns
Subject: Contact council members

Hello Chuck,

I looked on the City website to find a place to send an email to council members but there was nothing so I would like to have you forward this on to the council members as I am unable to attend the Nov. 4 council meeting due to surgery. Thanks!

Council Members and Mayor,

I am writing this with regards to the proposal to restrict all motorized boats on the Whitefish River. While I agree with a drastic limit to the horsepower on the river, I think for all to enjoy the river, there should be an allowance for low hp, no wake type motorized watercraft.

I certainly do not like the idea of a jet ski or larger boats, but smaller boats would provide many people that are not paddleboarders, kayakers etc. the opportunity to enjoy the river that are also unable to really enjoy the use of their watercraft on the lake due to the larger wakes and waves on the lake.

It is important that you consider the needs of all rather than just a few.

Thanks very much for your consideration.

Miriam Lewis
406.249.5804

received
10/29/13

10/29/13

Necile Lorang
Administrative Services
City of Whitefish

Re: Proposal to restrict motorized access on the Whitefish River

Necile:

Per our conversation this morning 10/29/13 would you see that my comments and concerns are brought to the attention of the appropriate parties.

Re: Proposal to restrict motorized access on the Whitefish River

To whom it may concern:

My name is Glen Kerestes and I own property along the Whitefish River, outside of the city limits, which could be impacted by the decision to restrict the use of motorized water craft on the river. This property has been in my family for over 100 years and the river has been the focal point of the land since my ancestors first settled in the area. The river divides portions of my land for a length of almost three quarters of a mile and any restrictions as presently proposed on how I or my heirs/successors may utilize the river or access portions of our property would not be welcome.

While I wish to maintain the right to utilize motorized craft for the purposes of access I do strongly believe in the need for the protection of the river banks from undue erosion as well as common sense use of the waterway to ensure the safety of other river users. As such I would have no objection to a speed limit or "no wake" regulation.

I can't help but feel that the proposed regulation is an attempt to address a problem that doesn't really exist. While I am most familiar with only the last 2 miles of the river above the Hwy 40 bridge I have never observed more than a couple of motorized craft a year. During the heat of early to mid summer there often times floaters enjoying the river but by late summer the numbers drop to almost nothing. It is only occasionally in the fall that a few waterfowl hunters will use small motorized boats to access the area.

While I may be one of the few landowners that has property actually divided by the river I would ask that you give my concerns due consideration. For generations my family has recognized the beauty and importance of this river for everyone. However, I sometimes have to question why we have paid 100 years of taxes for a river bed everyone has the right to enjoy only to turn around and feel that I must specifically request that my rights as a property owner be recognized without having to resort to means such as special request, permits or litigation.

Thank you again for your consideration.

Glenwood F. Kerestes

10-29-13

Glenwood F. Kerestes

406-861-1154



received
3/12/14 CS

Flathead Basin Commission

655 Timberwolf Parkway
Kalispell, Montana 59901
406.240.3453
cmiske@mt.gov

Caryn Miske
Executive Director

March 11, 2014

City of Whitefish
418 East 2nd Street
Whitefish, MT 59937

Dear Mayor Muhfeld and Whitefish City Council members:

Over the last two years, Whitefish has provided funding support for the local Aquatic Invasive Species (AIS) effort in the Flathead Basin. Due to this support, and the funding contributions from other federal, state and local entities, the Basin continues to remain free of zebra and quagga mussels. The contribution provided by the City has allowed us to employ a dedicated consultant to work on a variety of AIS prevention efforts in the Flathead Basin. In addition, this partner funding has allowed us to establish a watercraft inspection station in Highway 2 in Coram to intercept boats coming from points east and north of the Flathead Basin.

The funding provided by the Whitefish for the upcoming fiscal year will enable us to operate the Coram station a second year. We anticipate that for the 2014 field season, the station will be operated in partnership with FWP, which will provide us with legislatively mandated authority requiring all watercraft to stop at the Coram inspection station. FWP will work with the local wardens to supplement inspection efforts to the extent possible, thereby increasing compliance rates at Coram.

We believe that the operation of the Highway 2 station contributes greatly to protecting the natural amenities upon which economic prosperity of the Basin rests. Once again, many thanks for your continued leadership and vision.

Sincerely,

Caryn Miske
Executive Director

cc: Chas Cartwright, FBC Chair

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.

Please return to Necile

PUBLIC HEARINGS

PLEASE SIGN IN TO SPEAK ON A SPECIFIC PUBLIC HEARING 4/7/14

PLEASE PRINT NAME and ADDRESS

REQUEST TO EXTEND PRELIMINARY
PLAT - ELK HIGHLANDS-Wapiti Woods

ORDINANCE AMENDING
USES IN WB-2 for CUP

APPLICATION FOR PUD
HAMPTON INN - HWY 93 S

GRANT APPLICATIONS
WASTEWATER I & I

	REQUEST TO EXTEND PRELIMINARY PLAT - ELK HIGHLANDS-Wapiti Woods	ORDINANCE AMENDING USES IN WB-2 for CUP	APPLICATION FOR PUD HAMPTON INN - HWY 93 S	GRANT APPLICATIONS WASTEWATER I & I
1. BRADLEY J. TUTSCH → OTHER	N/A	N/A	N/A	N/A
2. Richard Hank				
3. DON Spidey			X	
4. Jan Nutzman			X	
5. Scott Stralhave				
6. rebecca norton		?	X	
7.				
8.				
9.				
10.				
15.				
16.				
17.				
18.				
19.				
20.				

received
4-7-2014
City Clerk's Office

Fwd: RE: Extension of Preliminary Plat for Wapiti Wood at Elk Hig...

Subject: Fwd: RE: Extension of Preliminary Plat for Wapiti Wood at Elk Highlands (WPP-09-18)

From: "Tom Penaluna" <trpenaluna@cbecompanies.com>

Date: 4/4/2014 4:41 PM

To: <Cstearns@cityofwhitefish.org>, <nlorang@cityofwhitefish.org>

We would like to request an extension to the preliminary plat above that is scheduled for Monday nights meeting. We believe it would be in all parties best interest to have more time to talk with those home owners that have protested the extension. The home owners we have spoken with we misinformed because of rumors going around that did not have all of the facts. We would like to postpone till late June or early July so we could have more time to talk to them.

Thank you for your consideration.

Tom Penaluna, President
Elk Highlands, Inc.

Subject: Hampton Inn
From: Doug Adams <dougmda@gmail.com>
Date: 4/7/2014 1:26 PM
To: Necile Lorang <nlorang@cityofwhitefish.org>

received
4-7-2014
City Clerk's Office

Necile,
Please forward my thoughts to the mayor and councilors.
Thanks,
Doug

Dear Mayor and Councilors:

I want to express my support for the Hampton Inn project that you will be looking at tonight. Although I always have reservations when someone asks for a variance in height, I believe this project will be worth it. I'm always glad when a national corporation is willing to change their building template to better reflect its community. The architectural embellishments to the roofline will make the hotel more attractive and keep it from looking like the flat roofed boxes at most Hampton Inns. It'll also keep it from being boring like the Holiday Inn Express just north of it.

If memory serves me correctly, Monterra is another example where an exception was made to allow for more interesting rooflines.

The hotel will be set back well away from the road, so it will not be too imposing because of the height variance. And the project will remove the Wendy's building, which has set empty for too long.

Lastly, the dedication of right-of-way for the possible extension of Baker Avenue shouldn't be overlooked.

Thank you for your consideration,
Doug Adams

To Whitefish City Clerk

Please find attached three documents that make up our comments. Please confirm that these have been received for the council meeting tonight, 4-7-2014

Cover letter

Recommended changes to the proposed ordinance and findings of fact Ordinance No. 11-05 and findings amending the WB-2 zone from May 5,2011

Mayre Flowers, Ex. Director
Citizens for a Better Flathead
PO Box 771, Kalispell, MT 59903
406-756-8993 (W), 406-253-0872 (Cell) 406-756-8991 (Fax)
Mayre@flatheadcitizens.org
www.flatheadcitizens.org



To: Whitefish City Council

Re: Amending Zoning Regulations in Whitefish City Code Section 11-2K-3 to identify shipping and packaging services as a conditional use in the Secondary Business District (WB-2)

Date: April 7, 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.

It is our recommendation that you carefully review and revise the proposed ordinance and the findings of fact to support this ordinance before moving forward with adoption of this proposed zoning text amendment. After reviewing the ordinance and the proposed findings of facts provided to you in your council packet we feel that these documents contain significant flaws and misrepresentations for the basis of the text amendment before you this evening.

We are providing as an attachment to our comments proposed changes to the ordinance and findings before you tonight. We have taken the ordinance and the findings and shown suggested changes with strike throughs ~~for example~~ and colored text for additions. We have also attached documents from the May 5, 2011 council decision that last amended the WB-2 zone text and suggest that findings that supported this decision are more appropriate to the consideration before you tonight.

We are concerned that as a council are already standing on the slippery slope of adopting a zone change for the benefit of a single business. And while we recognize that you find yourself in a situation where you are trying to make a fair decision under difficult circumstances given prior inappropriate actions by your planning staff, we urge you to give careful consideration to drafting clear and defensible findings to support the proposed single zone text change before you tonight.

Thank you for consideration of our comments.

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-3 to identify private postal services and shipping services as a conditional use in the Secondary Business District (WB-2).

WHEREAS, the City of Whitefish initiated an effort to define and identify "business services" as a permitted use in the Secondary Business District (WB-2), and amend the definition of personal services and professional services in Section 11-9-2 of the Whitefish City Code; and

WHEREAS, in response to the proposal to amend WB-2 Secondary Business District and Section 11-9-2 of 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 comment, and thereafter agreed there was not council support for WZTA-14-03 and its recommendations and voted to direct staff to come back to the next City Council meeting with an option for shipping and packaging services as a conditional use in the WB-2 District; and

WHEREAS, at a lawfully noticed public hearing on March 17, 2014, the Whitefish City Council received an oral report from Planning staff, reviewed the proposed findings of fact, invited public comment, and thereafter voted to table the proposed text amendment until the next meeting; and

WHEREAS, at a lawfully notice public hearing on April 7, 2014, the Whitefish City Council received an oral report from Planning staff, reviewed the addendum to Staff Report WTZA 14-03 dated April 1, 2014, invited public comment and thereafter considered and revised the proposed findings of fact and voted to approve the proposed text amendment and ~~staff report and addendum~~ adopted as findings of fact a revised set of findings known as WTZA 14-03 dated April 7, 2014; and

WHEREAS, it will be in the best interests of the City of Whitefish and its inhabitants to adopt the ~~proposed~~ revised findings of fact and text amendment.

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: A revised set of findings known as WTZA 14-03 dated April 7, 2014 Staff Report ~~WZTA-14-03 and its Addendum, dated April 1, 2014,~~ are hereby adopted as Findings of Fact.

Section 3: An amendment to Whitefish City Code WB-2 Secondary Business District, Conditional Uses, Section 11-2K-3, as provided below, with the insertion shown underlined, is hereby adopted:

- Private postal services and shipping services.

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

Whitefish City Council REPORT WTZA 14-03 DATED APRIL 7, 2014

PROPOSED CODE AMENDMENT

TITLE 11, CHAPTER 2K: SECONDARY BUSINESS DISTRICT

April 7, 2014

This is a revised set of findings known as WTZA 14-03 dated April 7, 2014 by the Whitefish City Council and it replaces former staff reports on this proposed code amendment to an addendum to staff report WZTA 14-03 to the Whitefish City Council amending the conditional uses in the Secondary Business District (WB-2). The City Council hearing is scheduled on April 7, 2014.

BACKGROUND:

The Planning Board held a public hearing on February 20, 2014 and recommended approval of a text amendment to add 'business services' to the WB-2 list of permitted uses along with a definition for 'business services'.

At the City Council meeting on March 3, 2014, the Council did not recommend approval of a new definition of 'business services' nor add it as a permitted use to the WB-2 (Secondary Business District). Instead the Council directed staff to come back to the March 17th meeting 'with an alternative option for shipping and packaging services as a conditional use in the WB-2 zone.'

At the City Council meeting on March 17, 2014, the Council tabled the text amendment for 'shipping and packaging services' as a conditional use in the WB-2. The Council directed staff to develop more robust findings in order to support the text amendment and change the use to 'private postal services and shipping services' to be consistent with other areas of the zoning regulations.

COUNCIL PROPOSAL:

Add the following conditional use to §11-2K-3:

☐ Private postal services and shipping services.

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 §11-7-12E.

1. Zoning Regulations Must Be:

- a. Made in Accordance with a Growth Policy

The Whitefish City-County Growth Policy was adopted in 2007 and addresses many aspects of development and growth in our community. The proposed text amendment is within the WB-2 zoning designation. The Whitefish Growth Policy describes this zone as which is consistent with a General/Highway Commercial land use designation. The General/Highway Commercial land use designation is

described as:

“Generally applied to the Hwy 93 corridor north of the Highway 40 intersection, this designation is defined by auto-oriented commercial and service uses. Specific land uses include retail, restaurants of all types and quality ranges (including those with drive-up facilities), professional offices, auto sales and services, hotels/motels, supermarkets, shopping centers or clusters, and convenience shopping, including the dispensing of motor fuels. Primary access is by automobile with ample parking provided on site. Development sites are properly landscaped to screen parking and drive areas and to provide a high-quality visual image. Zoning is generally WB-2, but higher density residential with WR-3 zoning, and mixed use development may also be appropriate in this area.” **(page 66, WFGP)**

The Whitefish Zoning Regulations further describe this district as:

“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)”

A ‘private postal services and shipping services’ use is ~~an auto-oriented service use with primary access by automobile and parking provided on-site~~ a use currently found in the downtown WB-3 district and it has been a grandfathered use in the WB-2 District at the Whitefish Mall location for a number of years. Adding, but limiting this use in the WB-3 as a conditional use is supported by the Whitefish Growth Policy as follows:

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.” (page 68 WFGP)

The proposed change conforms to this goal by requiring an additional 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.” (page 68 WFGP)

By limiting this change to a conditional use in the WB-2 zone, the proposed amendment recognizes the growth policy intent to strengthen the role of Downtown Whitefish as the commercial, financial, and administrative center of the community.

3. “From a physical standpoint, the plan [Whitefish Downtown Master 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.” (page 40 WFGP)

The text of the Whitefish Growth Policy references the Whitefish Downtown Master Plan, which was adopted as part of the WFGP, and demonstrates that the growth potential in the Downtown plan area provides a further basis for limiting additional development uses within the Highway 93 Corridor.

Additionally, on May 5, 2011 the Whitefish City Council passed Ordinance No. 11-05 which amended the WB-2 zone, following a three-year review on this policy that included numerous public hearings and reviews. In adopting this ordinance findings were adopted as a basis for this ordinance. This ordinance included findings applicable to the intent and basis of the proposal to add a conditional use to §11-2K-3: Private postal services and shipping services. Consistent with Ordinance No. 11-05 the following findings support the addition of a conditional use to §11-2K-3: Private postal services and shipping services.

- Whereas this change will allow a currently non-conforming existing businesses to apply for consideration as a conforming condition use; and
- Whereas the Whitefish Downtown Business District Master Plan and the 2007 Growth Policy support continuing to protect the WB-3 Zone as Whitefish's commercial retail district by advocating limiting small retail and businesses in the WB-2 Zone and the proposed changes are consistent with that; and
- We find that it is in the best interest of the City of Whitefish to allow this amendment to the WB-2 zone conditional uses 11-2K-3 in order to address a non conforming use in the WB-2 Secondary Business District while protecting the economic interests of the WB-3 General Business District.

Many of the goals and policies outlined in the Growth Policy support the proposed text amendment, specifically the following:

Land Use:

5. Protect and preserve the special character, scale, and qualities of existing neighborhoods while supporting and encouraging attractive, well-designed, neighborhood compatible infill development.

7. Plan for healthy, efficient, and visually attractive corridors along major transportation routes through the community.

Economic Development:

3. Seek ways to diversify the local base economy with compatible business and industries such that the character and qualities of Whitefish are protected

The ‘private postal services and shipped services’ use fits the character and quality of the WB-2 neighborhood. The use fits nicely along the highway

~~corridor, as it is an auto-oriented land use and it will diversify the economy by providing another service within the community.~~

~~Finding 1: The proposed amendment is in accordance with the Growth Policy because the Growth Policy provides a definition for the General/Highway Commercial that supports services that are auto-oriented, uses that are primarily accessed by automobiles, it promotes a diversification of the economy, and it promotes uses that preserve the character of the neighborhood.~~

Finding 1: The proposed amendment is in accordance with the Growth Policy because adding a conditional use to §11-2K-3 for Private postal services and shipping services to the WB-2 zone, but limiting this use in the WB-3 to a conditional use, is supported by the Whitefish Growth Policy as follows:

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.” (page 68 WFGP)

The proposed change conforms to this goal by requiring an additional 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.” (page 68 WFGP)

By limiting this change to a conditional use in the WB-2 zone, the proposed amendment recognizes the growth policy intent to strengthen the role of Downtown Whitefish as the commercial, financial, and administrative center of the community.

