CITY COUNCIL SPECIAL SESSION
CITY COUNCIL CHAMBER CONFERENCE ROOM
MONDAY, NOVEMBER 3, 2014, 5:15 PM

1. Call to Order

2. Interview
   5:15 – Gail Shay Linne

3. Public Comment

4. Appointment – Council appointment

   WEED CONTROL ADVISORY COMMITTEE –1 Position, 2-year terms.

5. Adjourn

CITY COUNCIL WORK SESSION
CITY COUNCIL CHAMBER CONFERENCE ROOM
MONDAY, NOVEMBER 3, 2014, 5:30 to 7:00 PM

1. Call to Order

2. Discussion on any proposed regulation of commercial activities on Whitefish Lake

3. Public Comment

4. Direction to staff on any proposed regulation of commercial activities on Whitefish Lake

5. Adjourn

PUBLIC NOTICE
THE CITY OF WHITEFISH HAS POSITIONS OPEN ON THE FOLLOWING VOLUNTEER COMMITTEES

HOUSING AUTHORITY - One position to fill the remainder of a term expiring 12-31-14 and a 5-year term ending 12-31-2019. Open to city residents or residents within a 10-mile radius of the City of Whitefish.

AD HOC FUTURE CITY HALL STEERING COMMITTEE – one position open, to fill the remainder of a term expiring 1-31-2015. Open to city residents.

WEED CONTROL ADVISORY COMMITTEE – open to residents of the City and the Zoning jurisdiction. 1 Position, 2-year term.

IMPACT FEE ADVISORY COMMITTEE – 2-Year term – One (1) Position – The open position is for a person from the Development Community. Committee specifications require the applicant either lives or works within the Whitefish zoning jurisdiction. The Committee meets once a year.

Please submit a letter of interest to serve on any of the above committees to the Whitefish City Clerk's Office at 418 E. 2nd Street or mail to P.O. Box 158, Whitefish, MT 59937, by Friday, October 10, 2014. Interviews will be scheduled for Monday, October 20th. Thereafter, if vacancies still exist, letters of interest will be accepted until the positions are filled. If you have any questions please call the City Clerk's Office at 863-2400. These are also posted on the City's website: www.cityofwhitefish.org.

**********THANK YOU FOR YOUR INTEREST!********

Cornerstones

Gail Shay Linne

106 Murray Avenue · Whitefish, MT 59937 · (406) 862-1835 · Cell (406) 871-4881
Email: gslinne@centurytel.net

received 10-17-14

10/17/14

Mr. Chuck Stearns and
Mayor, City of Whitefish
P.O. Box 158
Whitefish, MT 59937

Dear Chuck, Mayor and Council,

I am writing to express my interest in serving on the Weed Control Board as a citizen representative.

I spoke w/ City Clerk Necile about the responsibilities of the Weed Control Board, including reviewing citizen calls about weeds, code enforcement issues, & working w/ Parks & Recreation to maintain city lands. Necile reviewed the board's mission, with which I support.

As a lifelong gardener who helped establish the Conrad Mansion gardens as a volunteer with Sam Bibler, and currently assists Master Gardener Teresa Stumpf, Kalispell, with native plant gardens at FVCC & CENTRAL SCHOOL MUSEUM, along w/ caring for my home Whitefish garden and Memory garden at Skyolive Lost PRAIRIE, Marion, I am well-prepared to serve on the Weed committee as a citizen.

Please consider my letter of interest. I look forward to hearing from you.

Sincerely,

Linne

GAIL SHAY LINNE

ICE RINK ADVISORY COMMITTEE – WCC 2-6-1 - Two-year terms, meet 1st Tuesday/monthly
(*Minimum of 6 Whitefish City Limit Residents required) 7:00 pm - Council Conference Room

Position #				Term Expiration Date
1.	*Pam Berberis, Councilor	PO Box 158	871-0223	May 31, 2016
2.	*Carol Anderson, Open Skating Rep.	PO Box 2067	862-7699	May 31, 2015
3.	Kelly Davidson, Adult Hockey	585 Armory Rd		May 31, 2015
4.	*Gregg Esakoff, Figure Skating Assn.	810 Dakota Ave		May 31, 2015
5.	Murray Craven, Glacier Hockey Assn.	2810 Rest Haven Dr	862-2007	May 31, 2016
6.	*Mark Van Everen, Member at Large	4 Pine Ave	260-1204	May 31, 2015
7.	*Laurel Grady, Park Board Representative	476 Aspen Court	212-6819	May 31, 2015
8.	*Bailey Minnich,Curling Club Representative	902 Kalispell Ave	860-921-6936	May 31, 2016
9.	Donna Taylor, Member at Large (Blanchard Lake Rd)	PO Box 1947	862-4804	May 31, 2015

WEED CONTROL ADVISORY COMMITTEE – WCC 2-11-1 – Two year terms, meet 4th Tuesday/monthly, 3:00 pm
Parks & Recreation Dept

No.	Position Specification (*Minimum of 5 Whitefish City Residents Required)		Expiration Date
1.	City Staff, City of Whitefish	863-2410	Continuous
2.	*(Mayor or Councilor) Pam Barberis, PO Box 158, WF	871-0223	5-31-2016
3.	*Member at Large – Life Noell, PO Box 5505, WF	212-0002	5-31-2015
4.	*Member at Large – Jake How, 11 Idaho Ave	862-8757	5-31-2015
5.	*Member at Large - Vacancy		5-31-2014
6.	*Member at Large - Jan Metzmaker, 915 Dakota Avenue, WF	862-7960	5-31-2016
7.	*Jim DeHerrera, Park Board Representative, 339 Fairway Drive	407-730-2424	5-31-2015

IMPACT FEE ADVISORY COMMITTEE – WCC 2-13-1 – Two year terms Per Ordinance 10-03 – Annual Meetings

1. Development community	Vacancy			12-30-2015
2. Certified public accountant	Myra A. Appel, CPA	PO Box 4223, WF	862-4057	12-30-2014
3. City Councilor	Jen Frandsen	PO Box 158	270-7249	12-30-2015
4. Finance Director	Rich Knapp	PO Box 158	863-2405	
5. Member at Large	Don Kaltschmidt	230 JP Rd	862-2731 (W) 862-3665 (H)	12-30-2014

HWY 93W CORRIDOR PLAN STEERING COMMITTEE – RES 13-10, Disbands January 1, 2014 or earlier, EXT 6-30-14

Doug Reed, Resort or Recreation business owner in corridor, Whitefish Lake Restaurant, PO Box 1719, WF
Cora Christensen, Commercial or Professional business owner in corridor, 750 W. 2nd St, Ste A, WF
Anne Shaw Moran, Residential owner-occupied property owner, PO Box 4472, WF
Ryan Zinke, residential owner-occupied property owner, 409 W. 2nd St, WF
Jim Laidlaw, residential investment or multifamily property owner, 1230 Lion Mountain Dr, WF
Ian Collins, WB-3 District property owner, 898 Blue Heron Dr, WF
Nancy Woodruff, Community Member at Large, 545 Ramsey Ave, WF
Chad Phillips, City-County Planning Board, City representative
Ken Stein, City-County Planning Board, County representative
Ad hoc members: MDOT, Idaho Timber – Todd Featherly and Dave Taugher
City Councilors Sweeney and Feury

AD HOC CEMETERY COMMITTEE, res 11-1-05 & 11-15, 13-02 SUNSETS 1-31-2015, or earlier
Meetings 3rd Thursday of each month, 2 to 4 pm, Whitefish Council Conference Room, 402 E. 2nd Street, 2nd Floor

Necile Lorang, Chair	PO Box 158, Whitefish	863-2402
Vanice Woodbeck, Secretary	PO Box 158, Whitefish	863-2401
Nina Laird	541 Columbia Ave, WF	862-2815
Bonnie Leahy	904 E. 10th St., WF	862-1811
Charlie Abell	5 Woodland Pl, WF	862-2883
Ole Netteberg	5491 Hwy 93 S, WF	261-8757
Steve Thompson, Vice Chair	PO Box 4471, WF	862-3795

WEED CONTROL ADVISORY COMMITTEE

2-11-1: ESTABLISHED:
There is hereby established a weed control advisory committee (the "committee") as a permanent city committee. (Ord. 06-15, 6-5-2006)
2-11-2: PURPOSE:
The mission of the committee shall be to assist in identifying and reporting noxious weed infestations to the city's code enforcement officer, to develop recommendations to the city council for a permanent weed control strategy, to educate the public to create an increased awareness and knowledge of methods of controlling noxious weeds, and to advise city staff regarding the need for weed control on city owned properties. The committee shall have no independent authority to commit or spend city funds, or to direct city staff. (Ord. 06-15, 6-5-2006)
2-11-3: MEMBERSHIP; TERMS:
A. Appointment; Compensation: The committee shall consist of seven (7) members, who shall be appointed by the city council, and who shall serve at the pleasure of the city council. One member shall be a city councilor. One member shall be a member of the city park board. One member shall be the city's code enforcement officer. Four (4) members shall be from the public and shall reside within the Whitefish zoning jurisdiction. The city clerk shall make appropriate notation of a member's category on the official committee roster. Committee members shall receive no compensation. Contracted consultants and city staff shall not serve as members, but may assist and participate in the facilitation of committee business.

B. Term; Positions: Committee terms shall be two (2) years, except for the initial terms identified below, some of which shall be longer than two (2) years. There are hereby created positions numbered 1 through 7 inclusive of the members of the committee, which positions are currently filled as follows:

Position Number	Position Specification	Initial Expiration Date
1	Code enforcement officer	Continuous
2	Mayor or councilor	May 31, 2007
3	Member at large	May 31, 2007
4	Member at large	May 31, 2007
5	Member at large	May 31, 2008
6	Member at large	May 31, 2008
7	Member at large	May 31, 2008

Thereafter members appointed to each position shall serve for two (2) year terms; the first of such terms beginning on June 1 of the year in which the term for the position expires. At the discretion of the city council, members may be appointed for more than one term.

C. Removal Of Member: A member may be removed from the committee by majority vote of the city council for cause upon written charges and after a public hearing. Willful disregard of this chapter and the rules of procedure of the committee, or absences from three (3) consecutive meetings, including regular and special meetings, or absences from more than fifty percent (50%) of such meetings held during the calendar year, shall constitute cause for removal. Circumstances of the absences shall be considered by the city council prior to removal. Any person who knows in advance of his or her inability to attend a specific meeting shall notify the chair or secretary of the committee at least twenty four (24) hours prior to any scheduled meeting. Any vacancy on the committee shall be filled by the city council acting in a regular or special session for the unexpired term of the position wherein the

vacancy exists. The city council may appoint members of the city council to temporarily fill vacant positions on the committee. (Ord. 06-15, 6-5-2006)

2-11-4: ORGANIZATION:
At its first meeting after June 1 of each year, the committee shall elect a chair, vice chair and secretary for the next twelve (12) month period. Upon the absence of the chair, the vice chair shall serve as chair pro tem. If the secretary is absent from a specific meeting, the attending members shall elect a secretary pro tem for the meeting. If a vacancy occurs in the chair, vice chair or secretary positions, the committee shall elect a member to fill the vacancy at the next meeting. The secretary need not be a member of the committee and shall keep an accurate record of all committee proceedings. (Ord. 06-15, 6-5-2006)

2-11-5: MEETINGS, RULES AND REGULATIONS:
Four (4) members of the committee shall constitute a quorum. Not less than a quorum of the committee may transact any business before the committee. The concurring vote of a simple majority of members present shall be necessary to decide any question or matter before the committee. The committee shall adopt rules of procedure for the conduct of meetings consistent with statutes, the city charter, ordinances and resolutions. Meetings of the committee shall be held at least once every three (3) months or at the call of the chair and at such other times as the committee may determine. All meetings shall be open to the public. (Ord. 06-15, 6-5-2006)

2-11-6: ENFORCEMENT OF DECISIONS:
The individual members of the committee shall not directly or personally contact members of the public concerning the need to control noxious weeds on their property, but shall work through the city's code enforcement officer to address individual noxious weed problems or infestations. Individual members of the committee may distribute informational material to members of the public, but all enforcement activity shall be funneled through the city's code enforcement officer. Enforcement decisions shall remain with the code enforcement officer, or his/her supervisor. (Ord. 06-15, 6-5-2006)

One possible regulatory option for commercial uses on Whitefish Lake - from June, 2014 work session

EXHIBIT "A"

Whitefish City Code Title 3, Chapter 1, Section 6
BUSINESS AND LICENSE REGULATIONS – BUSINESS LICENSING PROVISIONS – CONDITIONS OF LICENSE

A. Display of License: The city license, issued pursuant to the provisions of this chapter, shall be conspicuously displayed in such a manner that a city official may observe the same upon entering the licensee's place of business.

B. Licensee Subject to Regulations: Every person licensed under the provisions of this chapter shall be subject to regulation, inspection, control and supervision under the general police power of the city and of all of the provisions of this code and ordinances of the city now in force, or which may hereafter be adopted, in aid of such police power and regulation. Nothing in this chapter contained creates any vested right in any person to the assignment, renewal, reissuance or continuance of any license.

C. Separate License for Each Business and Location: Except as otherwise provided, a separate license must be procured and fee paid when a license is required by the provisions of this chapter, for each business and business location.

D. Licensee's Land-Based Business Location: All retail business and sales must be conducted from licensee's land-based business location. No retail transactions and retail sales will be conducted on Whitefish Lake.

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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, November 3, 2014, at **7:10 p.m.** at City Hall, 402 East Second Street.

Ordinance numbers start with 14-12. Resolution numbers start with 14-53.

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) Consideration of recommendation from Future City Hall Steering Committee regarding progressing to schematic design phase using Scheme 1.5 (p. 28)
   b) Presentation of Impact Fee Annual Report and recommendation from the Impact Fee Advisory Committee to approve the Annual Report (p. 40)

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 October 20, 2014 Council special session (p. 48)
   b) Minutes from the October 20, 2014 Council regular session (p. 49)

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 approving an application from Graham Hart on behalf of Bonsai Brewing Project LLC for a Conditional Use Permit for a micro-brewery and tasting room in an existing building at 549 Wisconsin Avenue (p. 60)
   b) Ordinance No. 14-___; An Ordinance rezoning approximately 1.050 acres of land to become a part of 6348 Highway 93 South, Section 1, Township 30 North, Range 22 West, Whitefish, Montana, from County R-2 (One Family Limited Residential) and B-2 (General Business) to City WLR (One-Family Limited Residential District) and WB-2 (Secondary Business District) and adopting Findings with respect to such rezone (First Reading) (p. 94)
   c) Ordinance No. 14-___; An Ordinance approving the Whitefish Crossing fka Deer Tracks Residences Planning Unit Development to develop a 60-unit apartment project on one parcel comprising approximately 4.493 acres of land to become a part of 6348 Highway 93 South, Whitefish (First Reading) (p. 97)

7) COMMUNICATIONS FROM PARKS AND RECREATION DIRECTOR
   a) Ordinance No. 14-___; An Ordinance transferring the Mountain Trails Ice Rink Advisory Committee, Whitefish Tree Advisory Committee, Pedestrian and Bicycle Path Advisory Committee, and Weed Control Advisory Committee from advisory committees to the City Council to advisory committees to the Board of Park Commissioners, establishing the W.A.G. Board as an advisory committee to the Board of Park Commissioners, and amending Whitefish City Code, Title 2, Chapters 1, 6, 7, 8 and 11 (p. 225)

8) COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR
   a) Consideration of staff recommendations regarding request from residents of Murray Avenue to close the north end of Murray Avenue (p. 240)

9) COMMUNICATIONS FROM CITY MANAGER
   a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 245)
   b) Other items arising between October 29th and November 3rd
   c) Resolution No. 14-53; Resolution relating to $300,000 Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2014A; Authorizing the issuance and fixing the terms and conditions thereof (p. 262)
   d) First quarter FY15 financial report (Dana Smith, Finance Director) (p. 311)
   e) Consideration of approving Addendum No. 1 to the City Hall/Parking Structure architectural contract with Mosaic Architecture to proceed to the Schematic Design and Design Development Phase (p. 319)
   f) Consideration of approving the use of the "Construction Manager At Risk" method of construction for the future City Hall/Parking Structure project instead of the traditional "Design-Bid-Build" method (p. 325)

10) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS
   a) Consideration of authorizing letter from Mayor Muhlfeld regarding the Whitefish Range Partnership (p. 361)
   b) Confirmation of Chamber of Commerce appointment of Jeff Raper of National Parks Realty to Future City Hall Steering Committee as Chamber appointee (p. 365)

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

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

- We provide a safe environment where individual perspectives are respected, heard, and acknowledged.

- We are responsible for respectful and courteous dialogue and participation.

- We respect diverse opinions as a means to find solutions based on common ground.

- We encourage and value broad community participation.

- We encourage creative approaches to engage public participation.

- We value informed decision-making and take personal responsibility to educate and be educated.

- We believe that respectful public dialogue fosters healthy community relationships, understanding, and problem-solving.