3. “From a physical standpoint, the plan [Whitefish Downtown Master 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.” (page 40 WFGP)

The text of the Whitefish Growth Policy references the Whitefish Downtown Master Plan, which was adopted as part of the WFGP, and demonstrates that the growth potential in the Downtown plan area provides a further basis for limiting additional development uses within the Highway 93 Corridor.

Finding 2: This change will allow a currently non-conforming existing businesses to apply for consideration as a conforming condition use.

Finding 3: The Whitefish Downtown Business District Master Plan and the 2007 Growth Policy support continuing to protect the WB-3 Zone as Whitefish's commercial retail district by advocating limiting small retail and businesses in the WB-2 Zone and the proposed change are consistent with that.

Finding 4: It is in the best interest of the City of Whitefish to allow this amendment to the WB-2 zone conditional uses 11-2K-3 in order to address a non confirming use in the WB-2 Secondary Business District while protecting the economic interests of the WB-3 General Business District.

b. Designed to:

i. Secure safety from fire and other dangers

This particular criterion is specific to lot development and this code amendment is a legislative matter that would apply to the entire WB-2 zoning district. The review of securing the public from fire and other dangers is reviewed either at the time of building permit and/or subdivision.

Finding 5: The proposed code amendment is unrelated to securing safety from fire and other dangers because it is legislative request and not a site specific request.

ii. Promote public health, public safety and general welfare

This particular criterion is specific to lot development and this code amendment is a legislative matter that would apply to the entire WB-2 zoning district. The review of public health, public safety and general welfare is mostly reviewed either at the time of building permit and/or subdivision – through the building code and/or other development standards. The proposed limited additional use promotes general welfare by ~~adding a compatible use~~ continuing to protect the WB-3 Zone as Whitefish's commercial retail district by advocating limiting small retail and business uses within the WB-2 zoning district.

Finding 6: The proposed code amendment promotes public health, public safety and general welfare by continuing to protect the WB-3 Zone as Whitefish's commercial retail district by advocating limiting small retail and business uses within the WB-2 zoning district. ~~because it is providing an additional compatible use within the zoning district.~~

iii. Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements

This particular criterion is specific to lot development and this code amendment is a legislative matter that would apply to the entire WB-2 zoning district. The review of transportation, water, sewer, schools, parks and other requirements is completed either at the time of building permit and/or subdivision.

Finding 7: The proposed code amendment has no impact on the adequate provision of transportation, water, sewerage, schools, parks and other public

requirements because it is legislative request and not a site specific request.

2. In the adoption of zoning regulations, the city shall consider:

a. Reasonable provision of adequate light and air

This particular criterion is specific to lot development and this code amendment is a legislative matter that would apply to the entire WB-2 zoning district. The review of reasonable provision of adequate light and air is completed at the time of building permit.

Finding 8: The proposed code amendment is unrelated to reasonable provisions of adequate light and air because it is legislative request and not a site specific request.

b. The effect on motorized and nonmotorized transportation systems

This particular criterion is specific to lot development and this code amendment is a legislative matter that would apply to the entire WB-2 zoning district. The review of effects on motorized and nonmotorized transportation systems are evaluated at the time of building permit and/or subdivision.

Finding 9: The proposed code amendment has no impact on motorized and nonmotorized transportation systems because it is legislative request and not a site specific request.

c. Promotion of compatible urban growth

The purpose and intent of the WB-2 zoning district states the following:

~~“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.”~~

~~The ‘private postal services and shipping services’ use is a service that has a need for parking areas and proximity to highways or arterials streets. The proposed use promotes compatible urban growth.~~

By limiting this change to a conditional use in the WB-2 zone, the proposed amendment recognizes the growth policy intent to strengthen the role of Downtown Whitefish as the commercial, financial, and administrative center of the community.

Finding 10: By limiting this change to a conditional use in the WB-2 zone, the proposed amendment recognizes the growth policy intent to strengthen the role of Downtown Whitefish as the commercial, financial, and administrative center of the community. The proposed code amendment promotes compatible urban growth because it implements the purpose and intent of the WB-2 zoning district.

d. The character of the district and its particular suitability of the property for the particular uses

The character of the district is auto-oriented, as described above in the purpose and intent of the WB-2 zoning district and 'private postal services and shipping services' is a use that is suitable for the character of the district.

The particular suitability of the property for the particular use portion of the criterion is specific to lot development and this code amendment is a legislative matter that would apply to the entire WB-2 zoning district. This review would either occur during the time of a zoning compliance permit, a business license or other land use review and not at the time of the legislative action.

Finding 11: ~~The proposed code amendment is suitable to the character of the district because it is an auto-oriented service within an auto-oriented zoning district.~~ The proposed code amendment is not related to the particular suitability of the property for the particular use because this portion of the criterion pertains more to site development than community wide zoning regulations and is not applicable to this code amendment.

e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area; and

Finding 12: The proposed code amendment does not affect the value of buildings because it is a legislative request and not a site specific request.

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 13: The proposed code amendment does not affect historical uses and established use patterns and recent changes in use trends because it is legislative request and not a site specific request.

ADDITIONAL FINDINGS:

Finding 14: ~~Staff finds the~~ Considerations in Section 11-7-12(E) are either met or are not applicable;

Finding 15: Whereas, legal public notice according to the Whitefish City Code was published in the Daily Interlake on February 5, 2014;

Finding 16: Whereas, staff sent a notice February 5, 2014 to twenty-three (23) reviewing agencies, departments and other service providers regarding the zoning regulation update.

Finding 17: Whereas, the City-County Planning Board held a public hearing on February 20, 2014 and recommended approval of adding 'business services' as a permitted use in the WB-2 zone and added a definition of 'business

services' in the zoning regulations.

Finding 18: Whereas, the Council at the March 3, 2014 public hearing and did not accept the recommendations of the planning board and instead directed the staff to create a 'shipping and packaging services' use to be a Conditional Use within the WB-2 (Secondary Business District).

Finding 19: Whereas, the Council, at the March 17, 2014, public hearing directed staff to develop more robust findings, and amend the proposed City Council Packet April 7, 2014 page 127 of 321 Conditional Use to 'private postal services and shipping services' in order to be more consistent with other zoning districts.

RECOMMENDATION CONCLUSION:

~~We find~~ It is in the best interest of the City of Whitefish to amend the Secondary Business District (WB-2) to add 'private postal services and shipping services' as a conditional use.

ORDINANCE NO. 11-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ADOPTING A ZONING TEXT AMENDMENT TO ALLOW ADDITIONAL PERMITTED USES IN THE WHITEFISH SECONDARY BUSINESS DISTRICT (WB-2) FOR PROPERTIES ALONG SPOKANE AVENUE/HIGHWAY 93 SOUTH FROM SIXTH STREET TO THE HIGHWAY 40 INTERSECTION.

WHEREAS, the City of Whitefish has investigated, invited public input, held public hearings and meetings regarding how to broaden the allowed uses within the Whitefish Secondary Business District (WB-2) in a way consistent with the intent of the District's planning and zoning for the past three years; and

WHEREAS, in 2008 the City brought to the Whitefish City-County Planning Board issues associated with broadening allowed uses and anticipated future uses in the WB-2 Zone. City staff recommended zoning text amendments to address these issues and broaden the allowed uses without compromising the written intent of both the WB-2 Zone and WB-3 Zone, and goals of the Growth Policy, South Whitefish Neighborhood Plan, and Downtown Master Plan; and

WHEREAS, at a lawfully noticed hearing on January 15, 2009, the Whitefish City-County Planning Board reviewed the issues, and proposed changes to the allowed uses in the WB-2 Zone to the City Council with its recommendation for adding several new permitted and conditional uses to the WB-2 Zone that fit the Zone's intent; and

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WHEREAS, at a lawfully noticed hearing on December 7, 2009, the City Council reviewed staff report WZTA-08-69, invited public input and by Resolution No. 09-45, created a seven-member Ad Hoc Committee to research the issues further. The Ad Hoc Committee was comprised of two Councilors, Council appointed members from business and property owners in the WB-2 and WB-3 Zoning Districts and Whitefish Zoning Jurisdiction, and the Heart of Whitefish nonprofit corporation appointed one of its members, and was charged with the following direction by the City Council:

The general purpose of the WB-2 Committee shall be to evaluate the existing WB-2 Zoning District and to recommend improvements in the form of specific text amendments that balance the intent of the WB-2 and WB-3 Zoning Districts in Title 11 and the Downtown Master Plan with the existing and anticipated future uses to the WB-2 Zone.

WHEREAS, at lawfully noticed public meetings, the Ad Hoc Committee met on multiple occasions from February through April 2010. On April 29, 2010, the Ad Hoc Committee reported its findings and recommendations to the Whitefish City-County Planning Board for zoning text amendments to add new permitted and conditional uses to the WB-2 Zone, new definitions, and a new section; and

WHEREAS, at a lawfully noticed public hearing on June 17, 2010, the Whitefish City-County Planning Board received from the Ad Hoc Committee and Planning staff, proposed zoning text amendments to Sections 11-2K, 11-9-2, and 11-3, to increase the number of permitted and conditional uses, and to include new definitions and a new section entitled "Shopping Centers and Shopping Malls," to the City Council; and

WHEREAS, at a lawfully noticed public hearing on July 15, 2010, the Whitefish City-County Planning Board received from the Ad Hoc Committee and Planning staff, proposed amendments to the permitted and conditional uses to the WB-2 Zone with a revised staff report, WZTA-08-69-B, invited public input, and thereafter voted to recommend approval of the proposed zoning text amendments to the Whitefish City Council; and

WHEREAS, at a lawfully noticed public hearing on August 2, 2010, the Whitefish City Council received oral and written reports from City Planning staff, reviewed staff report WZTA-08-69-B, invited public input, and asked staff to come back with changes to the proposed WB-2 zoning text amendments; and

WHEREAS, at a lawfully noticed public hearing on August 16, 2010, the Whitefish City Council received oral and written reports from City Planning staff, reviewed staff report WZTA-08-69-B, reviewed the Council's requested changes to the proposed zoning text amendments, invited public input, and following Council discussion voted to reject proposed Ordinance No. 10-13 with its proposed WB-2 zoning text amendments; and

WHEREAS, at a lawfully noticed public meeting on September 7, 2010, the Whitefish City Council voted to reconsider, then tabled proposed Ordinance No. 10-13 with its proposed WB-2 zoning text amendments, requesting staff hold a work session on the proposed WB-2 zoning text amendments; and

WHEREAS, at a lawfully noticed public work session on September 20, 2010, at a lawfully noticed public meeting on October 18, 2010, and at a lawfully noticed public hearing on November 15, 2010, the Whitefish City Council received oral and written reports from City Planning staff, invited public input, deliberated on the proposed text amendments to allow additional permitted use in WB-2 Zone; and

WHEREAS, at a lawfully noticed public meeting on December 6, 2010, Brian Muldoon, HeartWorks, and Dru Jackman volunteered to work towards a resolution of the WB-2 zoning issues with community members through a collaborative process, and the Council authorized Mr. Muldoon and Ms. Jackman to work with a mediated process to try to find a collaborative solution to the WB-2 text amendment issues through April 2011; and

WHEREAS, at a lawfully noticed hearing on April 18, 2011, the Whitefish City Council reviewed the WB-2 zoning text amendment recommendations and findings and past oral and written reports from City Planning staff, reviewed the consensus agreement reached by the informal community collaborative process, invited public input, and voted to amend the proposed WB-2 zoning text amendments and to adopt findings, having

determined it will be in the best interests of the City of Whitefish, and its inhabitants, to adopt the proposed zoning text amendments to allow for additional permitted uses in the Whitefish Secondary Business District (WB-2).

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-08-69-B, together with the WB-2 zoning text amendments and past transmittal letters from City Planning staff to the Whitefish City Council, are hereby adopted as Findings of Fact.

Section 3: The zoning text amendments to Whitefish City Code Sections 11-2K and 11-9-2, as set forth on Exhibit "A," attached hereto and incorporated herein by reference, are hereby adopted as amendments to the Whitefish Zoning Jurisdiction Regulations. The Zoning Administrator is hereby directed and authorized to amend the Zoning Regulations of the City of Whitefish to conform to the terms of this Ordinance.

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 _____, 2011.

MICHAEL JENSON, MAYOR

ATTEST:

Necile Lorang, City Clerk

Exhibit "A"

Title 11, Chapter 2, Article K ZONING REGULATIONS - ZONING DISTRICTS WB-2 Secondary Business District

(Insertions shown underlined and deletions shown with strikethrough)

11-2K-1 INTENT AND PURPOSE:

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.

11-2K-2 PERMITTED USES:

- * Antique stores and auction barns
- * Automobile, boat, ~~manufactured home~~ and recreational vehicle sales, rentals, parts, repair and service
- * Automotive service stations and convenience stores within
- * Bed and breakfast establishments (see special provisions in section 11-3-4 of this title)
- * Bowling establishments
- * Building supplies outlets
- * Bus depot
- * Churches or similar places of worship
- * Daycare centers (13 or more individuals)
- * ~~Electric and household appliance stores~~
- * Financial institutions and professional services
- * Frozen food lockers, not including slaughtering
- * Furniture and floor coverings stores
- * Grocery stores
- * Hair salons
- * Hospitals, and associated related nursing homes, retirement homes, congregate housing and personal care facilities in a campus setting
- * Hotels, motels, and other hospitality and entertainment uses
- * Household appliance and electronics stores
- * Laundry and dry cleaning
- * Machinery and equipment sales, rental and repair
- * Medical clinics and associated therapeutic health services
- * Military surplus stores
- * Mortuaries and crematories
- * Professional offices

- * Public buildings
- * Recreational facilities, private and commercial
- * Residential: Caretaker's units (see special provisions in section 11-3-6 of this title)
- * Restaurants
- * Seed and grain sales
- * ~~Shopping malls~~
- * Theaters
- * Vendors (see special provisions in section 11-3-23 of this title)
- * Veterinary office, small animal
- * Wholesale and warehousing

11-2K-3 **CONDITIONAL USES:**

- * Accessory apartments
- * Bars/lounges
- * Boat and recreational vehicle storage (see special provisions in section 11-3-32 of this title)
- * Casinos within a casino overlay zone
- * Colleges, business and trade schools
- * Light assembly and light manufacturing
- * Manufactured home subdivisions
- * Microbreweries
- * Ministorage
- * Personal care facilities when not in association with a hospital in a campus setting
- * Recreational vehicle parks, campgrounds and amusement parks (2 acres minimum size)
- * Truck stops
- * Veterinary hospital

Title 11, Chapter 9
ZONING REGULATIONS - DEFINITIONS
(Insertions shown underlined)

11-9-2 **DEFINITIONS:**

CONVENIENCE STORE: A retail establishment of up to 5,000 sq. ft. selling primarily food products, household items, newspapers and magazines, candy, and beverages, and a limited amount of freshly prepared foods such as sandwiches and salads for off-premises consumption.

MILITARY SURPLUS STORE: A retail sales establishment that offers for sale new or used military surplus items and may also include sporting goods and outdoor recreation clothing and gear.

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



April 18, 2011

Mayor Jenson and City Councilors
City of Whitefish
Whitefish, Montana

WB-2 Zone Text Amendment Recommendations

Summary

On the table are two competing proposed text amendments to the WB-2 Secondary Business District zone that address issues with inconsistencies, archaic language, and existing illegal uses. Because there was a draft forwarded by the Whitefish City-Planning Board that was the subject of a public hearing and postponement by the council, that is included in your packet. Alternatively, the council appointed mediator Brian Muldoon to work with stakeholders in both the downtown and the WB-2 districts to come up with a jointly agreed upon solution to the WB-2 zone issues. Attached is an agreement signed by the members of that committee with a draft WB-2 text amendment as well as several other recommendations for your consideration. Representatives from the City, the Downtown, the WB-2, and At Large all agreed to the mediated amendments, so that is the preferred option for the Council to consider.