- We acknowledge, consider and respect the natural tensions created by collaboration, change and transition.

- We follow the rules and guidelines established for each meeting.

Adopted by Resolution 07-09
February 20, 2007

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October 29, 2014

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

Mayor Muhlfeld and City Councilors:

Monday, November 3, 2014 City Council Agenda Report

There will be a special session for an interview for a committee appointment at 5:15 p.m. There will be a work session on Monday at 5:30 p.m. on regulating commercial activities on Whitefish Lake. We will provide food for the work session.

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 October 20, 2014 Council special session (p. 48)
b) Minutes from the October 20, 2014 Council regular session (p. 49)

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

Items a and b are administrative matters. Item c 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 approving an application from Graham Hart on behalf of Bonsai Brewing Project LLC for a Conditional Use Permit for a micro-brewery and tasting room in an existing building at 549 Wisconsin Avenue (p. 60)

From Senior Planner Wendy Compton-Ring's transmittal memo:
Summary of Requested Action: Graham Hart on behalf of Bonsai Brewery Project llc is proposing to operate a microbrewery and tasting room in an existing building at

549 Wisconsin Avenue. The property is currently developed with an existing building and is zoned WB-1 (Limited Business District). The Whitefish Growth Policy designates this property as "Neighborhood Commercial".

Planning & Building Department Recommendation: Staff recommended approval of the above referenced conditional use permit with ten (10) conditions set forth in the attached staff report.

Public Hearing: The applicant spoke at the public hearing on October 16, 2014 and no one else spoke. The draft minutes for this item are attached as part of this packet.

Planning Board Action: The Whitefish Planning Board met on October 16, 2014 and considered the request. Following the hearing, the Planning Board unanimously recommended approval of the above referenced conditional use permit with ten (10) conditions as contained in the staff report and adopted the staff report as findings of fact.

The Planning Board amended condition #2 to include 'no parking' signage along all of Denver Street, on both sides, between Wisconsin Avenue and Colorado Avenue. The condition is recommended to read as follows:

2. All existing and proposed parking shall be paved. No gravel parking shall be permitted. No parking shall be permitted within the Denver Street right-of-way. No parking shall be permitted within the Denver Street right-of-way between Wisconsin Avenue and Colorado Avenue on both sides of the streets. (§11-6)

UPDATE: A couple of issues came up during the hearing requiring follow-up from staff; these included Denver Street reconstruction and no parking signage.

The Planning Board members asked where Denver Street falls on the priority list of road reconstruction projects. The City Council updated this list at the October 20, 2014 meeting; Denver Street, between Wisconsin Avenue and Texas Avenue, is priority #7. The Public Works Department anticipates the project would be in 9-10 years.

View of Denver Street looking east from Wisconsin Avenue

After the addition of the 'no parking' recommendation as an amendment to condition #2 to require signage on both sides of Denver Street between Wisconsin and Colorado Avenues, staff followed-up with staff in other department to see if they had any questions or concerns with the recommended condition. The power to add 'no parking' along city rights-of-way rests solely with the Council under §6-2-4A. In the past, the Council has adopted a resolution along with a map identifying the area for 'no parking' and included an opportunity for public comment for those directly affected by the proposal. Once the Council adopts a resolution for 'no parking', the Public Works Department is directed to install signage. This condition would require the applicant to request the Council's designation – the applicant would not be able to simply add no parking signage on Denver Street.

While Denver Street does not meet all the current city standards and will not be reconstructed within the next 10 years, Fire, Police and Public Works Departments did

not see signing the entire street as necessary. None of the departments have had any access problems on Denver Street. On the north side of Denver Street, there are two single family homes, a vacant single family lot, two 4-plexes and one professional office. It appears the day to day parking needs are being met off-street. To the south of Denver, there is considerable vacant land, an empty office building and the subject building. It appears the day to day parking for this side of the street is also being met off-street.

The purpose of a Conditional Use Permit (CUP) is to assign conditions to the subject property for the particular use. It is uncommon to require an applicant to make off-site improvements in order to obtain a CUP. Staff would recommend the last sentence of condition #2 be struck and the original wording for the condition be approved with a minor amendment. As suggested by staff, the applicant could simply place a sign on his building to meet the condition. It will be in the applicant's interest to self-monitor their parking, as it is a condition of their approval.

If there is an interest or concern on behalf of the Council with on-street parking on Denver Street, this could be addressed in a different forum following the standard 'no parking' protocols identified in §6-2-4A.

Proposed Motion (Planning Board Recommendation):

- I move to approve WCUP 14-05 along with the Findings of Fact in the staff report and the amended ten conditions of approval, as recommended by the Whitefish Planning Board.

Alternative Motion (Staff Recommendation):

- I move to approve WCUP 14-05 along with the Findings of Fact in the staff report and ten conditions of approval, as recommended by the Whitefish Planning Board striking the last sentence in Condition #2. This condition will now read: "All existing and proposed parking shall be paved. No gravel parking shall be permitted. No parking shall be permitted within the Denver Street right-of-way adjacent to the applicant's property."

RECOMMENDATION: Staff respectfully recommends the City Council approve WCUP 14-05 along with the Findings of Fact in the staff report and ten conditions of approval, as recommended by the Whitefish Planning Board striking the last sentence in Condition #2. This condition will now read: "All existing and proposed parking shall be paved. No gravel parking shall be permitted. No parking shall be permitted within the Denver Street right-of-way adjacent to the applicant's property."

This item is a quasi-judicial matter.

b) Ordinance No. 14-___; An Ordinance rezoning approximately 1.050 acres of land to become a part of 6348 Highway 93 South, Section 1, Township 30 North, Range 22 West, Whitefish, Montana, from County R-2 (One Family Limited Residential) and B-2 (General Business) to City WLR (One-Family Limited Residential District) and WB-2 (Secondary Business District) and adopting Findings with respect to such rezone (First Reading) (p. 94)

c) Ordinance No. 14-___; An Ordinance approving the Whitefish Crossing fka Deer Tracks Residences Planning Unit Development to develop a 60-unit apartment project on one parcel comprising approximately 4.493 acres of land to become a part of 6348 Highway 93 South, Whitefish (First Reading) (p. 97)

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

Summary of Requested Action: Jeff Badelt and Sean Averill on behalf of Montana Development Group are proposing to develop a 60-unit apartment complex at 6348 Highway 93 S and rezone a portion of the property recently annexed into the city. The property is partially developed with a dry cleaning business and a drive thru coffee kiosk and is zoned WB-2 (Secondary Business District) and WLR (One-Family Limited Residential District). The Whitefish Growth Policy designates this property as "General Commercial" and 'Suburban Commercial".

The portion of the property proposed for rezone has County R-2 and County B-2 zones and they are proposed to be rezoned back to what they were zoned before the County Interim Zoning to WB-2 (Secondary Business District) and WLR (One-Family Limited Residential District).

Planning & Building Department Recommendation: Staff recommended approval of the above referenced zone change and the planned unit development along with the two requested zoning deviations subject to 16 conditions set forth in the attached staff report.

Public Hearing: The applicant spoke at the hearing and seven members of the public spoke at the hearing. The public voiced the following concerns:

- Density of the project, especially in relation to the underlying zoning
- Location of the affordable housing
- A request by the neighbors for more time to review the project
- Request for fencing on the west side of the project to buffer the neighborhood from adjacent landowners
- Inappropriate location for high density residential
- Traffic – an increase in volume and lack of a safe means to make left-hand turns
- Lack of usable open space for the residents
- Light pollution
- Doesn't comply with the Growth Policy
- Support for affordable housing – major concern

A number of letters and emails have come in regarding this proposal. These should be carefully reviewed by the City Council. The draft minutes for this item are also attached as part of this packet.

Planning Board Action: The Whitefish Planning Board met on October 16, 2014 and considered the request. Following the hearing, the Planning Board unanimously recommended approval of the above referenced zone change and adopted the staff report as findings of fact. The Planning Board also unanimously recommended approval of the above-referenced planned unit development with 15 conditions as contained in the staff report and adopted the staff report as findings of fact. The Planning Board did not recommend approval of zoning deviation to reduce the overall off-street parking and recommended striking condition #12 that would enable the project to find additional off-street guest parking from adjacent landowners through a shared parking agreement.

There are two staff reports, the application, other documents and many letters/emails regarding this project in the packet.

RECOMMENDATION:

Staff respectfully recommends the City Council, after considering the staff report, recommendation from the Planning Board, and public testimony, approve Ordinance No. 14-___; An Ordinance rezoning approximately 1.050 acres of land to become a part of 6348 Highway 93 South, Section 1, Township 30 North, Range 22 West, Whitefish, Montana, from County R-2 (One Family Limited Residential) and B-2 (General Business) to City WLR (One-Family Limited Residential District) and WB-2 (Secondary Business District) and adopting Findings with respect to such rezone (First Reading) (p.)

Staff respectfully recommends the City Council, after considering the staff report, recommendation from the Planning Board, and public testimony, Ordinance No. 14-___; An Ordinance approving the Whitefish Crossing fka Deer Tracks Residences Planning Unit Development to develop a 60-unit apartment project on one parcel comprising approximately 4.493 acres of land to become a part of 6348 Highway 93 South, Whitefish (First Reading) (p.)

These items are quasi-judicial matters.

COMMUNICATIONS FROM PARKS AND RECREATION DIRECTOR

(a) Ordinance No. 14-___; An Ordinance transferring the Mountain Trails Ice Rink Advisory Committee, Whitefish Tree Advisory Committee, Pedestrian and Bicycle Path Advisory Committee, and Weed Control Advisory Committee from advisory committees to the City Council to advisory committees to the Board of Park Commissioners, establishing the W.A.G. Board as an advisory committee to the

Board of Park Commissioners, and amending Whitefish City Code, Title 2, Chapters 1, 6, 7, 8 and 11 (p. 225)

From Maria Butts staff report:

The Whitefish Parks and Recreation Department hosts multiple committees. These committees include the Mountain Trails Ice Rink Advisory, Whitefish Tree Advisory, Pedestrian and Bicycle Path Advisory, and Weed Control Advisory committees. The Whitefish Animal Group Board (W.A.G. Board) is a Parks and Recreation Department committee that has not been adopted into the Whitefish City Code at this time. Historically members of these committees have been appointed by the City Council. W.A.G. Board members have been appointed by the W.A.G. Board. Each committee, other than the W.A.G. Board, is appointed a City Council representative and a Park Board representative.

The Parks and Recreation Director and/or Chair of each committee discussed with all committees the proposal to transfer committees to the Board of Park Commissioners. All committees were in favor of the proposal, requesting that the structure of the committees remain the same. On October 14, 2014 the Board of Park Commissioners unanimously moved to request of City Council to allow the transfer of these committees to the Board of Park Commissioners.

RECOMMENDATION: Staff respectfully recommends the City Council adopt an Ordinance transferring the Mountain Trails Ice Rink Advisory Committee, Whitefish Tree Advisory Committee, Pedestrian and Bicycle Path Advisory Committee, and Weed Control Advisory Committee from advisory committees to the City Council to advisory committees to the Board of Park Commissioners, establishing the W.A.G. Board as an advisory committee to the Board of Park Commissioners, and amending Whitefish City Code, Title 2, Chapters 1, 6, 7, 8 and 11.

This item is a legislative matter.

COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

a) Consideration of staff recommendations regarding request from residents of Murray Avenue to close the north end of Murray Avenue (p. 240)

A neighborhood group living on Murray Avenue submitted the attached letter and presented their case to the City Council on October 20th. Their goal is to maintain a safe, quiet street with limited traffic. This memo is in response to the City Council's direction for staff to review those requests to:

- Establish a permanent barrier at the north end of Murray Avenue,
- Set a speed limit of 15 miles per hour,
- Post load limits to restrict heavy truck traffic, and
- Post signs for "Local Traffic Only" and "Children at Play".

The residents on Murray Avenue were substantially impacted by heavy construction traffic during Phase I of the Highway 93 Reconstruction project in 2013. They communicated their concerns to City staff throughout the summer and have maintained communication, although less frequently, in 2014. We understand their immediate concerns about heavy construction traffic were largely mitigated during 2014, due to agreements between MDT's contractor, the Veteran's Peace Park, and Idaho Timber which allowed the contractor to access the Peace Park from Karrow Avenue.

Regarding the request for a permanent barricade at the north end of Murray Avenue, there are a number of reasons to not take action at this time. In addition to the Fire Department's needs and BNSF's right of access through the Peace Park, there is also an undeveloped private access easement between Murray Avenue and tract 4DAB, as shown on the attached map. We understand this is the only practical access to this property. Considering these points, as well as the pending development of the Idaho Timber property and the on-going development of the Veteran's Peace Park, the Fire Department and Planning Department have expressed the concern that Council action to block this road would be premature at best. Perhaps other options to manage traffic in and out of the Peace Park can develop as those projects move forward. We can expect City staff and the concerned neighbors to be watching for those opportunities.

The typical speed limit on residential streets is 25 miles per hour throughout the community and staff believes this is appropriate for Murray Avenue. Responsible drivers can be expected to travel this short, narrow street at well below the speed limit, while irresponsible drivers unfortunately pay little attention to speed limits anyway. The typical means to manage such irresponsible behavior is to catch the perpetrator and write a speeding ticket, but it just isn't practical to devote those sorts of law enforcement resources to a remote street on a day to day basis.

A plan to restrict heavy truck traffic with posted load limits does not seem necessary, as highway construction will be winding down in the near future. Short term measures to divert construction traffic away from Murray Avenue have succeeded and should continue to be effective through Phase II of the highway reconstruction project which comes to an end next July. After that, the potential for heavy construction traffic should subside.

And finally, prudent standards for traffic signage and control do not support signs such as "Local Traffic Only" and "Children at Play". Restrictions for local traffic only are frequently used to discourage traffic in construction zones, but otherwise public roads are funded by public dollars and it is reasonable to keep those roads open to the general population. And it is widely held in the law enforcement and traffic engineering professions that signs such as "Children at Play" lead to a false sense of

security and, much like speed limit signs, are often not respected by irresponsible drivers and are not enforceable in a practical sense.

Staff recognizes the concerns expressed by the Murray Avenue neighborhood. We suggest the best solution would be a more convenient, permanent route for public access to the Veteran's Peace Park from Highway 93 via Karrow Avenue. City staff will watch for those opportunities as development in the area moves forward.

RECOMMENDATION: Staff, including the Fire Department, Planning Department and Public Works Department respectfully recommend the City Council not take action to block the north end of Murray Avenue at this time. The City should revisit the issue in conjunction with development of the Veteran's Peace Park and Idaho Timber properties.

Staff also recommends the Council not take action on related proposals for a 15 mph speed limit, load limits, and inappropriate signage for the reasons stated above.

This item is a legislative matter.

COMMUNICATIONS FROM CITY MANAGER

a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 245)
b) Other items arising between October 29th and November 3rd
c) Resolution No. 14-53; Resolution relating to $300,000 Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2014A; Authorizing the issuance and fixing the terms and conditions thereof (p. 262)

From Finance Director Dana Smith's staff report:

During the Council Meeting held on October 20, 2014 the Council awarded a construction contract for the River Lakes Force Main Project to Pilot West Corporation of Bonners Ferry, Idaho in the amount of $201,055. The notice of award for the River Lakes Force Main Project was completed by the Public Works Department and construction is expected to begin within two to three weeks.

Resolution 14-53 authorizes the $300,000 Sewer System Revenue Bond, which is the anticipated financing for this project. The revenue bond is purchased by the Montana DNRC as part of its SRF (State Revolving Fund) program.

The City Attorney, Mary VanBuskirk, has reviewed Resolution 14-53.

The River Lakes Force Main Project was anticipated to be funded through the SRF Loan Program in the FY15 Wastewater Fund budget.

A budget detailing the use of the proceeds of the revenue bond can be found in Appendix A (page A-1) of the bond resolution. The term of the bond is 2.5% over 20

years with an average annual debt service of approximately $9,600. The current wastewater rates will support the debt service obligation.

RECOMMENDATION: Staff respectfully recommends the City Council approve Resolution No. 14-53; Resolution relating to $300,000 Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2014A; Authorizing the issuance and fixing the terms and conditions thereof.

This item is a legislative matter.

d) First quarter FY15 financial report (Dana Smith, Finance Director) (p. 311)

Dana Smith, Finance Director has a first quarter, FY15, financial report in the packet along with narrative, analysis, and important financial figures.

Recommendation: Staff respectfully recommends the City Council accept the FY15 first quarter financial report.

This item is a legislative matter.

e) Consideration of approving Addendum No. 1 to the City Hall/Parking Structure architectural contract with Mosaic Architecture to proceed to the Schematic Design and Design Development Phase (p. 319)

On December 11, 2013, the City Hall Steering Committee held a design competition among four architectural firms who were the finalists selected for the City Hall architectural design project. The City Hall Steering Committee subsequently met and decided to recommend Mosaic Architecture of Helena, MT as the preferred architectural firm to negotiate a contract with. The City Council approved their recommendation that we negotiate a contract with Mosaic Architecture at the City Council meeting on January 21, 2014.