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Mediated Stakeholder Committee Results

For three months, attorney Brian Muldoon and Dru Jackman worked with nineteen individual stakeholders to come up with a mutually agreed upon solution to the issues. There were five representatives each from the City, Downtown, and At Large, and four from the WB-2 (one member dropped out) involved in the process, and they did eventually reach consensus on all issues. The majority of the recommended changes to the WB-2 zone text were quickly agreed to, but personal services, sporting goods, and shopping malls took a bit longer to sort out. Eventually it was agreed by everyone that, in the spirit of compromise, "hair salons" and "medical clinics and associated therapeutic health services" be included rather than the all encompassing "personal services" in order to address uses that were already active in the WB-2 zone. It was also agreed that "shopping malls" be removed from the list of permitted uses, since a shopping mall is a building type rather than a particular use, and keeping it in there left too many issues unresolved. The existing mall would be grandfathered as a legal, non-conforming use and could continue having unlimited retail sales and services within. The committee could not agree on whether to include sporting goods, so a smaller group made up of attorneys and members of the Heart of Whitefish and the City met with Brian Muldoon to craft a solution that might work. Eventually, it was agreed that instead of sporting goods, "military surplus" would be listed in the permitted uses, and a definition be created that defined military surplus in such a way that Army Navy would be a legal use, but other types of sporting goods stores would be excluded. That was then presented to the entire committee, which agreed to that, with all

nineteen members signing the attached "Agreements" form, making it unanimous. The Agreements form also includes six other recommendations, which will be discussed further below.

Discussion

The Stakeholder Committee endorsed seven items for the City Council to consider. Please see the attached "Agreements" for more detail. Staff will discuss each one in brief below:

1. *The Committee endorsed the adoption of zoning compliance permit requirements and suggested that the fees not be onerous.*

The council voted to approve the code amendment implementing Zoning Compliance Permits on April 4, and it will go into effect May 18, 2011. Fees for commercial zoning compliance permits were previously established by the Council at \$75, which is a reasonable fee for the public considering the minimum of two hours of staff time required for a project review including the staff site review meeting, as well as reviews of site plan, zoning, parking, landscape, CAO, ARC, and other applicable standards.

2. *The Committee endorsed a Corridor Master Plan for the WB-2 zone and urged the city to pursue available grants.*

The city was not eligible for a 2011 CDBG Grant, but will pursue other available grants. A long range planning consultant will need to be retained to assist with the development of such a plan since staff cuts virtually eliminated the future planning function of the city. A thorough plan such as is suggested could cost upwards of \$50,000 and take up to six months to complete.

3. *The Committee agreed that the Mountain Mall be permitted to operate as is in perpetuity, while also recommended eliminating "shopping malls" from the permitted uses, and recommended that the City find a way to exempt the mall from the requirement in the Non-conforming Uses section that requires a building or use that is destroyed more than 50% of its value be fully conforming upon reconstruction.*

The code currently says that "Shopping Malls" are a permitted use in the WB-2. The code does not say that shopping malls are allowed to have unlimited retail within in the WB-2. However, over the years the mall has been allowed to have unlimited retail within, and the City and the stakeholder committee have all agreed that the malls has established the right to continue to have unlimited retail within. The stakeholder committee and the city have recommended that shopping malls be removed from the permitted uses because shopping malls are a building type, not a use, and having it there puts the city in a situation where we may be not applying the zoning regulations equally in a district, allowing unlimited retail in one type of building but not other similar types. The mall has agreed to be put into a non-conforming use category, but would like an exemption to the rule that if more than 50% of the mall is destroyed, they could rebuild and continue the non-conforming use. All non-conforming uses are treated equally in the zoning jurisdiction. 11-7-9 of the code outlines the regulations. Nonconforming uses can be expanded up to 50% in size with a CUP. They can change to other similar nonconforming uses with a CUP. Nonconforming uses may continue in perpetuity as long as the use is not discontinued for more than 180 days. But if a building containing a nonconforming use is damaged by more than 50% of its value (excluding foundation), then the building must henceforth conform to the regulations. The zoning administrator is not certain the city could provide an exemption to the mall that it did not provide all other nonconforming uses as well.

However, in the mall's case, if the building was damaged beyond 50% and they wished to continue to provide full retail uses, they could apply for a PUD, which would enable them to again have full retail uses. It has not been determined whether the city could grant only the mall an exemption to that code section without making the same exemption available for every other nonconforming uses who wish to get the same treatment out of fairness.

4. *The Committee recommended that the city strengthen its open storage regulations to prevent the unsightly views of wrecked vehicles, oil drums, etc in the WB-2 and elsewhere.*

Many communities have regulations that prohibit open storage of items, requiring landscaping screening and/or sight-obscuring fencing around what are often eyesores on commercial and industrial type properties. If the city council would like to pursue adding new open storage regulations to the WB-2 zone, it can direct staff to pursue a code amendment to that effect. Staff estimates it could have such an amendment to the planning board in 2-3 months, depending on the work load and if other projects that might take precedence.

5. *The Committee recommended that startup fees for new business be streamlined to the extent practical, especially with regard to a zoning text amendment to consider adding a new use to a zoning district.*

Currently the fee for any citizen-proposed zoning text amendment is \$1,980. As far as its relationship to staff resources and notification costs go, that fee may be a bit high for a minor change such as adding a new use, but is low for major amendments such as the short term rental ordinance we recently considered. Note that just following state law requirements for advertising a zoning text amendment costs the city around \$300. When staff next brings forward the planning fee schedule for changes, the council could consider creating a separate, smaller fee for a "proposed new zoning use in a district". However, as you consider reducing that fee, remember that it is difficult to gauge how much staff time such a request might take. Consider that these WB-2 zone amendments you are now considering could very well have been initiated by a private party such as Army Navy or the Walgreen's developer rather than staff two and a half years ago, and how much staff time has been expended.

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6. *The Committee recommended the following changes to the WB-2 zone 11-2K permitted uses:*

- automobile, boat, ~~[delete manufactured home]~~ and recreational vehicle sales, rentals, parts, repair and service
- automotive service stations and convenience stores within
- ~~[delete electric and]~~ household appliance and electronics stores
- furniture and floor coverings stores
- hair salons
- medical clinics and associated therapeutic health services
- ~~[delete shopping malls]~~

- military surplus

The Stakeholder Committee also recommended the following new definition be added to Section 11-9-2, Definitions:

Military Surplus Store: A retail sales establishment that offers for sale new or used military surplus items and may also include sporting goods and outdoor recreation clothing and gear.

All those changes were unanimously (although at times, reluctantly) agreed upon by the members of the Stakeholder Committee. The Committee did a thorough job of going through all the existing uses listed, and there were only a couple of differences from the final City Council draft modified from what was previously proposed by the Ad Hoc Committee and Planning Board.

For the permitted uses, in alphabetical order, those differences are:

- The Planning Board and Ad Hoc Committee had originally proposed adding agricultural supplies and sales to replace the antiquated term seed and grain sales in the permitted uses. The Stakeholder Committee did not discuss that issue, and no change was recommended.
- Recreational vehicle sales and service was originally recommended to be moved from permitted uses to conditional uses, due to the fact that the code defines recreational vehicles as motor homes and travel trailers. The Stakeholder Committee did not recommend this, although they also did not discuss it.
- At Don K's request, the Stakeholder Committee recommended adding automobile, boat, and recreational vehicle repair.
- Both the Ad-Hoc Committee/Planning Board and the Stakeholder Committee recommended adding Automobile and Boat Rentals and Parts. Sales and Service of those items are currently permitted and were recommended to remain so.
- Convenience Stores was recommended by the Committee to be only included as an accessory to service stations.
- The Committee preferred Household Appliance and Electronics Stores to the previous recommendation of Electric, Electronic, and Household Appliance stores. Electric and Household Appliance Stores are currently permitted.
- The Committee preferred furniture and floor covering stores to the previous recommendation of Furniture and Home Furnishing Stores.
- The Committee preferred including Hair Salons, but not the more general Personal Services that was recommended previously.

- To address medical clinics and massage therapists and other uses falling under personal services associated with medical clinics, the Committee recommended adding Medical Clinics and Associated Therapeutic Health Services.
- The Committee did not recommend including Movie and Video Game Rentals
- The Ad Hoc Committee and Planning Board recommended adding Residential Uses (single family through multi-family) on the second floor to the permitted uses to promote affordable housing. Currently, only 600 square foot accessory apartments are allowed as a conditional use in the WB-2 zone and a PUD is needed to add residential. The Stakeholder Committee did not discuss or address residential uses, and made no recommendation.
- Rather than include Sporting Goods as was previously proposed, the Stakeholder Committee has proposed adding Military Surplus, with a definition added to Section 11-9-2.
- Both the last City Council draft and the Stakeholder Committee have Shopping Malls removed from the permitted uses.

The Stakeholder Committee made no recommendations with regard to Conditional Uses, other than requesting additional development requirements for the already listed Mini-storage. Changes from the previous drafts for recommended Conditional Uses are as follows:

- The Ad Hoc Committee/Planning Board had recommended removing accessory apartments from the conditional uses and adding Residential Uses on the Second Floor to the permitted uses to promote affordable housing as mentioned above. The Stakeholder committee made no recommendations, and did not discuss residential uses at all.
- The last Council Draft had Department and Discount Retail Stores as a conditional use. That was not discussed or recommended by the Stakeholder Committee.
- Manufactured Home and Recreational Vehicle Sales, Parts, and Service had been recommended to be moved from Permitted Uses to Conditional Uses previously. The Stakeholder Committee just recommended deleting Manufactured Home Sales Parts and Service from the Permitted Uses.
- Multi-family Residential was previously recommended by the Planning Board/Ad Hoc Committee as a conditional use so as to promote affordable housing and utilize the back parts of the unusually deep lots along the strip. Currently residential and multi-family is only allowed in the WB-2 through a PUD process. The Stakeholder Committee did not discuss residential uses, and made no such recommendation.

Some additional points to consider, perhaps for a future code amendment:

- At one point in the previous WB-2 drafts, staff had recommended adding Variety Stores to the Conditional Uses along with a definition to close the uncertainty

created by allowing Walgreens. No solution to address future Walgreen-type uses was presented by the Stakeholder Committee.

- Tobacco Products Stores and Tattoo Shops have recently approached the city to locate in the WB-2, and were told that the WB-2 zone does not allow such uses. Tattoos are a personal service, and tobacco products are small retail not listed in the permitted uses. Those uses will likely locate downtown for lack of other options.

7. *Mini-storage. It was agreed that the City should establish appropriate setbacks and other appropriate regulation of mini-storage units on US 93, Baker Avenue and JP Road so that the units are not an eyesore or otherwise objectionable when viewed from the street.*

Mini storage is an allowed Conditional Use in the WB-2 zone. There are currently no specific development or design standards established for ministorage facilities in the zoning code or Architectural Review Standards. The architectural standards would provide some design oversight, but do not address a setback from the major arterials. The committee wished to see those facilities set behind commercial uses on Highway 93 or JP Road, rather than fronting on those roads. At the direction of the council, staff could look at putting together a development standards chapter for mini storage facilities in the Special Provisions chapter that would address those concerns.

Summary

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.

ZONING TEXT AMENDMENT CRITERIA – Section 11-7-10(D)

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

CONSIDERATIONS FROM SECTION 11-7-10D.	Staff Analysis/Comments
Conformity to the Growth Policy	<p>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:</p> <ol style="list-style-type: none"> 1. <u>Preserve and enhance the character, qualities, and small town feel and ambience of the Whitefish Community.</u> 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. <u>Strengthen the role of Downtown Whitefish as the commercial, financial, and administrative center of the community.</u> By minimizing changes to the WB-2 zone, the

CONSIDERATIONS FROM SECTION 11-7-10D.	Staff Analysis/Comments
	<p>proposed amendments do their best to continue to support downtown Whitefish.</p> <p>3. Under Recommended Actions, 7. <u>The City shall develop special regulations for “big box” commercial structures to ensure that the scale and character of the community are maintained.</u> The Committee has recommended a Corridor Study to address that issue.</p>
Project Designed to Lessen Congestion in the Streets	The proposed corridor plan may establish better criteria for large commercial developments that would allow city officials to require traffic impact studies and other ways to mitigate traffic impacts.
Historical and established use patterns and recent change in use trends weighed equally, not one to the exclusion of the other.	The proposed amendments carefully weight historic and established use patterns in the WB-2 Zone with change in use trends by expanding allowed uses that were not contemplated when the original code was written in 1982 while eliminating archaic uses.
Security from Fire, Panic, and Disasters	This criterion is not applicable to this code amendment.
Promote Health and General Welfare	The proposed amendments generally promote health and welfare.
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, although the amendment does expand the WB-2 zone’s ability to provide mixed use residential commercial without setting density limits. Modern zoning trends encourage concentration and clustering of residential properties in order to minimize travel time and energy use to jobs and amenities.
Facilitate Adequate Provisions for Transportation, Water, Sewerage, Schools, Parks and Other Public Requirements	The criteria for adequate transportation, utilities, schools and parks are imposed via impact fees on new development and will also come into play when larger facilities are proposed that require a conditional use permit or PUD, wherein the city can impose additional conditions not otherwise required.
Reasonable	The proposed changes take great care to maintain the

CONSIDERATIONS FROM SECTION 11-7-10D.	Staff Analysis/Comments
Consideration to the Character of the District	character of both the WB-3 downtown zone and the WB-2 Secondary Business District zone, and attempt to be faithful to the adopted intents of those zones while preventing the continued proliferation of illegal 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	The proposed code amendments try to maintain building and property values in both the WB-3 and the WB-2 zone by encouraging consistent application of zoning and allowed uses.
Encourage the Most Appropriate Use of the Land throughout the Municipality	The modifications to the WB-2 zone continues to encourage auto-related uses that require access and parking, while also minimizing impacts to the downtown as the retail center of the city per the Downtown Master Plan and adopted Growth Policy

FINDINGS:

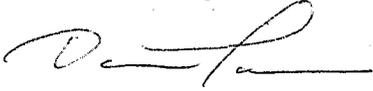
Approval of the amendments by the City Council should include the following findings:

1. Whereas additional uses that are compatible with the intent of WB-2 Zone such as automobile rentals, parts and repair, convenience stores associated with service stations, electronics stores, floor covering stores and military surplus stores should be permitted; and
2. Whereas personal services such as hair salons, and massage therapy and medical clinics are similar to other allowed professional office uses appropriate uses and do not compete with the commercial retail center and should be permitted; and
3. Whereas these changes will make several currently non-conforming existing businesses conforming; and
4. Whereas the Whitefish Downtown Business District Master Plan and the 2007 Growth Policy support continuing to protect the WB-3 Zone as Whitefish's commercial retail district by advocating limiting small retail in the WB-2 Zone and the proposed changes are consistent with that; and
5. We find that it is in the best interest of the City of Whitefish to allow amendments to the WB-2 zone permitted and conditional uses 11-2K-2 and 3, 11-9-2 Definitions, in order to

balance the growing needs of the WB-2 Secondary Business District while protecting the economic interests of the WB-3 General Business District.

Recommendation

Staff respectfully asks the City Council review and approve the proposed WB-2 text amendments with modifications proposed in the Stakeholder Committee draft enclosed, subject to the findings listed above.



David Taylor, AICP

Enc.

- A. WB-2 Stakeholder Committee WB-2 Draft
- B. 11-15-2010 WB-2 Text Amendment Staff Draft
- C. WB-2 Stakeholder Committee Agreement
- D. WB-2 Stakeholder Correspondence (15 pages)
- E. Staff Summary of Issues

WB-2 Zone Stakeholder Mediated Draft Text Amendment, April, 2011

CHAPTER 11-2K WB-2: SECONDARY BUSINESS DISTRICT

11-2K-1 INTENT AND PURPOSE: 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.

11-2K-2 PERMITTED USES:

- Antique stores and auction barns.
- Automobile, boat, ~~manufactured home~~, and recreational vehicle sales, rentals, parts, repair, and service.
- Automotive service stations and convenience stores within.
- Bed and breakfast establishments (see Special Provisions Section 11-3-4 of this title).
- Bowling establishments.
- Building supplies outlets.
- Bus depot.
- Churches or similar places of worship.
- Daycare centers (13 or more individuals)
- ~~Electric and Household appliance~~ and electronics stores.
- Financial institutions and professional services.
- Frozen food lockers, not including slaughtering.
- Furniture and floor covering stores.
- Grocery stores.
- Hair Salons
- Hospitals, and associated related nursing homes, retirement homes, congregate housing and personal care facilities in a campus setting.
- Hotels, motels, and other hospitality and entertainment uses.
- Laundry and dry cleaning.
- Machinery and equipment sales, rental and repair.
- Medical clinics and associated therapeutic health services.
- Military surplus stores
- Mortuaries and crematories.
- Professional offices.
- Public buildings.
- Recreational facilities, private and commercial.
- Residential:
 - a. Caretaker's units (see Special Provisions Section).
- Restaurants.