The City Council approved a contract with Mosaic Architecture at their May 5, 2014 meeting and the contract was signed and dated on May 6, 2014. Subsequent to that time, Mosaic Architecture has progressed and finished Phase 1 of the contract for Programming and Conceptual Design. After interviews with each department, Mosaic created several conceptual designs, culminating in the City Council's consideration of Scheme 1.5 at the November 3, 2014 City Council meeting. If Scheme 1.5 is accepted, it is time to move onto Phase 2 of the Architectural Contract and consider approving an addendum to the contract for Phase 2 services.

Addendum No. 1 to the Mosaic Architecture contract is attached to this report in the packet. Phase 2 of the contract covers both Schematic Design for $153,695.75 and Design Development for $164,674.01. During this phase, the final design process will

occur and all remaining design decisions will be done. Once this phase is done, the detailed construction documents for the City Hall and Parking Structure are prepared for building inspection review and bidding.

There are also pages attached in the packet which show the architectural fee breakdown in more detail than in the Addendum. At this point in time, the estimated total architectural contract (including engineering design fees) is estimated to be $1,097,657 or 8.6% of the basic City Hall/Parking Structure cost of $12,765,428 provided by Mosaic. In addition, reimbursable costs for copies, plan sets, travel costs etc. can add another $44,679 or 0.35% to the architectural contract for a total of $1,142,506 or 8.95% of the cost of construction. By way of comparison, on infrastructure projects, engineering costs of 15-18% of the cost of construction are often typical.

The total cost of Phase 2 for both Schematic Design ($153,695.75) and Design Development ($164,674.01) equals $318,369.76 plus reimbursable expenses. Reimbursable expenses for the entire project are capped at $44,679.

To date we have spent $73,933.63 on conceptual design including $65,700 for Mosaic basic services, $6,433.63 for Mosaic reimbursable costs, and $1,800.00 for Kimley-Horn services.

All of these costs are paid out of the City Hall Construction Reserve Fund which was financed and built up year by year with annual contributions from the Tax Increment Fund. There is still a balance in the City Hall Construction Reserve Fund of $2,180,767.36 as of September 30, 2014, so there are plenty of funds available to progress to the next phase of architectural services.

RECOMMENDATION: Staff respectfully recommends the City Council approve Addendum No. 1 to the Professional Architectural Services contract with Mosaic Architecture and authorize progressing to Phase 2 of the project for Schematic Design and Design Development.

This item is a legislative matter.

f) Consideration of approving the use of the "Construction Manager At Risk" method of construction for the future City Hall/Parking Structure project instead of the traditional "Design-Bid-Build" method (p. 325)

For the construction of municipal buildings and infrastructure projects, cities have long used and often been required to use what is called the "Design-Bid-Build" method. This method is where the city uses a Request for Qualifications (RFQ) or Request For Proposals (RFP) to select an architect or engineer (depending on type of project), the architect/engineer then designs the project and uses recent bidding information or standards to estimate cost, and finally the project is bid out and awarded to the lowest responsible bidder.

Because of some of the problems inherent in such methods (disagreements between architect and contractor and building owner, not using contractor knowledge and expertise in designing the building, increasing number of change orders, etc.), the private construction world and later the public construction world started considering and often using either "Design-Build" or "Construction Manager At Risk" methods of competitive selection and construction of projects in a number of situations.

In 2005, the Montana Legislature approved using alternative construction methods such as Design-Build or Construction Manager At Risk. The law is now codified as Section 18-2-501*et. seq.* MCA (copies attached to this report in the packet). The City of Whitefish has used a design-build method one time for the hydro-electric project because of the complexity of using a Design-Bid-Build method for that project. I am also attaching to this report in the packet some comparisons of the pros and cons of each method of construction and additional information on the Construction Manager at Risk (CMAR) method.

It is too late to use a Design-Build method on our City Hall because that method is where either a single contractor with architects on staff is selected for the project at the beginning or where a joint venture between a contractor and an architectural firm is selected at the beginning.

Mosaic Architecture and I believe that a Construction Manager At Risk (CMAR) method of bidding and construction would benefit the City Hall/Parking Structure by getting a construction company involved early. That way difficult issues such as costs, staging areas, street closures, City Hall staff relocation, and other areas could be better explored. CMAR still involves bidding and competition, but the bidding is typically done for all the sub-contractor components after a general construction manager/contractor is selected in a competitive qualifications basis (somewhat like selecting an architect or engineer). The selected contractor/construction manager provides a guaranteed price for the entire project during the process. Cost reduction and/or "value engineering" are typically primarily done before going out for bids.

The attachments in the packet provide description and pros/cons of CMAR and other methods. Mosaic Architecture has used the CMAR project method for the Helena project that was similar to our project (State Fund office building with City parking structure) and they used it for the current project under construction in Butte for NorthWestern Energy's new office building.

The new High School project used CMAR as the delivery method as well. I know there were 2-3 City Council members who had questions or concerns about this method of bidding and project delivery as they called me with questions. However, I think most of that concern was caused by the lack of familiarity with this new process as compared with the traditional Design-Bid-Build approach.

There is no financial requirement at this time, however both I and Mosaic Architecture believe that the CMAR method of project delivery will save money in the design and construction of the City Hall/Parking Structure project.

RECOMMENDATION: Staff respectfully recommends the City Council approve using the Construction Manager At Risk method of construction and project delivery for the future City Hall/Parking Structure.

This item is a legislative matter.

COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

a) Consideration of authorizing letter from Mayor Muhlfeld regarding the Whitefish Range Partnership (p. 361)
b) Confirmation of Chamber of Commerce appointment of Jeff Raper of National Parks Realty to Future City Hall Steering Committee as Chamber appointee (p. 365)

ADJOURNMENT

Sincerely,

Chuck Stearns
City Manager

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

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October 15, 2014

Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

Mayor Muhlfeld and Councilors

Recommendation to Move Forward with Scheme 1.5 Design

Introduction/History
The Future City Hall Steering Ad Hoc Committee was established in November 2011 (Resolution No. 11-57) to study, evaluate and recommend ideas and process for the location, design and architectural selection for the future City Hall to City Council. In September 2012, the Committee recommended to City Council to build the future City Hall on the same property where it currently is located. In January 2014, the Committee recommended to City Council to award the design contract to Mosaic Architecture and move forward with the Phase I design. City Council moved forward to negotiate a contract with Mosaic Architecture.

Since Mosaic received the design contract, the City Hall Committee has participated in goal setting and concept design meetings with them as well as attending public meetings gathering public input for the New City Hall design. The Committee has spent many hours reviewing the designs presented by Mosaic, discussing the pros/cons of each plan and moving forward with what we feel is the best design for our community and staff.

At our August 21st meeting the Committee voted 6-3 for Scheme 1 design, but asked Mosaic to return with the Scheme 1 design revised, opening up the lobby area some and showing an active edge. September 11th, the Committee reviewed the revised Scheme 1 design and voted 7 to 3 for this design to be recommended to City Council as the Scheme to move forward with and also voted 8 to 2 to recommend City Council to include a 3rd floor and a full basement/half finished.

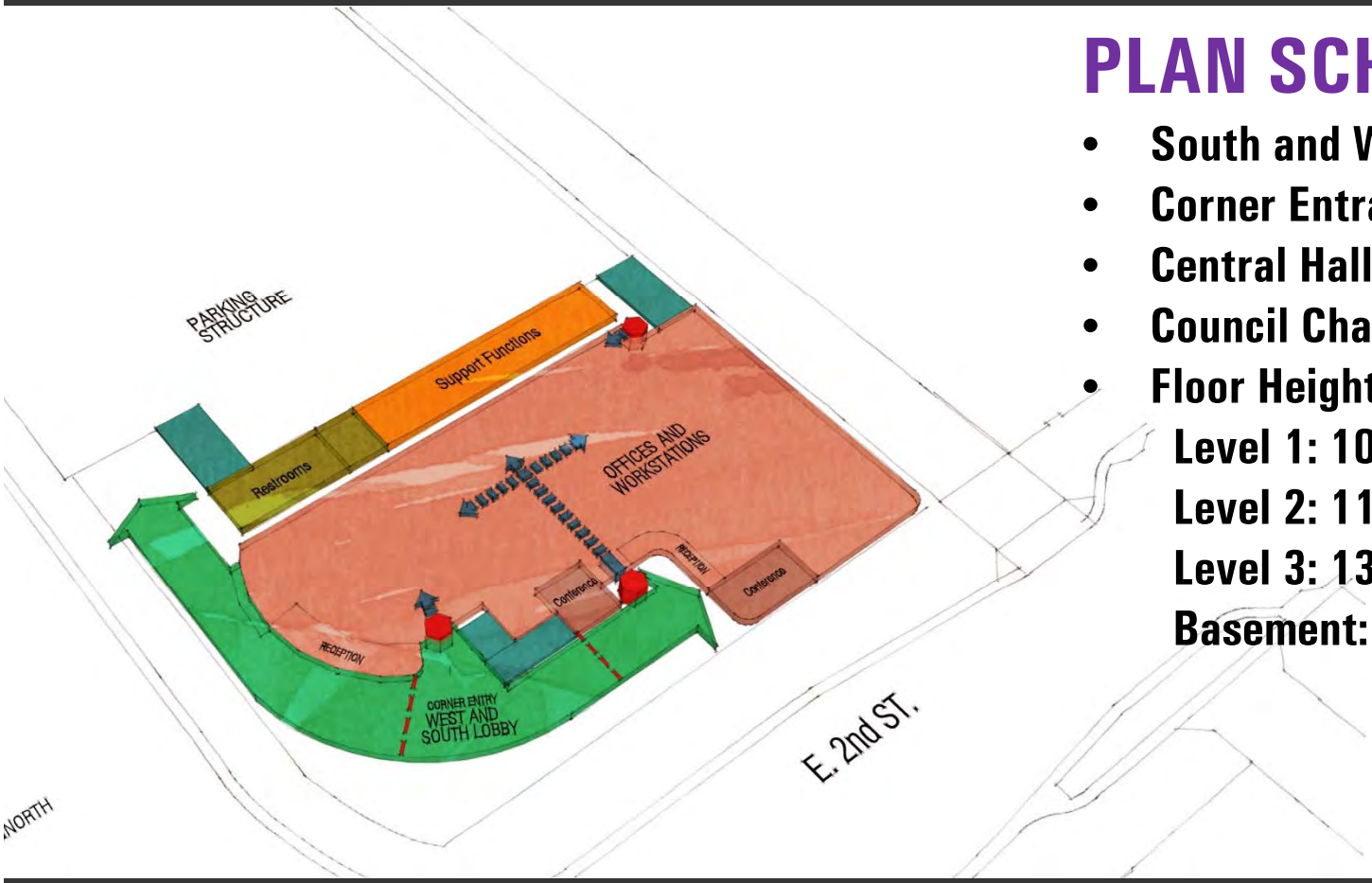
At the October 6th Council workshop and regular meeting, Mosaic presented the information to Council and an idea of "Scheme 1.5" was discussed. Council asked that this Scheme to be presented to the City Hall Committee for review and consideration. On October 15th the Committee met with Mosaic Architecture to review their Scheme 1.5 design, discuss, and decide which plan to recommend to City Council.

Current Report and Recommendation
At the October 15, 2014 meeting, the City Hall Committee voted 9 to 1 to recommend to City Council to move forward with Scheme 1.5 design (to include a 3rd floor and a full basement/half finished).
A copy of Mosaic's Scheme 1.5 design is attached with this recommendation and the minutes from the October 15th City Hall Committee meeting.

Sincerely,

Sherri L. Baccaro

Sherri L. Baccaro
Chair, Future City Hall Committee



PLAN SCHEME 1.5

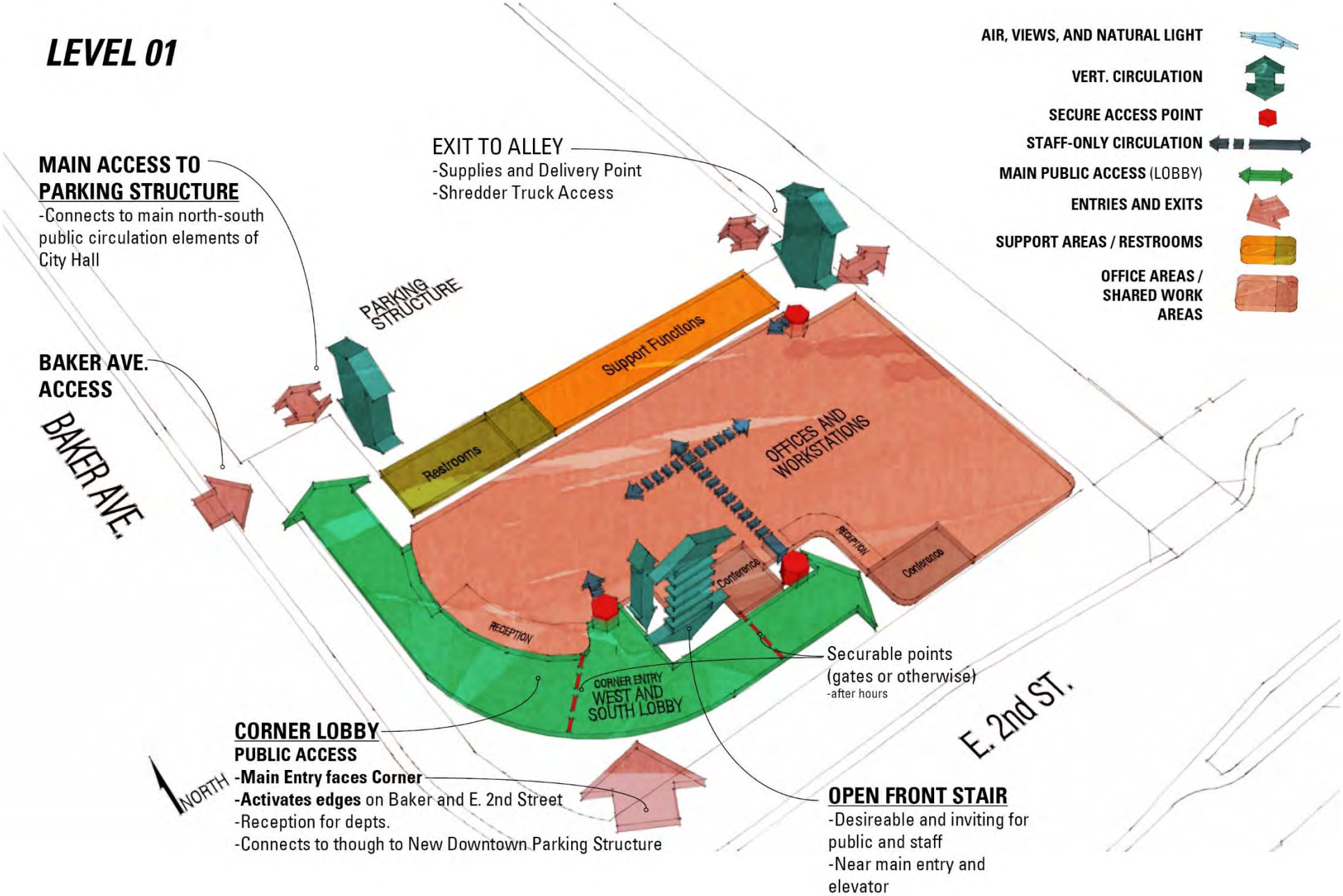
- South and West Lobby
- Corner Entrance
- Central Hall on 2nd Level
- Council Chamber on 2nd Level
- Floor Heights:
  - Level 1: 100.0′
  - Level 2: 116.0′
  - Level 3: 130.0′
  - Basement: 88.0′