EXHIBIT

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- Seed, and grain sales
- ~~Shopping malls~~
- Theaters.
- Vendors (see Special Provisions Section).
- Veterinary office - small animal.
- Wholesale and warehousing.

11-2K-3

CONDITIONAL USES:

- Accessory Apartments
- Bars / lounges.
- Boat and recreational vehicle storage (see special provisions in Section 11-3-32 of this title)
- Casinos within a Casino Overlay Zone.
- Colleges, business and trade schools.
- Light assembly and light manufacturing.
- Manufactured home subdivisions.
- Mini-storage.
- Personal care facilities when not in association with a hospital in a campus setting.
- Recreational vehicle parks, campgrounds and amusement parks (2 acres minimum size).
- Truck stops.
- Veterinary Hospital.

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11-2K-4

PROPERTY DEVELOPMENT STANDARDS: The following property development standards shall apply to land and buildings within this district:

Bulk and scale: All new structures with a building footprint of 15,000 square feet or greater, existing structures where an addition causes the total footprint to be 15,000 square feet or greater, and additions to structures where the footprint already is 15,000 square feet or greater, are subject to a conditional use permit pursuant to section 11-7-8 of this title.

Minimum Lot Area: n/a

Minimum Lot Width: n/a

Minimum Yard Spaces:

Front: 20 feet.

Side: 20 foot greenbelt when abutting a residential district or a public right-of-way. Otherwise: none.

Rear: 20 foot greenbelt when abutting a residential district. Otherwise: none.

Maximum Height:	35 feet.
Permitted Lot Coverage:	n/a
Off-Street Parking:	See chapter 6 of this title
Accessory Uses:	Accessory uses shall maintain the same yard requirements as the primary use
Landscaping Requirements:	See chapter 4 of this title (single family uses excepted)

Definitions

CHAPTER 11-9-2

CONVENIENCE STORE: A retail establishment of up to 5,000 sq. ft. selling primarily food products, household items, newspapers and magazines, candy, and beverages, and a limited amount of freshly prepared foods such as sandwiches and salads for off-premises consumption.

MILITARY SURPLUS STORE: A retail sales establishment that offers for sale new or used military surplus items and may also include sporting goods and outdoor recreation clothing and gear.

Staff Draft Text Amendment, 11/15/10

CHAPTER 11-2K WB-2: SECONDARY BUSINESS DISTRICT

11-2K-1 INTENT AND PURPOSE: 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.

11-2K-2 PERMITTED USES:

- Agricultural supplies and sales
- Antique stores and auction barns.
- Automobile, boat, ~~manufactured home, and recreational vehicle~~ sales, rentals, parts, and service.
- Automotive service stations.
- Bed and breakfast establishments (see Special Provisions Section 11-3-4 of this title).
- Bowling establishments.
- Building supplies outlets.
- Bus depot.
- Churches or similar places of worship.
- Daycare centers (13 or more individuals)
- Electric, electronic, and household appliance stores.
- Financial institutions and professional services.
- Frozen food lockers, not including slaughtering.
- Furniture and home furnishing stores.
- Grocery and convenience stores.
- Hospitals, and associated related nursing homes, retirement homes, congregate housing and personal care facilities in a campus setting.
- Hotels, motels, and other hospitality and entertainment uses.
- Laundry and dry cleaning.
- Machinery and equipment sales, rental and repair.
- Mortuaries and crematories.
- Movie and video game rentals
- Personal services.
- Professional offices.
- Public buildings.
- Recreational facilities, private and commercial.
- Residential:
 - a. Caretaker's units (see Special Provisions Section).
 - b. Single family, duplex, tri-plex, fourplex and larger and

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EXHIBIT

B

multifamily dwelling units, on levels other than the ground floor.

- Restaurants.
- Sporting goods
- Seed, and grain sales

- ~~Shopping malls~~
- Theaters.
- Vendors (see Special Provisions Section).
- Veterinary office - small animal.

- Wholesale and warehousing.

11-2K-3

CONDITIONAL USES:

- ~~Accessory Apartments~~
- Bars / lounges.
- Boat and recreational vehicle storage (see special provisions in Section 11-3-32 of this title)
- Casinos within a Casino Overlay Zone.
- Colleges, business and trade schools.
- Department and discount retail stores
- Light assembly and light manufacturing.
- Manufactured home subdivisions.
- Manufactured home and recreational vehicle sales, parts and service
- Mini-storage.
- Personal care facilities when not in association with a hospital in a campus setting.
- Recreational vehicle parks, campgrounds and amusement parks (2 acres minimum size).
- Residential
 - a. Multi-family dwellings
- Truck stops.
- Veterinary Hospital.

11-2K-4

PROPERTY DEVELOPMENT STANDARDS: The following property development standards shall apply to land and buildings within this district:

Bulk and scale: All new structures with a building footprint of 15,000 square feet or greater, existing structures where an addition causes the total footprint to be 15,000 square feet or greater, and additions to structures where the footprint already is 15,000 square feet or greater, are subject to a conditional use permit pursuant to section 11-7-8 of this title.

Minimum Lot Area: n/a

Minimum Lot Width: n/a

Minimum Yard Spaces:	
Front:	20 feet.
Side:	20 foot greenbelt when abutting a residential district or a public right-of-way. Otherwise: none.
Rear:	20 foot greenbelt when abutting a residential district. Otherwise: none.
Maximum Height:	35 feet.
Permitted Lot Coverage:	n/a
Off-Street Parking:	See chapter 6 of this title
Accessory Uses:	Accessory uses shall maintain the same yard requirements as the primary use
Landscaping Requirements:	See chapter 4 of this title (single family uses excepted)

Definitions

CHAPTER 11-9-2

CONVENIENCE STORE: A retail establishment of up to 5,000 sq. ft. selling primarily food products, household items, newspapers and magazines, candy, and beverages, and a limited amount of freshly prepared foods such as sandwiches and salads for off-premises consumption

DEPARTMENT STORE: A retail establishment of over 20,000 square feet divided into separate departments carrying a great variety of unrelated merchandise and services

DISCOUNT RETAIL STORE: an establishment or store, offering merchandise for retail sales at less-than-usual retail prices, and characterized by large structures or warehouse style facilities of over 20,000 square feet gross floor area

Agreements

1. The Committee endorses the adoption of a zoning compliance ordinance, effective within City limits, that would require a business to establish compliance with the zoning for the location proposed for its operation. The Committee expressed a concern that the fees for zoning compliance not be onerous.

2. The Committee endorses the prompt commencement of a comprehensive Corridor Master Plan for the WB-2 zone, as called for in the Growth Policy, to provide a framework to establish a vision for the corridor, which includes consideration of the intention and purpose of the zone, market demand, land use, appropriate commercial activity, aesthetic considerations, traffic concerns and best practices of urban design, recognizing that there may be geographical differences within the WB-2 that may call for different solutions. The Committee urges the City to immediately apply for available grants for this study, including the Department of Commerce's CDBG grants, for which there is an April 15 deadline.

3. The Committee agrees that the Mountain Mall should be permitted to operate in its current form in perpetuity; it recommends that "shopping malls" be eliminated as a permitted use (since a shopping mall is a kind of structure, and not a use), which will make the Mountain Mall a legal, non-conforming use, but recommends that the City take whatever steps are necessary to provide that the Mountain Mall be permitted to retain its permitted uses even "in the event of a disaster that destroys more than 50% of the existing structure" (which otherwise might cause the Mall to lose its wide range of permitted uses). It is our understanding that, as long as the Mall applies for a building permit, the use will be considered continuous, but the Committee supports the Mall in closing this possible

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loophole.

4. The Committee recommends that that City strengthen its open storage regulations so that businesses operating in the WB-2 (or elsewhere) not be permitted to store wrecked vehicles, oil drums, and other unsightly objects in public view.

5. The Committee recommends that "start-up" fees for new businesses be streamlined to the extent practicable. For example, if a business requests a zoning change to allow it to operate a business that is within the intention and purpose of the zone, perhaps a smaller fee could be considered. The Committee acknowledges the Planning Department's efforts to create a checklist for new businesses and endorses its efforts to educate and manage the demands on its staff.

6. These are the proposed text amendments to permitted uses in the WB-2 that garnered unanimous support:

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11-2K-2: Permitted Uses:

- *antique stores and auction barns
- *automobile, boat, [delete manufactured home] and recreational vehicle sales, rentals, parts, repair and service
- *automotive service stations and convenience stores within
- *bed and breakfast establishments
- *bowling establishments
- *building supplies outlets
- *bus depot
- *churches or similar places of worship
- *daycare centers (13 or more individuals)
- *[delete electric and] household appliance and electronics stores
- *financial institutions and professional services
- *frozen food lockers, not including slaughtering
- *furniture and floor coverings stores
- *grocery stores

- *hair salons
- *hospitals, and associated related nursing homes, retirement homes, congregate housing and personal care facilities in a campus setting
- *hotels, motels, and other hospitality and entertainment uses
- *laundry and dry cleaning
- *machinery and equipment sales, rental and repair
- *medical clinics and associated therapeutic health services
- *mortuaries and crematories
- *professional offices
- *public buildings
- *recreational facilities, private and commercial
- *residential
- *caretaker's units
- *restaurants
- *seed and grain sales
- *[delete shopping malls]
- *theaters
- *vendors
- *veterinary office, small animal
- *wholesale and warehousing
- *military surplus [defined as "a retail sales establishment that offers for sale new or used military surplus items and may also include sporting goods and outdoor recreation clothing and gear"]

11-2K-3: Conditional Uses:

- *accessory apartments
- *bars, lounges
- *boat and recreational vehicle storage
- *casinos within a casino overlay zone
- *colleges, business and trade schools
- *light assembly and light manufacturing
- *manufactured home subdivisions
- *microbreweries
- *mini-storage [see #7 below]

- *personal care facilities when not in association with a hospital in a campus setting
- *recreational vehicle parks, campgrounds and amusement parks (2 acres minimum size)
- *truck stops
- *veterinary hospital

7. Mini-storage. It was agreed that the City should establish appropriate setbacks and other appropriate regulation of mini-storage units on US 93, Baker Avenue and JP Road so that the units are not an eyesore or otherwise objectionable when viewed from the street.

DATED: March 31, 2011

James H. ...

January 11, 2011

Dear Friend:

Thank you so much for agreeing to participate in a collaborative process to resolve the issues that have arisen from the WB-2 zoning issues along US 93 South. From what we have seen already, we are confident that our time together will be productive and we both look forward to working with you.

Our first meeting will be held on **Saturday, January 22, from 1:00-5:00 pm** at the Whitefish Public Library. Wear comfortable clothes and come with an open mind filled with creative thoughts.

The initial session will focus on providing the kinds of tools we will be using in reaching an agreement in the coming weeks. Our friend Rebecca Johns from Bigfork, who has worked with the Polson city council, has kindly agreed to co-lead this training session with Brian. Dru Jackman (who is helping her mother recover from surgery in California) will join us as co-facilitator for the balance of the meetings.

A list of participants will be provided at the first session. Our group consists of five representatives from the WB-2 area; five from the WB-3 downtown district; five folks from the city; and five at-large participants.

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In addition to working with the tools of collaboration, at the first meeting we will decide when and how often to meet in order to complete our work by March. If there is enough time we may also work out a mechanism for bringing the general public into our proceedings. Because several lawyers in addition to Mary VanBuskirk have given some thought to the legal aspects of the zoning questions, we will also consider how to invite their input in a way that best serves the work of the group.

We would be grateful if you would email Brian at heartworks@montanasky.com to confirm your attendance. Fasten your seatbelt!

Warm regards,

Brian Muldoon
Dru Jackman

EXHIBIT

D

David Taylor

From: Brian Muldoon [heartworks@montanasky.com]
Sent: Tuesday, April 05, 2011 9:16 AM
To: Chuck Stearns
Subject: Fwd: Participant list

Begin forwarded message:

From: Brian Muldoon <Heartworks@montanasky.com>
Date: January 12, 2011 5:14:02 PM MST (CA)
To: Brian Muldoon <heartworks@montanasky.com>
Subject: Participant list

Dear Folks:

I've been asked a few times to provide a list of participants in our collaboration, and here's the current list:

City:

Phil Mitchell
John Muhlfeld
Turner Askew
Mike Jenson
Dave Taylor

-72- Downtown:

Ian Collins
Rhonda Fitzgerald
Marilyn Nelson
Jan Brunk
Denise Magstadt

At Large:

Charley Abell
Kevin Gartland
Jen Elden
Randy Schwickert
Mayre Flowers

WB-2:

Tom Kraus
Frank Wright
Jeff Jensen
Kent Reimer
Don Kaltschmidt

One of first orders of business will be to determine if we need to add anyone else (and there are many candidates for that) and how we can involve the public in our proceedings without diminishing the sense of having a core group.

I look forward to seeing you on the 22nd at the Library, 1-5 pm. And be sure to rsvp to me to confirm your attendance.

Warm regards,

Brian

Brian Muldoon
HEARTWORKS Mediation Center
525 Railway Street, Ste. 200
PO Box 5028
Whitefish, MT 59937
406-270-5393 (cell)
406-862-9292 (office)
www.workwithheart.com

Brian Muldoon
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www.workwithheart.com

**WB2 Relevant Planning Documents-
Whitefish Growth Policy 2007
Downtown Business District MasterPlan 2006
Whitefish Transportation Plan 2010**

Section 76-3-307 of the Montana Code Annotated, requires that zoning regulations must be made in accordance with a Growth Policy.

The Whitefish Growth Policy was adopted in 2007. The resolution to adopt the Growth Policy incorporated the Whitefish Downtown MasterPlan as part of the Growth Policy. In February 2010, the City Council adopted the Whitefish Transportation Plan. These documents provide the required legal framework for reviewing any proposed text amendments.

These three planning documents were developed through an extensive, community-wide public process through dozens of public meetings where hundreds of community members expressed their visions for Whitefish's future growth.

The Downtown Business District Master Plan, which is a component of the Whitefish Growth Policy contains guidelines stating that new growth should stimulate downtown development while managing highway corridor development.

Growth Policy

Relevant goals, policies and actions from the Whitefish Growth Policy include the following:

1. ***Economic Development - Policy 1 & Land Use – Policy 1:*** “Support the role of Downtown Whitefish as the commercial center of the community through implementation of the Downtown Business District Master Plan. “
2. ***Economic Development - Action 3:*** “ Explore adding an economic impact analysis requirement to the permitting process for big box commercial facilities. “

Allowing big box uses (department/discount) , absent an “economic impact” analysis with mitigation strategies, is inconsistent with the recommendations of the Growth Policy and could have the unintended consequence of diminishing the economic vitality of downtown Whitefish. There has been no economic impact analysis to determine the effect of big box stores.

1. ***Land Use - Goal 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.
2. ***Land Use - Action 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 Whitefish Downtown Business District Master Plan has been adopted as an element of the Growth Policy, but the staff reports do not reference this document as part of the zoning analysis for B2 zoning text amendments. The Downtown Plan has the following relevant guiding principles that should also be used to evaluate any proposed text amendments.

Guiding Principles

"Ensure that Highway 93 improvements enhance and support downtown businesses."

"Demonstrate how Whitefish can stimulate downtown development while managing highway corridor development."

(Source: "Whitefish Downtown Business District Master Plan", pg. 3)

Land Use Framework

"The Land Use Framework outlines the preferred community vision for development of Downtown Whitefish. It is intended to attract new uses and maintain and strengthen existing, desirable uses. It addresses and meets the needs of the projected market over the next 20 years "

(Source: "Whitefish Downtown Business District Master Plan", pg. 7)

Retail

"Successful retail is key to having a healthy downtown. In Whitefish successful retail will depend on having a well-defined retail district that strengthens present retail business and provides for retail expansion... both small scale retail establishments and potential larger floorplate contemporary retail development. ensuring that Whitefish can meet projected market demand."

(Source: "Whitefish Downtown Business District Master Plan", pg. 30)

The MasterPlan identifies 140,000 square feet of additional available retail space and 170,000 square feet of renovatable retail space. It also identifies locations for an additional 330 residential units Downtown.