SCHEME 1.5

City Hall: Plan Organization

WHITEFISH CITY HALL AND PARKING STRUCTURE

mosaic architecture planning design

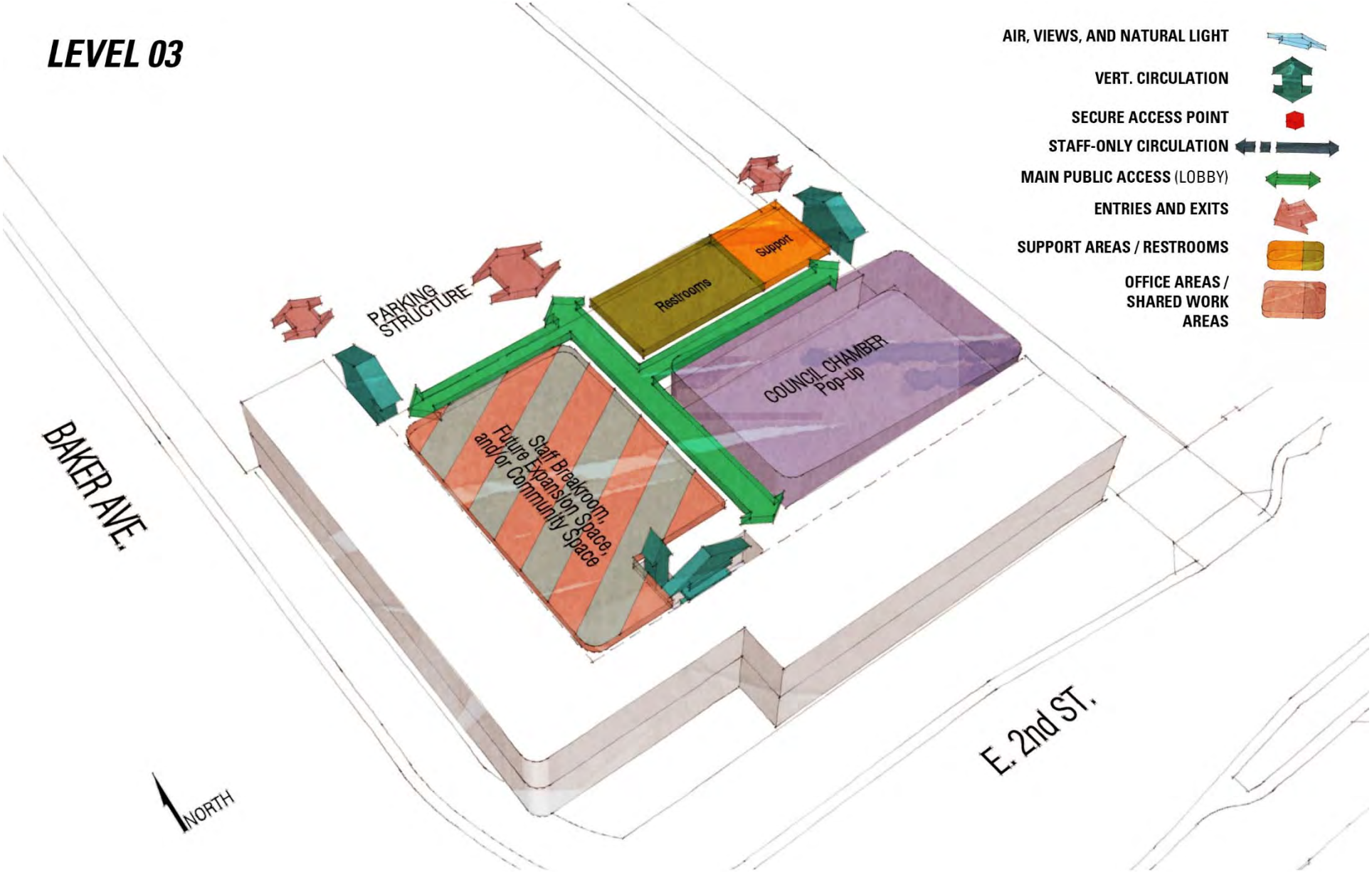


SCHEME 1.5 – Basic Organization

City Hall: Plan Organization
WHITEFISH CITY HALL AND PARKING STRUCTURE

mosaic architecture planning design

SCHEME 1.5 – Basic Organization

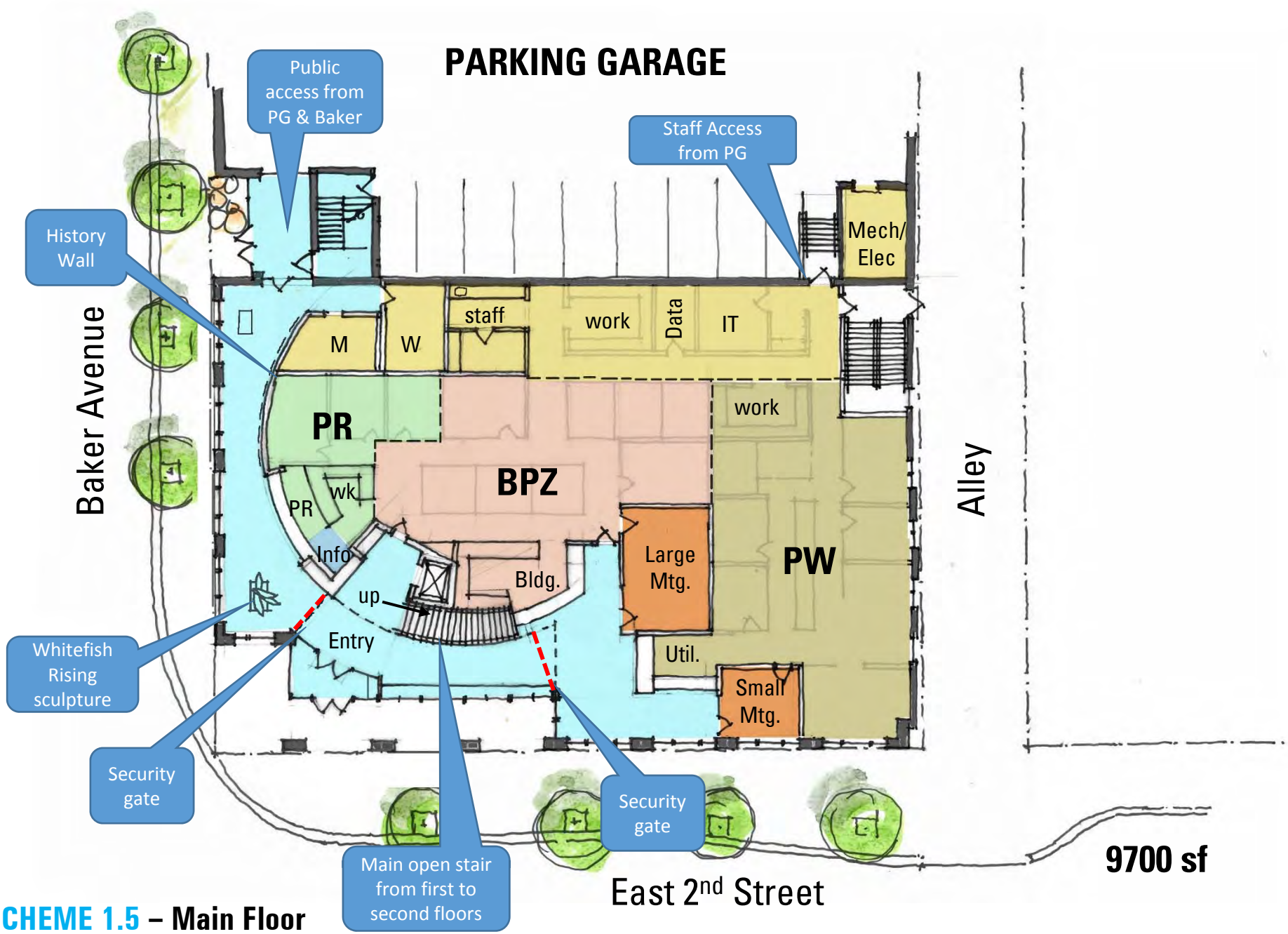


SCHEME 1.5 – Basic Organization

City Hall: Plan Organization

WHITEFISH CITY HALL AND PARKING STRUCTURE

mosaic architecture planning design



SCHEME 1.5 – Main Floor

City Hall: Plan Organization
WHITEFISH CITY HALL AND PARKING STRUCTURE

mosaic architecture planning design

SCHEME 1.5 – 2nd Floor

City Hall: Plan Organization
WHITEFISH CITY HALL AND PARKING STRUCTURE

mosaic architecture planning design

WHITEFISH FUTURE CITY HALL STEERING COMMITTEE
CITY COUNCIL CONFERENCE ROOM
OCTOBER 15, 2014

CALL TO ORDER:
Chairman Baccaro called the meeting to order at 3:00 p.m. Members present were Wendy Compton-Ring, Ian Collins, George Gardner, Toby Scott, City Manager Chuck Stearns, Ross Anderson, Richard Hildner, Robert Blickenstaff, Necile Lorang and Vanice Woodbeck. John Muhlfeld attended through a phone conference. Ben Tintinger and Marc Opus from Mosaic were also in attendance. Members in the audience were Rhonda Fitzgerald, Frank Sweeney and Joe Page.

APPROVAL OF MINUTES FROM LAST MEETING:
Necile made a motion, seconded by Toby, to approve the September 11, 2014 minutes. The motion passed unanimously.

PRESENTATION BY MOSAIC ARCHITECTURE; PRESENT REVISED CONCEPT PLAN (SCHEME 1.5):
Ben presented the 1.5 scheme showing a more wrap around counter and treating the Parks & Recreation like retail. The entrance is more on the center with the staircase and elevator off the entrance. Ben said it would make it more functional to have the Council Chambers on the eastside of the 2nd floor. The 3rd floor maybe could be leased office space. He also said they would be able to easily secure the building in this setup. Ben also said the parking structure would be about 3' above the main floor but would be even with the 2nd and 3rd floors.