Source: "Whitefish Downtown Business District Master Plan", pg. 38)

Whitefish Transportation Plan The proposed zoning amendments documentation does not reference the Whitefish Transportation Plan or discuss the potential traffic impacts the proposed changes in zoning may have on the Spokane – US 93 corridor. According to the transportation plan adopted in 2010, there are a number of issues along this corridor including:

- Intersections operating at LOS D (approaching unstable flow) or less, include Spokane Ave. & 13th Street, Spokane Ave. & Commerce Street, and U.S. 93 & Hwy 40.
- Roads that are projected to be operating at or above capacity for future by the year 2030 include the entire corridor from 6th Street to Hwy 40

- Intersections of interest based on crash statistics include U.S. 93 & 13th Street as well as U.S. 93 and Hwy. 40

Whitefish City Code, which is consistent with the Montana Code Annotated (76-2-304) City Code 11-7-10 E.2.e. Conserving the value of buildings;

Dave Taylor, in his Planning department staff reports from 2009 and 2010, notes the negative impact that discount stores can have on downtown businesses and consequently devaluing the real estate in the central business district. Following is an excerpt from the staff report to the Planning Board on 1/15/09.

"It has been well documented throughout the United States how discount chain stores, shopping centers and other large retail developments placed on the edges of small towns can severely impact the economic well being of main street and historic shopping districts. A quick look toward Kalispell and Columbia Falls bears witness to that fact." (Staff report, Dave Taylor- 1/15/09)

The memo to City Council dated 2/17/09 notes a web site with links to these studies. (www.newrules.org/retail). Additionally, the staff report dated February 2, 2010 notes the following:

"The code was written deliberately with the understanding that Whitefish's downtown core was the city's most important asset, and that the existing retail businesses there needed to be protected even as the city limits and commercial districts continued to expand to the south. One only needs to look to nearby cities like Kalispell and Columbia Falls to see downtown cores eroded into non-retail wastelands due to unchecked commercial development on perimeter highway strips that drew away retail businesses from the city center. While not perfect, Whitefish's zoning code contributed to our robust downtown business core, helping it to survive and succeed as it evolved into what it is today." (Staff report , Dave Taylor– 2-3-10)

David Taylor

From: Brian Muldoon [heartworks@montanasky.com]
Sent: Tuesday, April 05, 2011 9:17 AM
To: Chuck Stearns
Subject: Fwd: Meeting recap: WB-2 Collaboration

Begin forwarded message:

From: Brian Muldoon <Heartworks@montanasky.com>
Date: February 15, 2011 7:43:45 PM MST (CA)
To: John Muhlfeld <jmuhlfeld@cityofwhitefish.org>, dirtpeddler@theaskews.com, mjenson@bresnan.net, David Taylor <dtaylor@cityofwhitefish.org>, pmitchell@cityofwhitefish.org, Ian Collins <ianbcollins@gmail.com>, Rhonda Fitzgerald/The Garden Wall Inn <Rhonda@gardenwallinn.com>, Nelson.Marilyn@gmail.com, GCyclery@montanasky.com, whitefishtoy@montanasky.com, Kevin Gartland <kevin@whitefishchamber.org>, CSABELL <csabell@centurytel.net>, Jen Elden <Jen@eldenworks.com>, Randy Schwickert <lawoffices@centurytel.net>, mayre@flatheadcitizens.org, tom@thecarringtoncompany.com, frankmrwright@yahoo.com, jjsgrls@msn.com, kent@midwayrental.com, don@donk.com, Sane Solutions by Dru <info@solutionsbydru.com>, Brian Muldoon <heartworks@montanasky.com>
Subject: Meeting recap: WB-2 Collaboration

Dear Folks:

This email will summarize today's meeting, which was held at the Whitefish Library.

Owing to travel plans and bad roads we were short-handed: not in attendance were Turner Askew, Phil Mitchell, Charlie Abell, Mike Jenson, Jen Elden, Kent Reimer, Don K. and Mary Whitbrod. John Mulfeld was welcomed to the group. Phil and Jen were involved in auto accidents, but we were relieved that neither of them were hurt. We send both our best wishes and gratitude for the near-misses.

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Next meetings: We are scheduled to meet again at the Library on Tuesday, February 22, 3-5 pm and Wednesday March 2, 4-6 pm.

The meeting started with a clarification of an issue that arose at our last meeting. After Rhonda made her presentation about the foundational documents that relate to WB-2 (the Master Plan, Growth Policy, etc.), Phil had indicated that he was informed that these documents were advisory and not binding. Rhonda brought my attention to M.C.A. §76-2-304, the state statute entitled "Purposes of Zoning," which provides as follows: "Zoning regulations must be...made in accordance with a growth policy..."

We then had a discussion about several communications that tested folks' confidence that we could actually develop a common vision and coherent set of regulations for WB-2. Among these were a recent article in the Pilot that referred to certain participants as "extremists" for their position on the Inter-local agreement. Mayre Flowers then suggested that we adopt the Principles For Civil Dialogue that apply to meetings of the City Council and all boards, committees and personnel of the City. This document was unanimously adopted to supplement the guidelines we previously established. We further agreed that each member agrees to hold all others accountable for any communications that violate these principles. Rhonda modeled this kind of accountability by telling me how she felt when I failed to address the breakdown at the last meeting over the issue of the founding documents. Accountability includes: (1) describing the behavior; (2) telling how it made us feel; (3) describing the consequences. I expect we will each get some practice in this over the coming weeks.

We then moved into a discussion of the intention of WB-2 zoning. There was consensus that the primary goal of the planning documents and existing zoning regulations is to provide a convenient location for retail operations that have outgrown or cannot be accommodated, by virtue of their size, in the WB-3 zone. Chapter 11-2K-1 states that, "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." There was consensus that this quality of "largeness," which changes from time to time, is the common ingredient of permitted uses, although it requires attention to be sure that the uses are neither aesthetically offensive nor damaging to the core downtown businesses. This stimulated comments about the need for architectural standards, finding ways to exclude large box stores (although perhaps in decline as a business model and maybe not a threat, given Whitefish's demographics) and strip malls. It was agreed that certain kinds of multi-use facilities might be appropriate if a way can be found to qualify them. Dru encouraged us to think creatively and not focus on fighting the old battles. It was pointed out that uses that weren't "large" (such as professional services) were included in the WB-2 zone simply because they were already there at the time of the initial zoning.

It was agreed that the two districts should complement each other, and not compete with one another. The South Whitefish Neighborhood Plan states:

"11. Whitefish has two major commercial districts, the Central Business District (WB-3), which is predominantly pedestrian oriented, and the Secondary Business District (South Whitefish), which is predominantly automobile oriented. These two districts exist in a tightly knit symbiotic relationship, and the health of each contributes to the success of the other. Appropriate commercial growth in the South Whitefish Neighborhood will complement Whitefish's downtown business district, and stimulate a positive business climate throughout the community.

-78- "12. The downtown and highway commercial districts are interdependent. Stimulating highway commercial growth may have positive and negative impacts on the downtown economy, both by expanding and dispersing commercial development in Whitefish. Like downtown, the highway commercial district is an integral component of the Whitefish economy, and its strength contributes to the vitality of the entire community."

Although "largeness" in some fashion was an intended characteristic of WB-2 businesses, there was discussion about whether the "pedestrian-automobile" distinction was a useful one, since folks often drive to a downtown business (such as Nelson's Hardware) and don't merely stroll through the downtown.

It was agreed that creating additional parking downtown is critical; otherwise, businesses that really aren't appropriate for the WB-2 zone will feel pushed out there by the lack of parking.

A suggestion was also made that we consider some form of qualification for certain proposed uses in WB-2, such as requiring some form of "economic impact statement" to show that the business will not adversely affect the vitality of the downtown, or that it has explored all available locations in the downtown and has been unable to find acceptable space.

It was also acknowledged that we must address the need to articulate a vision of the WB-2 as an entrance or gateway to Whitefish.

For the next meeting, we will fashion an agreed vision for the WB-2 and brainstorm about all the ways to frame the issue of acceptable and unacceptable uses that don't pass the "largeness" test.

Please feel free to add to or correct this summary if I didn't get it right. It's dinner time!

Brian

David Taylor

From: Brian Muldoon [heartworks@montanasky.com]
Sent: Tuesday, April 05, 2011 9:17 AM
To: Chuck Stearns
Subject: Fwd: Summary of 2-22-11 WB-2 Meeting

Begin forwarded message:

From: Brian Muldoon <muldog@montanasky.com>
Date: February 25, 2011 5:24:56 PM MST (CA)
To: Brian Muldoon <heartworks@montanasky.com>
Subject: Summary of 2-22-11 WB-2 Meeting

Dear Colleagues:

This email will summarize my notes of our meeting on Tuesday. Please feel free to note any corrections or changes.

The intention of this session was to create an overall vision or mission statement that will focus our future discussions about the specifics of zoning in the WB-2. We began by identifying the considerations that go into framing the issue. These were the factors that the group identified:

- * There should be a mutually-beneficial and symbiotic relationship between the downtown and the WB-2
- * Both the WB-2 and the WB-3 should be economically viable
- * We should encourage owner-operated businesses
- * The WB-2 should meet the needs of the community
- * We need to keep things sufficiently flexible to allow for future growth and change
- * Whitefish should retain its unique character and "sense of place"
- * Zoning decisions should be fair to those who own property in the zone
- * Zoning regulations need to be realistic, given the consumers' preferences and needs
- * We should encourage infill of the WB-3
- * Local dollars should stay local
- * In accordance with the principles of "adaptive management," we need to keep in mind our planning relationship with the County
- * The WB-2 should be aesthetically pleasing, with good architectural standards and landscaping requirements
- * We need to capitalize on and protect our natural resources
- * Attract visitor dollars
- * Attract "amenity migrants" who move here because they love what Whitefish has to offer
- * WB-2 should be made more "pedestrian-friendly"
- * Steps should be taken to make downtown more attractive, such as providing parking
- * The WB-2 needs to remain available for businesses that need space (land, storage, display, etc.) not available downtown

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This list was then reduced to five basic concerns:

1. Supporting prosperity in both the WB-2 and the WB-3, which should complement each other

2. Maintaining and capitalizing on the unique character and flavor of Whitefish
3. Ensuring that the WB-2 is aesthetically pleasing in all respects
4. Anticipating appropriate future growth
5. Encouraging sustainable economic activity

Kevin Gartland then (bravely) reduced these five concerns into a single statement:

"That the zoning regulations should permit reasonable and appropriate development of the WB-2 without negatively impacting the economic viability of the downtown."

This statement, although still controversial and in need of more wordsmithing than it has already gotten, seemed to capture the essence of the tension between WB-2 and WB-3, although there are many other considerations as well.

We then discussed a variety of ways to address the zoning question.

* There was a consensus that WB-2 was the most appropriate place to site businesses that are too large for the downtown, such as Don K's dealership, Midway Rentals and Wright Furniture, provided that suitable landscaping and architectural regulations are in place to ensure that the zone is visually appealing. So a primary tool of the zoning regulations ought to favor large businesses, so that land they might otherwise use does not get nibbled away by smaller operations better suited to the downtown.

* There also seemed to be agreement that "box stores," outlet malls, strip malls and shopping centers (other than the Mountain Mall) ought to be prohibited in the WB-2. It was suggested that box stores, to the extent they are still viable (note the bankruptcy of Borders), are unlikely to come to a town as small as Whitefish because the demographics don't support it.

The question, then, becomes how to treat businesses that do not have a demonstrable need for space (floor space, parking, storage, etc.)? It was recognized that the kinds of businesses that will flourish in either zone are likely change fairly often, especially given the high mortality rate for retail.

* There are many different ways to approach zoning. "Use" is one way to tackle it, and it may be that there actually is very little disagreement about that (once we go through the list of uses).

* If "use" does not bring us to agreement, then we might consider "flexible zoning." One approach of flexible zoning, rather than specifying the allowed uses, might be to require an "Economic Impact Statement" from a business that does not qualify under the "largeness" provisions. For example, the business might be required to demonstrate that:

- (a) it has explored and exhausted all possible locations in the WB-3 and cannot find suitable space;
- (b) it has evaluated the impact on the WB-3 of its locating in WB-2 and can demonstrate that its location there will not adversely affect the downtown, traffic or infrastructure.

Dave Taylor has experience with drafting such a provision, which has been used elsewhere with some effectiveness. This approach was initially considered for regulating shopping centers in WB-2 but was rejected by the ad hoc committee and others. For it to be effective, there needs to be a way to ensure that the provision has some teeth in it; some people feel that conditional use permits are ineffective because they are always granted.

* Other approaches include:

- * Relying on architectural standards rather than use standards
- * Allowing the free market to determine what businesses are located in WB-2 (i.e., no zoning)

Food for thought.

Next week, we'll have three illustrious guests--City attorney Mary VanBuskirk, Roger Sullivan (Heart of Whitefish) and Sean Frampton (Bill Halama) to share their views about alternative ways by which the City can re-establish its authority over uses in the WB-2.

See you on Wednesday, March 2 at 4 pm.

Warm regards,

Brian

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David Taylor

From: Brian Muldoon [Heartworks@montanasky.com]
Sent: Tuesday, April 05, 2011 9:18 AM
To: Chuck Stearns
Subject: Fwd: Agreement!!

Begin forwarded message:

From: Brian Muldoon <heartworks@montanasky.com>
Date: March 19, 2011 2:52:11 PM MDT (CA)
To: Brian Muldoon <Heartworks@montanasky.com>
Subject: Agreement!!

Dear Friends:

First, congratulations to everyone who worked so hard on making this collaboration a success!! With the exception of one issue (or maybe two, depending on how you count it), we have accomplished what we set out to do--reach unanimous agreement on the proposed changes to the WB-2 zoning ordinance. Of course, it remains for the Council to vote on these recommendations, but I think we've set the table for them to do so.

-82- We were joined for the first part of the meeting on March 15 by Wes Hart, owner of Hart Jewelers. Wes explained that he had only a week to relocate his business from Spokane and Second Street, and that he consulted with a City employee before moving to his present location in the WB-2. He said he had been advised that the new location was a legal one, and so dismissed the idea that he was now "illegal." I suggested that Dave Taylor and I meet with Wes to work out an agreement that would bring him into compliance or otherwise resolve the situation.

I'll get to the open issue/s at the end of this email, but here's what my notes say the group decided at the meeting:

We were reminded that the Committee's primary charge is to recommend ways by which the City can successfully enforce its zoning in the WB-2 without running afoul of fairness considerations, in a fashion that is consistent with the foundational documents (such as the Growth Policy, the Master Plan and the South Whitefish Neighborhood Plan), and that do not involve the forced relocation of illegal businesses operating in the WB-2. As a result, we agreed to examine the permitted uses in the most conservative fashion possible--that is, by asking what changes are required for the City to exercise its authority in the zone, setting aside, for the moment, consideration of additional changes that might be desirable but not required to achieve this goal.

Here's where we then went:

Agreements:

1. The Committee endorses the adoption of a zoning compliance ordinance, effective within City limits, that would require a business to establish compliance with the zoning for the location proposed for its operation. The Committee expressed a concern that the fees for zoning compliance not be onerous.

2. The Committee endorses the prompt commencement of a Corridor Master Plan for the WB-2 zone, as called for in the Master Plan, which includes consideration of the intention and purpose of the zone, appropriate uses, aesthetic considerations, as well as traffic concerns, recognizing that there may be geographical differences within the WB-2 that may call for different solutions (noting that, for example, some portions of the WB-2 zone might better fit within the WB-3 zone). The Committee urges the City to immediately apply for available grants for this study, including the Department of Commerce's CDBG grants, for which there is an April deadline.

3. The Committee agrees that the Mountain Mall should be permitted to operate in its current form in perpetuity; it recommends that "shopping malls" be eliminated as a permitted use (since a shopping mall is a kind of structure, and not a use), which will make the Mountain Mall a legal, non-conforming use, but recommends that the City take whatever steps are necessary to provide that the Mountain Mall be permitted to retain its permitted uses even "in the event of a disaster that destroys more than 50% of the existing structure" (which otherwise might cause the Mall to lose its wide range of permitted uses). It is our understanding that, as long as the Mall applies for a building permit, the use will be considered continuous, but the Committee supports the Mall in closing this possible loophole.

4. The Committee recommends that that City strengthen its open storage regulations so that businesses operating in the WB-2 (or elsewhere) not be permitted to store wrecked vehicles, oil drums, and other unsightly objects in public view.

5. The Committee recommends that "start-up" fees for new businesses be streamlined to the extent practicable. For example, if a business requests a zoning change to allow it to operate a business that is within the intention and purpose of the zone, perhaps a smaller fee could be considered. The Committee acknowledges the Planning Department's efforts to create a checklist for new businesses and endorses its efforts to educate and manage the demands on its staff. -83-

6. These are the proposed amendments to permitted uses in the WB-2 that garnered unanimous support:
 - 11-2K-2: Permitted Uses:
 - *antique stores and auction barns
 - *automobile, boat, [delete manufactured home] and recreational vehicle sales, rentals, parts, repair and service
 - *automotive service stations and convenience stores within
 - *bed and breakfast establishments
 - *bowling establishments
 - *building supplies outlets
 - *bus depot
 - *churches or similar places of worship
 - *daycare centers (13 or more individuals)
 - *[delete electric and] household appliance and electronics stores
 - *financial institutions and professional services
 - *frozen food lockers, not including slaughtering
 - *furniture and floor coverings stores
 - *grocery stores
 - *hair salons
 - *hospitals, and associated related nursing homes, retirement homes, congregate housing and personal care facilities in a campus setting
 - *hotels, motels, and other hospitality and entertainment uses

- *laundry and dry cleaning
- *machinery and equipment sales, rental and repair
- *medical clinics and associated therapeutic health services
- *mortuaries and crematories
- *professional offices
- *public buildings
- *recreational facilities, private and commercial
- *residential
- *caretaker's units
- *restaurants
- *seed and grain sales
- *[delete shopping malls]
- *theaters
- *vendors
- *veterinary office, small animal
- *wholesale and warehousing

11-2K-3: Conditional Uses:

- *accessory apartments
- *bars, lounges
- *boat and recreational vehicle storage
- *casinos within a casino overlay zone
- *colleges, business and trade schools
- *light assembly and light manufacturing
- *manufactured home subdivisions
- 84- *microbreweries
- *mini-storage [see #7 below]
- *personal care facilities when not in association with a hospital in a campus setting
- *recreational vehicle parks, campgrounds and amusement parks (2 acres minimum size)
- *truck stops
- *veterinary hospital

7. Mini-storage. It was agreed that the City should establish appropriate setbacks and other appropriate regulation of mini-storage units on US 93, Baker Avenue and JB Road so that the units are not an eyesore or otherwise objectionable when viewed from the street.

The Open Issue. The last issue concerns the presence of the Army-Navy store on US 93, which apparently was permitted on the basis that there was an administrative finding that it qualifies under "equipment sales" and falls within the intent and purpose of the zone, in addition to the fact that the original store has been in the zone for many years. Does this mean that in the future any large sporting goods store (or perhaps even other large retail businesses) would be able to claim that fairness (equal protection) requires that it also be allowed to locate within the zone? Is that the kind of business the community wants to have in this zone? Is it necessary that the City take any further action to ensure that it has the power to exclude such businesses? Some felt that the matter could be left "as is" until a new sporting goods business indicates an intention to locate in the WB-2; some suggested that any sporting goods business of more than 8,000 square feet be allowed to apply for a conditional use permit; and some suggested that a new category of permitted use for "military surplus" stores be established. It was also suggested that the matter be brought up as part of the Corridor Master Plan study. The downtown sporting goods stores have a significant stake in the matter and have conveyed their sense that opening the WB-2 to large sporting goods stores would have a clear negative impact on existing businesses.

It was agreed that the lawyer for the Heart of Whitefish should meet with City Attorney Mary VanBuskirk to discuss what options are available to the City. That meeting will occur this week. My hope is that they will conjure a solution that everyone will find acceptable so that we can rightly claim 100% agreement on all points.

In the event an agreement cannot be reached on this issue, some participants intimated that they might withdraw their assent to the elimination of shopping centers as a permitted use (that's why we might have two open issues), but I am confident that we'll reach agreement and spontaneously start hugging each other.

We will take up that final issue at a one-hour valedictory meeting on Thursday, March 31, 2011 at 3:00 p.m. at the Library. My sincere hope is that we will have a document at that time to which each of us can honestly affix our signatures.

Let's get 'er done!

Warm regards,

Brian

P.S. It would be great to have 100% attendance at our final meeting, so please RSVP! (If I spoke French I'd know that this is redundant.) We only have the one (and a half) issue to discuss, so the meeting should be a short one.

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January 28, 2011

Background on the WB-2 Zoning Issues

Because there is so much history and information related to the efforts of the City to address some of the issues related to the WB-2 zone, I felt it would be easier to provide a written summary for the committee to review on their own time. This is a somewhat lengthy but thorough summary of the history of the issues and legislation, some taken from excerpts of reports to the Council, Planning Board, and the previous Ad Hoc Committee. If this working group familiarizes itself with this information prior to the meeting, it should give us more time to work on solutions.

History and Intent

The WB-2, Secondary Business District Zone, stretches along Spokane Avenue/Highway 93 South from 6th Street to the Highway 40 intersection. The zoning district was created in 1982 basically as it is now, with an intent that was different but complimentary to the downtown WB-3 General Business District zoning.

Section 11-2-K lists the intent of the WB-2 zoning district:

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.

The intent of the zone is to steer only those commercial uses that are too large or require too much parking to fit downtown toward the WB-2. In contrast, under Section 11-2-L, the intent of the WB-3 zone is listed:

The WB-3 district is intended as a center of financial, retail, commercial, governmental, professional, institutional, and cultural activities. This district classification is not intended for general application through the Whitefish area.

This intent makes it clear that most retail and commercial activities should occur in the WB-3, which protects the downtown as the economic center of Whitefish. The WB-2 Zone, unlike the WB-3, does not list "retail sales and service" as a generally allowed use, but specifically lists the type of retail uses it deems appropriate in keeping with the intent, i.e., businesses requiring large display areas and proximity to the highway such as antique stores, furniture stores, grocery stores, building supplies, malls, machinery rentals, electrical and household appliance stores, restaurants, and wholesale and warehousing, etc.. The differences between the two zones are summarized in these excerpts from the South Whitefish Neighborhood Plan:

EXHIBIT

E

Whitefish has two major commercial districts, the Central Business District (WB-3), which is predominantly pedestrian oriented, and the Secondary Business District (South Whitefish), which is predominantly automobile oriented. The two districts exist in a tightly knit symbiotic relationship, and the health of each contributes to the success of the other. Appropriate commercial growth in the south Whitefish neighborhood will compliment Whitefish's downtown business district, and stimulate a positive business climate throughout the community.

The downtown and highway commercial districts are interdependent. Stimulate highway commercial growth may have positive and negative impacts on the downtown economy, by both expanding and dispersing commercial development in Whitefish. Like downtown, the highway commercial district is an integral component of the Whitefish economy, and its strength contributes to the vitality of the entire community.

Property owners in the WB-2 zoning district have expressed strong support for allowing a wider range of retail and other commercial uses in the district. Zoning regulations generally limit commercial uses in the WB-2 district to land-intensive types of businesses.

Both the 2007 City-County Growth Policy and the Downtown Master Plan discuss the city's policy towards commercial growth in downtown versus the 93 Strip. Here is some background information from the Land Use section that summarized each:

ISSUE: Where shall additional commercial development take place, and what form should it take?

Here too, the citizens of Whitefish were quite clear in their preferences. Downtown should remain the commercial and cultural center of the community. In 2004 and 2005, the Whitefish Downtown Business District Master Plan was formulated and adopted. This Master Plan is based upon an extensive community involvement program that included hundreds of participants in public meetings, workshops, and visioning exercises.

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In order to ground the Master Plan in reality, a market analysis was used as the starting point. Out of this effort came land use alternatives that meet realistic goals within a 20-year period, and a strategy for attainable investment and growth. The plan also includes land use and transportation assessments, an opportunities and constraints analysis, and a framework for improvements to transportation, parking, civic/cultural, open space, housing, and retail components.

The Master Plan contains an extensive implementation program that includes a capacity diagram depicting a possible 140,000 square feet on new retail floor space and over 330 housing units. Finally, detailed recommendations and concepts for "catalyst projects" for key downtown locations are presented. Other specific recommendations call for zoning district changes, a recommendation to write upper floor residential uses into the WB-3 zoning district, and five new architectural review standards.

While the commercial strip along Hwy 93 South from Hwy 40 north to about 13th St. was generally accepted as a given, most visioning session participants wished to see the current quality of commercial development maintained. This included the meandering bicycle-pedestrian way, and distinctive landscaping maintained by each business establishment. There was very little interest in extending commercial development down Hwy 93 south of Hwy 40, or extending it along Hwy 40 toward Columbia Falls. Some commercial establishments now exist in both of those corridors as legal non-conforming

uses. There was, however, great interest on the part of visioning session participants to work with Flathead County on cooperative planning beyond the Whitefish jurisdictional boundaries, and on preserving the visual qualities of community gateways, especially along the Hwy 93 and 40 corridors.

There has been virtually no support in the Whitefish community for “big box” and “category killer” retail. Those types of retail establishments are readily available 15 miles away in Kalispell, and are generally viewed as being out of scale with Whitefish and detrimental to its small town feel and character. Code revisions to limit big box stores both in the downtown area and in the Hwy 93 commercial corridor are already being enacted.

The 1996 Master Plan concluded that, “Commercial land is vastly oversupplied and underused in the Planning Jurisdiction”, and judging from the amount of commercial land that is still undeveloped, especially in the Hwy 93 South corridor, that remains true today. Other than the recommendations set forth in the Downtown Master Plan, this growth policy will recommend no additional land for commercial development.

Specific Goals and Recommended Actions of the Growth Policy included:

3C. Strengthen the role of Downtown Whitefish as the commercial, financial, and administrative center of the community.

7. The City shall develop special regulations for “big box” commercial structures to ensure that the scale and character of the community are maintained.

9. The City shall formulate, or shall facilitate the development of, corridor plans for all major transportation corridors to address land use, transportation function and modes, noise, screening, landscaping, and all aspects of urban design. Corridor plans shall address the issues and concerns set forth in this element of the Growth Policy. The Hwy 93 South corridor shall be the first priority,

Specific Issues with the WB-2 Code

It is difficult to find any other community with zoning that dictates specific types of retail uses the way our WB-2 does, with zoning that protects downtown retail interests in the WB-3 by banning competition for small item retail in one zone (WB-2) while allowing it in another (WB-1). Things like professional offices are allowed in all zones including the WB-2, but similar uses such as personal services (hair salons, massage therapists) are not allowed in the WB-2. We will go into detail below on the complex issues associated with the WB-2 zoning, especially the allowed uses.

One inconsistency is that the WB-2 allows “shopping malls” as a primary use. All retail sales and services have been allowed to exist within the Mountain Mall in the WB-2. A shopping mall is defined as “a fully enclosed building with access through interior corridors to store fronts”, therefore strip malls do not qualify as a mall. It has been argued that only allowing full retail within a shopping mall in the WB-2 without allowing it elsewhere is an inconsistent application of zoning and could make the city vulnerable to “equal protection” litigation. Another issue with “shopping malls” are that typically they are a building type, not a specific use, therefore including them as an allowed permitted or even conditional use is out of context with normal zoning practice.

There are several other “issues” that have gotten a bit misconstrued, and it may help the committee to focus specifically on which problems we are trying to solve. For instance, the issue of corridor planning and aesthetics on the strip is important, but it was not something we were specifically looking at. Most of the aesthetic issues are controlled by the Architectural Review Standards. The major policy issue of whether large chain stores should be allowed on the strip was also not reviewed. Currently buildings over 15,000 feet need a conditional use permit, but that is the only deterrent in the code book. The City Council has indicated through the Growth Policy and their priorities list that they would like to do corridor planning on 93 South, which could include an upgrade of our South Whitefish Neighborhood Plan, but the planning department does not have the budget or staff to work on that presently.

The majority of the focus has been on the existing controversial or illegal use issue in the WB-2 zone. Several uses such as hair salons, sporting goods, video rentals and flower shops have opened up over the years that could be considered illegal under the existing code. Others that aren't specifically listed (auto parts and auto rentals, for instance) were allowed due to their similarity to listed uses (automobile sales and service). The problem could be traced to staff oversight (Whitefish had no local planning department until 2005) or perhaps due to the fact that the city code does not require a zoning permit review to open a business. Businesses that changed location were not required to submit a new business license application until recently. Often the first contact from a relocated business is after they are ready to open and they need a sign permit. Also, some of the existing uses that weren't originally listed in the permitted uses either generally fit with the intent, so were allowed in on proximity to listed uses.

Illegal Vs Non-Conforming Uses

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The main problem the Council has been focusing on is the permitted uses, trying to be consistent with the “intents” of both zones while addressing uses that have been allowed in through either oversight or gray areas of the code, to button it up so that the City can effectively enforce the allowed uses going forward without being challenged by new businesses saying, “Well, the city let that illegal use in, so I get mine too.”

In the code, a non-conforming use is defined as: *a lawful use of a building, other structure or land, which predated the adoption of the zoning use regulations now in effect, and which would not be a use authorized in the district designation currently applied to that site.* Additionally, under 11-7-9, Non-Conforming Uses, a non-conforming use is described as follows: *Any building for which a building permit has been issued prior to the adoption or amendment of these regulations and the erection of which is in conformity with the plans submitted and approved for the permit, but does not conform to the provisions of these regulations, shall be a nonconforming use.*

Only uses that existed legally before the zoning code was adopted or amended can be considered legal-nonconforming uses. A use that was never legal cannot be considered a legal non-conforming use. The only way to legitimately allow illegal uses to continue is to amend the code to make them either a permitted or conditional use, such as the previously proposed WB-2 Text Amendments. Once the use is allowed, if it is ever removed with a future text amendment, then it would be considered a legal non-conforming use and allowed to remain with grandfather status.

Under 11-7-3 B.14, if a use is not categorically permitted but deemed to be synonymous to permitted uses by the zoning administrator, he is to take it to the planning board, who has the

right to declare a new use and thus require a zoning ordinance amendment for the placement of the new use. This procedure was followed, and on July 15 the planning board declared the new permitted uses proposed in the previous text amendment to be consistent and necessary in the draft forwarded to the council for approval.

As will be shown below, the businesses that exist in the WB-2 zone right now that are most likely illegal are few, and the majority of those involve personal services (hair salons and spas). There are also a number of uses that were allowed to open due to the use being similar to a permitted use. The proposed WB-2 zone amendments attempted to clarify many of those uses that are similar and fit with the intent, but are not specifically listed.

Later on in this memo, we will discuss a legal maneuvering tactic that would move the illegal uses that we decide shouldn't proliferate in the WB-2 into a category where they are legally non-conforming by temporarily adding them to the conditional uses to solve the dilemma.

Existing Use Inventory

A thorough inventory of every business in the WB-2 was done in January of 2009, and that was updated on September 13, 2010. There were 94 businesses counted in the WB-2, not including the Mountain Mall and all its tenants. Of those 94, five are most likely not permitted outright, while another eight are questionable but an argument can be made for their legality, and many of those were formally permitted by staff, therefore assuring their status as conforming. The rest appear to fully conform.

Probably illegal businesses that do not fit an existing use category:

Mum's Flowers#

Rejuvenate Spa*

Village Barber Shop*

Inspirations Salon*

Hart Jewelers (could be allowed under "light manufacturing" CUP since he makes his jewelry)

(# would fit under draft proposed "agricultural supplies and sales")

(* would fit under draft proposed "personal services" item)

Apparently conforming businesses that were allowed through similarity to allowed uses:

Wireless Connection (allowed due to similarity to items sold at Radio Shack, which fits under "electric and household appliances")

Oriental Secrets (rug store fits under "furniture stores")

Army Navy (allowed under "intent" (large display, parking requirement) and "equipment sales" and due to its existence in town for many years prior to the new building)

Walgreens (allowed under "intent" and similarity to items sold in "grocery stores")

Summit Signs (light manufacturing is allowed with a CUP)

Napa Auto Parts (allowed by proxy under "automobile sales and service", proposed "automobile parts" is more specific)

Carquest Auto Parts (allowed by proxy under "automobile sales and service", proposed "automobile parts" is more specific))

Budget Car Rental (allowed by proxy under "automobile sales and service", proposed "automobile rentals" is more specific)

Legal businesses that clearly fit in existing allowed uses (listed because there was some confusion over their legality):

Midway Party Supply (allowed under “equipment rentals”)

Midway Rental (allowed under “equipment rentals”)

Wright’s Furniture (allowed under “furniture stores”)

Radio Shack (allowed under “electric and household appliances”)

Zoning Text Amendment Efforts

In 2008, it was brought to the Planning Board’s attention that there had been inconsistencies in how the allowed uses of the WB-2 Zone were being administered. Stemming from that, staff worked with the Planning Board on draft zoning text amendments reviewing and updating the allowed uses in ways that minimized compromises to the written “intent” of both the WB-2 zone and the WB-3 zone as well as the goals of the Growth Policy and Downtown Master Plans.

In late 2008, the Planning Board forwarded those to the City Council with a recommendation for adding several allowed uses to the zoning district which would make several non-conforming businesses legal, and they also looked at some additional uses that were not considered when the original WB-2 was drafted, but that fit with the intent of the zone. After deliberating the issue at two council meetings and a work session, the council postponed taking action on the issue due to pressure from both The Heart of Whitefish and Bill Halama of the Walgreen’s development in the WB-2, who opposed the changes for different reasons. In November of 2009, when the issue was raised again, the Council appointed an Ad-Hoc Committee to research the issue further. Specifically, the Council charged the WB-2 Ad Hoc Committee with the following:

The general purpose of the WB-2 Committee shall be to evaluate the existing WB-2 Zoning District and to recommend improvements in the form of specific text amendments that balance the intent of the WB-2 and WB-3 Zoning Districts in Title 11 and the Downtown Master Plan with the existing and anticipated future uses of the WB-2 zone.

The Ad Hoc Committee was made up of one downtown business owner (Henry Roberts, who owns a business in the Railway District), one member of the Heart of Whitefish (Ian Collins, who also owns property in the Railway District), two property owners from the WB-2 Zone (Bill Halama, who developed the Walgreen’s site, and Jeff Jensen, owner of the Holiday Plaza strip mall), one at-large member (Brian Schott), and two city council members (Turner Askew and Phil Mitchell). The Committee met on multiple occasions from February through April of 2010, with their final meeting being April 27, wherein they sent a draft text amendment to the Planning Board and Council.

After getting consensus on most of the uses and voting on several of the more controversial issues, they passed their best shot back to the Planning Board and Council for further refinement. While the committee was split on major issues, there were some items they found common ground on. The two representatives from downtown on the Ad Hoc Committee, as well as the at-large member, generally approved most of the proposed additions to the allowed ‘permitted’ uses in the WB-2 (although the Heart of Whitefish opposed personal services and sporting goods). The conditional uses were a bit more contentious. The residential element had unanimous support, as well as making shopping malls, shopping centers, department stores, and discount retail stores conditional uses. However, the issue of allowing full retail sales within shopping centers was a divisive issue, especially the idea of allowing it in existing smaller strip

malls. The committee was split when the majority voted to reduce the threshold size for a shopping center with full retail to 12,000 square feet in order to accommodate ad-hoc committee member Jeff Jenson's Holiday Plaza development. Currently, all buildings 15,000 square feet and over in the WB-2 already require a conditional use permit.

The proposed changes represented a compromise that would for the most part expand the allowed uses of the WB-2 Zone without fully negating the established intent of the city's commercial zones, although not all of the committee agreed with that.

It was pointed out by the representative from the Heart of Whitefish that the compromises by the committee were all at the "expense" of the downtown WB-3 zone. The Heart of Whitefish holds the view that the downtown is vital today due to the strength of the zoning code, and that for Whitefish to remain strong, the downtown should continue to be protected as the retail center of Whitefish per the goals adopted by the City Council in the Downtown Master Plan.

Through deliberation, the majority of the committee voted to add the following new permitted uses to the WB-2 zone:

- *Agricultural supplies and sales (formerly "seed and grain sales", which was removed)*
- *Automobile rentals and parts sales*
- *Electronic items sales*
- *Home furnishing stores*
- *Convenience stores*
- *Movie and video game rentals*
- *Personal Services (hair salons, catering, spa or massage therapy, recreation guides, etc)*
- *Single and multi-family residences, provided they are on levels other than the ground floor*
- *Sporting goods*

"Manufactured Home Sales" and *"Shopping malls"* were moved to the Conditional Uses.

The following were also added to the Conditional Uses by the Ad Hoc Committee:

- *Department and Discount Retail Stores*
- *Residential multi-family dwellings (apartments utilizing ground floors as well)*
- *Shopping malls and shopping centers, including additional commercial uses not listed under permitted or conditional uses above, subject to the development requirements listed under 11-3-31*

Accessory Apartments were deleted from the Conditional Uses as residential uses were added to the Permitted Uses.

The following new definitions were also recommended by the Ad Hoc Committee:

SHOPPING CENTER: A group of architecturally unified commercial establishments containing over twelve thousand (12,000) square feet of gross floor area built on a site which is planned, developed, owned, and managed as an operating unit related in its location, size and type of shops to the trade area that the unit serves. The unit provides on-site parking in definite relationship to the types and floor area of the stores

CONVENIENCE STORE: A retail establishment of up to 5,000 sq. ft. selling primarily food products, household items, newspapers and magazines, candy, and beverages, and a limited amount of freshly prepared foods such as sandwiches and salads for off-premises consumption

DEPARTMENT STORE: A retail establishment of over 20,000 square feet divided into separate departments carrying a great variety of unrelated merchandise and services

DISCOUNT RETAIL STORE: An establishment or store offering merchandise for retail sales at less-than-usual retail prices and characterized by large structures or warehouse style facilities of over 20,000 square feet gross floor area

City Council Changes to the Draft Ordinance

These proposed changes were sent through the Planning Board to the City Council in August of 2010, and after several meetings, the Council modified the draft to remove several elements. Initially a few members of the council were in support of allowing unlimited retail in strip malls as well, but they backed off of that early in this second process due to overwhelming public comment in opposition. In the end the council decided to take Shopping Malls out of the allowed uses entirely, which would grandfather the existing mall but not allow any more, which I think was a good decision that effectively solved the equal protection problem. They also removed all references to strip malls and shopping centers. The Heart of Whitefish also submitted a draft ordinance, and the Council considered some of their recommended changes although they postponed action prior to voting on specific uses one by one.

Proposed WB-2 Permitted Uses

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Here is some more specific discussion on uses as proposed in the latest City Council draft.

Agricultural Supplies and Sales

This was inserted to replace "Seed, and Grain Sales", an antiquated type of use. Retail agricultural supply stores seem best suited for the WB-2 zone in Whitefish and are consistent with the zone's intent. Flower shops would fit into this category, as flowers are an agricultural item.

Automobile, Boat and Recreation Vehicle Rentals and Parts

The WB-2 zone currently allows automobile, boat and recreational vehicle sales and service, but no mention is made of rentals and parts sales. These uses have been allowed over the years due to the similarity to permitted uses, but the code needs to be clear that those uses are also permitted. The WB-2 zone with its automobile-related intent and need for parking is the best location for car, boat and RV rentals and parts stores. The Heart of Whitefish's proposed draft WB-2 removes RV sales from permitted uses. The code defines Recreational Vehicles as motor homes and travel trailers. While motor home sales may not be attractive, with the visitor destination and second home market, the WB-2 seems the most suited, especially as a conditional use. The term "sport vehicles" or ATV's could be added to more specifically include 4-wheeler and motorcycle sales.

Electronic Appliance Stores

The WB-2 currently allows electric and household appliances. Most everything Radio Shack sells could be considered an electric or household appliance, including phones, which is why that store was allowed in the WB-2. The cell phone store near Walgreens was allowed solely

because the developer of that property challenged the previous city attorney that because the city considered Radio Shack a legal use, and everything they would sell Radio Shack also sells, we had to allow it. The attorney agreed. Since most electronic appliances could also be called electric appliances, adding electronic doesn't really change what uses are allowed. It does clarify that stores selling electronic devices such as cell phones, cameras, I-pods, etc are legal, eliminating a grey area. If the council is uncomfortable with small appliance stores not being consistent with the zone's intent, the text could be modified to add a minimum square footage, although the result of that would probably be to encourage large "chain" electronics stores rather than smaller locally owned mom and pop stores.

Home Furnishing Stores

Most home furnishings could be considered furniture, so again adding this clarification does not really change the allowed uses, it just clarifies a grey area. There has been some consternation that small home furnishing stores in the WB-2 would compete with downtown home furnishing stores, however most furniture stores need ample parking and vehicle access, consistent with the WB-2 intent. The Heart of Whitefish has suggested it should be changed to "furniture and rug/carpet stores" to be more specific. That is a reasonable change.

Convenience Stores

Currently grocery stores are allowed, but we don't specify convenience stores as an allowed use. While they are typically accessory uses to a fuel station, they can also be stand-alone to provide needed retail convenience items such as beer/pop/candy/cigarettes to nearby residential neighborhoods. While the floor area is typically small, convenience stores are auto related with a large traffic volume and thus fit with the intent. The Heart of Whitefish has suggested allowing them only as an accessory use to a service station, and that is another option to consider. The draft zoning text amendment also included a new definition for convenience stores, which sets a maximum of 5,000 square feet.

Movie and Video Game Rentals

The chain stores providing this use may be disappearing due to technology trends, but the use is auto-related in that parking and vehicle trip needs are high with drop-off or drive-thru areas necessary. Historically, there have been several movie rental businesses in both the downtown and illegally on the strip. The downtown locations suffered from parking and traffic issues. The Heart of Whitefish has recommended removing this use entirely from the WB-2. The committee should decide if the WB-3 zone downtown is the only appropriate location for this type of use, and whether there may be opportunity for smaller mom and pop type video/game rental stores in the future.

Personal Services

Personal services is one of the more controversial uses proposed, and the Heart of Whitefish has made it clear they would like to see them limited to the downtown only. One thing to consider is that personal services includes far more uses than just hair salons, and many of those other uses, such as massage therapists and personal trainers, are already present in the WB-2 at the Wave and other locations. In many cases, personal service uses and professional office or professional services type uses overlap, as they are often located together in office buildings. Professional services and professional offices are currently allowed in the WB-2, although offices on first blush do not seem to fit with the intent of the zone. However, everyone recognizes the WB-2 has become a hub of medical related professional offices, and no one has suggested that the use is inappropriate – in fact it has been highly encouraged to provide economic development. From a planning use category perspective, personal services and

professional services are very similar, with similar parking requirement needs. The zoning code definition of personal services is as follows:

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, and personal spa and grooming services such as manicure, facial, massage therapy, 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.

If the committee decides that the proliferation of hair salons on the strip is detrimental to the downtown economy and should be limited to there, it could change the recommended WB-2 text amendment to say something like:

- Personal services, with the exception of hair salons and personal spa and grooming services

The other option if it is decided that hair salons shouldn't be in the WB-2 is to add hair salons/barber shops to the conditional uses temporarily, which would make the existing ones in the WB-2 legal non-conforming, then change the code to remove that so no more could open.

Residential Uses

Allowing residential uses above the ground floor in the WB-2 will provide affordable housing opportunities, which is a tenet of our adopted Growth Policy. Currently, a lengthy and expensive CUP process is required to add an accessory apartment in the WB-2. This change streamlines the process and makes second floor housing a permitted use. Since most of the WB-2 is a narrow strip, the zone abuts residential uses on much of its length. There is quite a bit of existing residential approved in it already through the PUD process. Allowing it only above the ground floor assures that there is ample area for the allowed commercial uses while providing some housing opportunities upstairs. The Heart of Whitefish draft submitted does not recommend allowing expanded residential uses in the WB-2, although their submittal did not explain why.

Sporting Goods

Another controversial subject, sporting goods stores already exist in the WB-2 (Sportsman and Army Navy). Whitefish is an outdoor oriented community, and sporting goods stores have always been a retail staple. The Heart of Whitefish is recommending that instead of sporting goods, Military Surplus be added so that Army Navy is covered without expanding the use to all sorts of sporting goods items. While their name implies the store is primarily military surplus, a quick perusal of the goods Army Navy sell shows that military related items are only a very small percentage of their inventory, so that could be an issue.

Staff proposed an option that allowed sporting goods as an allowed use, but set a minimum square footage requirement of 8,000 square feet so that the Army Navy store and others of that size which fit with the zone's intent are allowed. Small sporting goods shops would be relegated to the downtown. The zoning text might read as follows:

- Sporting goods stores with a minimum floor area of 8,000 square feet

It should be noted that even if sporting goods are banned in the WB-2, sporting equipment rentals such as bikes, kayaks, motorcycles, etc., could be allowed with a conditional use permit under the “recreational facilities, low impact” in the SAG-5 (south of Highway 40). Retail sales would be allowed only as an accessory only to the rentals (less than 50% of the floor area). Commercial recreation facilities are also allowed in the WB-2 with a CUP.

There also needs to be discussion about the unintended consequences of setting a minimum square footage without addressing loopholes that might allow the type of large chain stores that often put smaller retailers out of business.

Shopping Malls

The last draft by the city council recommended deleting shopping malls from the allowed uses so as to protect the city from equal protection lawsuits. Since it was a previously allowed use, deleting it puts the Mountain Mall into the existing non-conforming use category, where they retain their rights and allowed uses but require a CUP to expand. The mall managers stated that the mall is OK with that. Since a shopping mall is a type of building and not a use, it probably should not be in an allowed uses anyway. It should be noted that deleting it will not prohibit future malls from being constructed, but it will prohibit future malls from being allowed to have a free reign of retail uses within.

Proposed WB-2 Conditional Uses

Accessory Apartments

This item is proposed for removal because of the addition of residential uses above the ground floor as a permitted use as noted above. Requiring a CUP to add an apartment is onerous and an impediment to affordable housing.

Department and Discount Retail Stores

These types of stores could possibly be permitted anyway based on the zone’s intent or through a PUD, but adding them to the Conditional Uses assures that the community gets a chance to weigh in through a public process when they are proposed. The WB-2 Zone is probably the only place such stores could work due to their vast parking requirements. Having a 20,000 square foot minimum in the definition assures that the stores will be large, meeting the zone’s intent. The council could consider removing the “20,000 square feet” from the definition so that smaller sized stores might also be approved with a CUP.

Manufactured Home Sales

This was moved from the permitted uses to the conditional uses for reasons that need little explanation. The Heart of Whitefish draft recommended removing this use entirely, as well as manufactured home subdivisions. Typically, legal controversial uses have to be allowed somewhere (i.e., sexually oriented businesses), but allowing them only via conditional use permits provides protection and oversight.

Multi-family Residential

Apartment buildings that don’t have a ground floor retail component could be permitted on a case-by-case basis in the WB-2 zone with this change. This provides flexibility for developers, and hopefully will provide more opportunity for affordable housing. The Heart of Whitefish draft did not include this use.

Heart of Whitefish Alternative Approaches Discussion

The Heart of Whitefish provided a memo to the City Council with several recommended alternative approaches to solving the issues facing the WB-2 zone. Staff will briefly discuss some of them.

Zoning Compliance Permits

Staff is currently working on a proposed text amendment that the City Council reviewed but did not take action on until they hear comments back from the County Commissioners. The change would make commercial zoning compliance permits mandatory so staff can review for required use, parking, and other zoning provisions. Planning staff also currently reviews all business license applications for conformity with zoning. Not all new commercial uses require a business license, as some are located outside of city limits, but the new revised business license code does require a new business license when a business is relocated.

Determination of Non-Conformity

Missoula's requirement that the property owner of a non-conforming use be burdened with providing the proof that it has legal non-conforming status is a great idea. Whitefish's planning department does that informally when a business makes a claim of legal non-conforming status, but it is not immortalized in our code. Unfortunately, the businesses we are dealing with are illegal, rather than non-conforming, so it is more difficult to apply this to our WB-2 situation. They have no legal rights, and no way to establish they were ever legal or have rights. It is the opinion of the staff that we cannot make illegal uses legal non-conforming just by the adoption of a zoning compliance permit requirement. The use must have been legal at one time to be legally non-conforming. To accomplish that, making a use temporarily legal by adding it to the permitted or conditional Uses for a time, then removing it, is the only way to turn an illegal use into a legal non-conforming use.

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Amortization

While allowing some sort of amortization period for illegal uses sounds like a good idea, even if it could be adopted it sets a precedent wherein any illegal use that comes will want the same benefit. Missoula's amortization appears to apply only to formerly legal non-conforming uses, not purely illegal uses. An example would be requiring adult businesses to close down in areas where the zoning no longer allows it, but giving them several years to do it. Creating a process to amortize illegal uses does not make sense, even if it were possible. Once a sign permit or building permit has been granted, it is very difficult to shut down an illegal use as you will see in the legal issues below.

Legal Issues

Because many of the illegal uses in the WB-2 obtained business licenses, building permits and sign permits over the years, they may have established a right wherein it would be difficult to make them move or close down. Montana Zoning Law Digest (February 1989) offers the following legal summaries that are specific to cases where building permits were granted to uses that were otherwise prohibited by zoning, which is likely the case for all of our illegal uses (they were probably granted business licenses, building permits, and sign permit). As you will see below, if an applicant received a building permit and/or sign permit relied on that as city approval to his detriment even though the use is illegal per zoning, a city typically cannot revoke the permit.

C. Revocation of Improperly Issued Building Permit -- Doctrine of Equitable Estoppel

Where the applicants for a building permit relied to their detriment on the mayor's erroneous representation that the permit had been issued and the town council later denied the application, and where the conduct of the council and mayor was fundamentally unfair, the town was estopped from denying the issuance of the permit. State ex rel . Barker v. Town of Stevensville , 164 Mont. 375, 523 P. 2d 1383 (1974).

In applying the doctrine of equitable estoppel to police power situations courts should weigh the gravity of the injustice to the citizen if the doctrine is not applied against the injury to the common weal if the doctrine is applied. Where any danger to the public is slight and a citizen has made a good faith and substantial change in position in reasonable reliance upon the conduct or representations of municipal officials and agents, local governments are estopped from exercising their police power in a way which is inconsistent with their prior representations or actions. State ex rel. Barker v. Town of Stevensville, 164 Mont. 375, 523 P. 2d 1388 (1974).

When a building permit has been issued in violation of the zoning ordinance, the applicant cannot invoke the doctrine of equitable estoppel to prevent the revocation of the permit unless he has relied on it to his detriment. Even if the applicant has relied upon the representations of the governing body to his detriment, however, the court, in deciding whether to apply the doctrine, must weigh the gravity of the injustice to the citizen if the doctrine is not applied against the injury to the public welfare if the doctrine is applied. State ex rel. Russell Center v. City of Missoula, 166 Mont. 385, 533 P. 2d 1087 (1975).

When an applicant relies to his detriment on an erroneously issued building permit and when, even if he had reviewed the zoning ordinance himself, he would not have discovered that the permit was erroneously issued, the doctrine of equitable estoppel will prevent a municipality from revoking the permit. State ex rel. May v. Hartson, 167 Mont. 441, 539 P. 2d 376 (1975).

Summary

As you can see, there are many complex issues associated with the WB-2 zone. The City of Whitefish is interested in maintaining a balance in zoning while minimizing their liability due to unclear codes and past oversights, as well as improving its ability to enforce zoning uses in the future. The Heart of Whitefish and Downtown Business Owners wish to maintain the economic viability of downtown while fulfilling the mandates of the Downtown Master Plan and the current intents of the zoning districts. Property owners in the WB-2 want equal treatment and a fair piece of the commercial pie available, along with clarity as to which uses are allowed and which are illegal.

If we work together we can find a resolution that works for everyone. Specifically, we need to:

1. Clarify the issues and what problems we are solving.
2. Go step by step through the City's latest draft of proposed new permitted and conditional to find consensus on which ones make sense and which ones don't.
3. Look at adding the uses that don't work to the conditional uses, at least temporarily, so that the city isn't forced to attempt to revoke permits for existing illegal uses.
4. Discuss the pros and cons of a long range planning effort for South Whitefish, including addressing improvement to the architectural review standards and clear policy on big box retailers
5. Discuss a downtown improvement district or other incentives to increase economic viability and available retail space in the downtown

By David Taylor, AICP, City of Whitefish Planning & Building Director

Whitefish Convention and Visitors Bureau 2013 Report

Public Relations

- Publicity results reached audiences of over 500 million people with an ad equivalency of over \$20 million dollars.
- Ad equivalency on earned media actual: \$23,909,681
- Audience (impressions: readers, viewers, unique visits, etc.) actual: 550,027,792
- Return On Investment: 191%

Accolades

- "Number 11 top ski resort in North America," by *SKI Magazine* readers in the 2013 annual Resort Guide.
- "North America's Best Winter Snowsports Festivals" -- *Fodor's Travel*, Dec. 2013 includes Whitefish Winter Carnival Ski Joring
- "Top 10 World's Most Beautiful Winter Scenes" -- *CNN Travel*, Dec. 2013
- "Best Winter Trips 2014" -- *National Geographic Traveler* article on the Whitefish Winter Carnival World Ski Joring Championships, Whitefish, Montana.
- "World's Best Ski Runs" -- *CNN Travel*, January 2014.

Social Media

- Facebook: 6,059 "likes"
- Twitter (@whitefishpr): 329 followers (account launched in 2013)

Website Report

VISITS CALENDAR YEAR	PAGEVIEWS CALENDAR YEAR
2013: 203,749	2013: 867,330
2012: 176,001	2012: 845,612
+15.77%	+ 2.57%

GEOGRAPHIC ORIGINATIONS FOR SITE VISITORS CALENDAR YEAR

United States = +20.09%
Australia = +13.55%
Germany = +10.76%
Canada = +3.70%
UK = +1.77%

TPA Voluntary Assessment Report (July 2013 through December 2013 compared to previous YTD)

- Total: 10% increase

Resort Tax Report (July 2013 through December 2013 compared to previous YTD)

- Total: 5.28% increase

Whitefish Bed Tax Report (January 2013 – December 2013)

- Total: 16% increase

2013 Nonresident Travelers to Whitefish (Institute for Tourism and Recreation Research – UM)

- Approximately 558,105 nonresident travelers spent at least one night in Whitefish

Rec'd at Council Meeting 4-7-14 from Don Spivey



Rec'd at Council mtg 4-7-14

City of Whitefish

**IMPROVEMENTS TO WASTEWATER COLLECTION SYSTEM
GRANT APPLICATIONS FOR FINANCIAL ASSISTANCE**

PUBLIC HEARING

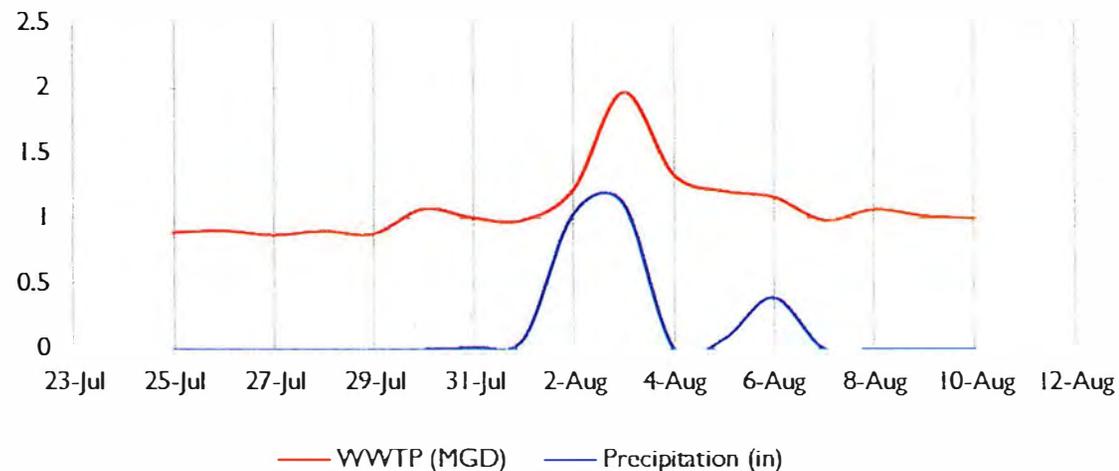
April 7, 2014



Project Need

- **Clearwater (I/I) to Wastewater Plant > 50% in Wet Weather**
- **Reduces Treatment Efficiency of Plant**
- **I/I has Caused Overflows from Sewers**
- **Future Plant Expansion – Reduction in Flow will Save in Cost**

July-August 2013 Precipitation vs. WWTP Flow



Project Attributes

- **Utilize existing concrete structures**
- **Upgrade manholes with lining**
- **Seal and/or raise manhole covers and rings**
- **Divert storm drainage away from sewers**
- **Seal incoming sewers**

Environmental Impacts

- **No reasonable and effective alternatives to proposed project**
- **Adverse environmental impacts, if present, will be mitigated**
- **Project should qualify for exemption from further MEPA review**
- **PER contains complete environmental review of the project.**

Project Cost & Budget

Estimated Project Cost: \$1,141,000

Funding:

TSEP Grant \$ 500,000

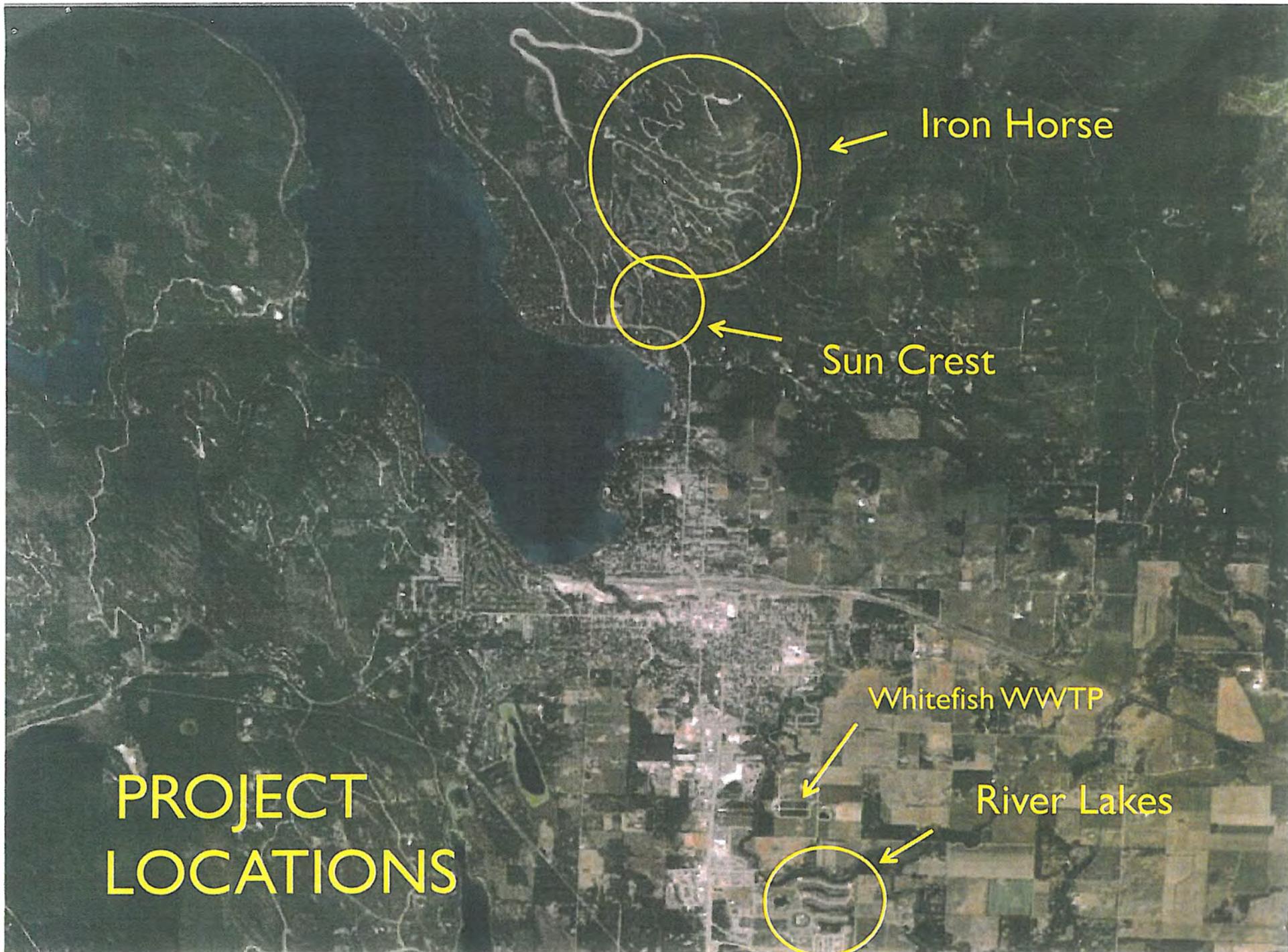
DNRC Grant \$ 125,000

Low Interest Loan \$ 402,300

Local Reserves \$ 113,700

\$1,141,000

**User Rate Increase Not Anticipated for
This Project**



Iron Horse

Sun Crest

Whitefish WWTP

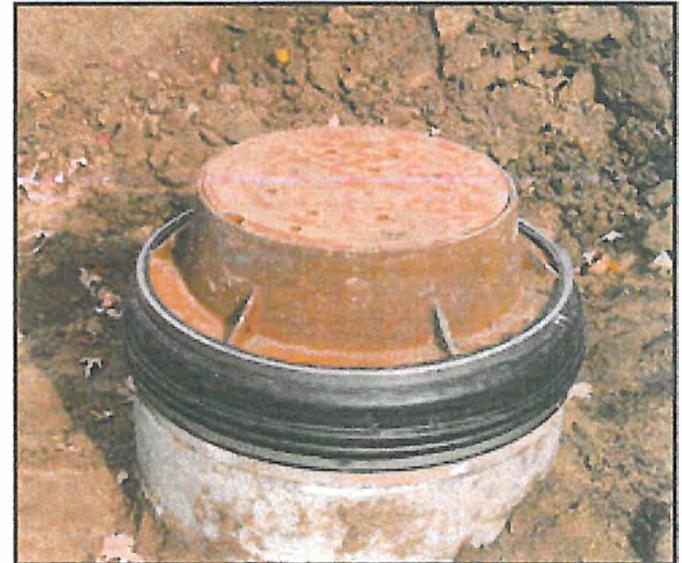
River Lakes

PROJECT
LOCATIONS

Some Fixes are Simple!

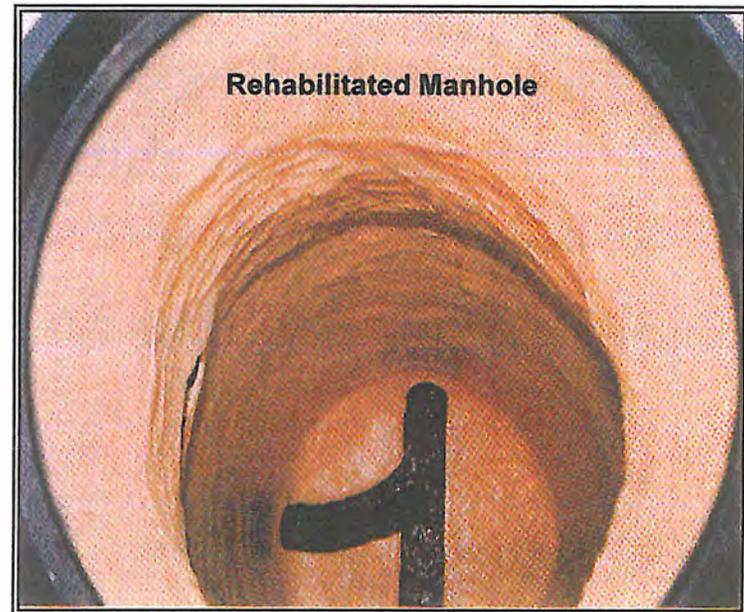
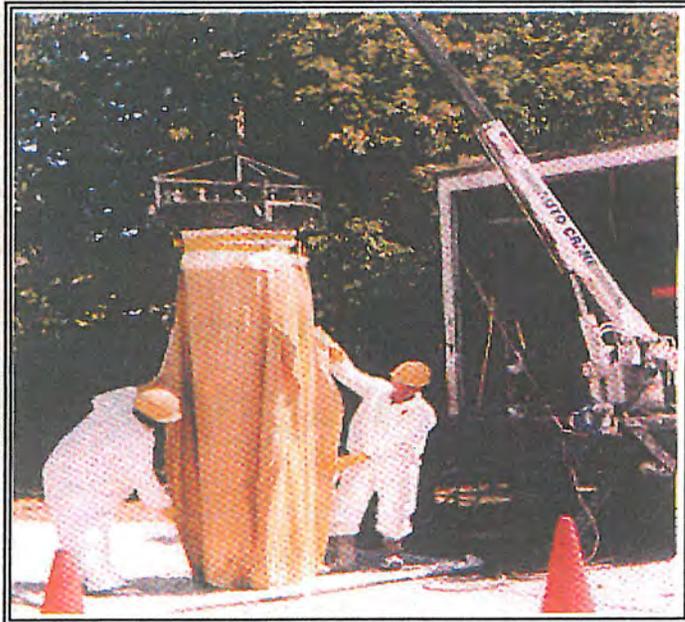


**Storm Drainage Enters MH From
Culvert**



**Elevate Manhole and Seal
Cover**

Manhole Rehabilitation Using Epoxy Lining



Project Schedule

- **Completion of Preliminary Engineering Report (PER)** December 2013
- **Submission of Grant Applications** May 2014
- **Review by Legislature** Jan- April 2015
- **Funding Availability** July 2015
- **Project Design** March- June 2015
- **Project Bidding and Award** June – July 2015
- **Project Construction** Aug- Nov 2015

COMMENTS?

QUESTIONS?

THANK YOU!