Richard would like to see the meeting rooms open at night if possible. City Manager Stearns does not like the information desk so far away from the utility department. Toby feels the 3rd floor plans should say "community room" only not "staff breakroom/community room". Ian feels the pop up for the council chambers is wasted space. On not having the pop up it would give more floor space if there is a 3rd floor or a flat roof if no 3rd floor.

Ben asked if everything this committee does goes to Crandall Arambula, as he felt their e-mail was very condescending. He understands and appreciated some of their comments, but does not feel they need to pick at everything they do.

After much discussion with the committee on how much information would be given to Crandall Arambula throughout the process, it was decided as milestones are met they would submit those to Crandall Arambula for their comments. Frank Sweeney said it best by stating we can submit everything to Crandall Arambula, but we do not have to take all of their suggestions, as we can either use them or not.

DISCUSS REVISED CONCEPT PLAN AND POSSIBLE RECOMMENDATION TO COUNCIL:
Wendy said she does have some questions and concerns from the Parks & Recreation Department. They feel there is too much wasted space in the lobby area, they are concerned about where the copy machine is located and having to share the bathrooms.

Wendy said she looked up the definition for "active edges" in the Downtown Master Plan and the Architectural Standards. In the Architectural Standards it states "commercial uses occur at ground floor of buildings, business shop fronts should foster an animated pedestrian environment by including

DRAFT

transparent openings (windows and doors) to lobbies and other public accessible areas of the businesses; blank walls should be discouraged. Where privacy is necessary, window and door coverings, or blinds are suggested. The Downtown Master Plan states a minimum of 50% transparent glass along ground-floor facades-as measured horizontally 5 ft. above the first finished-floor height.

Ian likes the way this scheme is going, would like to see a bigger lobby and less landscape area out front. He would like to see the Parking structure and City Hall together. He does like Frank's comments and would like the council chambers to stay within the 2nd floor.

George said the information desk is very important and we need landscaping.

Toby said scheme 1.5 is going in the right direction. He is in favor of a 3rd floor with the pop up for the Council Chambers. He would like the space for the community room/staff breakroom to be called just a community room. He would like to have some contemporary components kept in the design.

John agrees the Parking Structure and City Hall should be together in the schematic design. He would like to see the design with and without the 3rd floor. John is very concerned on the additional cost for the 3rd floor as it would be coming out of the TIF funds. If the 3rd floor was built and the other projects that are set to come out of the TIF funds it could only leave 1 to 2.5 million left in the TIF by 2020 which makes him very nervous.

City Manager Chuck Stearns likes the stairway and feels the history wall should be outside. He does like this scheme better than the prior one. He can see both sides on building out to the sidewalks or set back like scheme 1.5 shows.

Ross would like to see greenery in front with a dramatic entry. He would like natural light with higher ceilings in the council chambers. We cannot afford the extra square footage by doing the 3rd floor. Let's make this a beautiful building.

Richard said he likes 1.5 scheme and the mayor is correct, the City Hall and Parking Structure go hand and hand. He thought it was great that we would still have 239 parking spaces with retail in the parking structure.

Robert likes the greenery, the 3rd floor is needed and he prefers scheme 1.

Necile likes the 1.5 scheme and we need the 3rd floor for the community room and future office space.

Sherri said she likes 1.5 scheme, she is also neutral on the landscaping and loves the staircase.

DISCUSS LEED WORKSHOP: Moved to next meeting.

COMMUNICATION FROM THE PUBLIC:
Joe Page the Interim Fire Chief said with a 3rd floor it would beyond the reach of the fire department to reach so they would have to have a couple of proactive staircases which would be another added expense.

Rhonda Fitzgerald had 7 points she wanted to touch on:

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1) Thank you to the committee and Mosaic for continuing to work on improving the scheme for City Hall. Scheme 1.5 is a big improvement over Schemes 1 and 2, bringing good parts from each earlier design. It can still use some further refinement.
2) The City Hall design does not need additional greenery-the Downtown Improvements have brought a great amount of greenery-plants, trees and flowers-into the downtown core. The building should have a similar connection to the sidewalk and streets that the other downtown buildings have.
3) The entrance should be pulled out to the sidewalks on Baker and 2nd St. The colonnaded entrance is not a good use of space, the building should use the whole footprint available to maximize the square footage. That outside area would be better used inside the building. Also the columns are not a look consistent with other Whitefish Historic buildings.
4) As designed, the vestibule is tiny, with an awkward change in direction between the two doors. Once inside, the lobby is "pinched down" at the entrance (similar to the O'Shaugnessy's narrowness in the middle of the lobby). When entering, a person would be bumping immediately up against the stairs-it appears to be only about 8 feet, maybe 10 feet, across the lobby to the stair. The lobby should be an open and welcoming civic space. This is to narrow- the needed space is wasted outside, the gathering area should be inside.
5) I am uncomfortable with the idea of accepting a Scheme that does not incorporate the Parking Structure.
6) It would be better if we could see a "conceptual elevation" with this Scheme, to show what a building with this design might actually look like. It seems somewhat "reverse engineered" to fit within the original design competition elevation.
7) Try to get back within the original budget. Design a two floor building using the full lot, with the option of adding a third floor.

Necile Lorang left the meeting at 5:00 p.m.

Frank Sweeney said he would like to see a concept with an elevated parking structure and look at the existing massing. He likes the 1.5 design. He wanted to point out that on the 1st floor it would not be a space for a lot of people standing around talking as that would be on the outside of the Council Chambers.

Richard made a motion, seconded by Toby, to recommend scheme 1.5 to the City Council. The motion passed with an 8 to 1 vote. Ian voted in opposition. John Muhlfeld had phone trouble and could not respond to the vote but his e-mail said he was in favor of 1.5 but he still has concerns with the costs and the impact to TIF. (The e-mail will be attached to the minutes) This would then make the vote a 9 to 1.

SET DATE AND TIME FOR NEXT MEETING: Ben said he would keep in touch with Sherri for the next meeting and he would like to meet with the committee and then in the evening have a public forum.

ADJOURNMENT: Meeting adjourned at 5:10 p.m.

DRAFT

Chuck Stearns' spreadsheet of 9/30/14 with summary of projected costs

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
5	Future City Hall and Parking Structure		Current Cost Estimates	09/26/14										
6														
7														
8						Additional Cost for	Additional Cost for	Additional Cost						
9			Basic City Hall w/ 3,535 sq. ft. basement	Basic Parking Structure	Basic City Hall + Parking Structure	Full City Hall Basement	3rd Floor City Hall	for Retail at 1st & Baker		City Hall Totals	Parking Structure Totals		Total	
10														
11	Square Footage		23,538	90,419	113,957	4,145	3,563	3,101		31,246	93,520		124,766	
12														
13	Basic Construction Cost		$4,820,320	$5,082,000	$9,902,320	$414,500	$781,830	$565,000		$6,016,650	$5,647,000		$11,663,650	
14	Allocation of General Conditions		$114,271	$120,475	$234,746	$9,826	$18,534	$13,394		$142,631	$133,869		$276,500	
15	Allocation of Site Development		$89,846	$94,724	$184,570	$7,726	$14,573	$10,531		$112,145	$105,255		$217,400	
16	Allocation of Contingency		$251,222	$264,860	$516,082	$21,603	$40,747	$29,446		$313,572	$294,306		$607,878	
17	Allocation of Development Costs		$587,297	$619,180	$1,206,477	$50,502	$95,256	$68,838		$733,056	$688,018		$1,421,074	
18														
19	Sub-totals		$5,862,957	$6,181,239	$12,044,196	$504,157	$950,940	$687,210		$7,318,054	$6,868,448		$14,186,502	** varies by
20	Add Furnishings		$420,000							$420,000			$420,000	$1 - $2 by
21	Total Cost		$6,282,957	$6,181,239	$12,044,196	$504,157	$950,940	$687,210		$7,738,054	$6,868,448		$14,606,502	rounding error
22														
23	Basic Construction Cost per square foot		$205	$56	$87	$100	$219	$182		$193	$60		$93	
24	Total cost per square foot		$267	$68	$106	$122	$267	$222		$248	$73		$117	
25														
26														

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Staff Report

To: Mayor John Muhlfeld and City Councilors
Chuck Stearns, City Manager

From: Dana Smith, Finance Director

Date: September 10, 2014

Re: Annual Impact Fee Report to the City Council

Introduction

According to Chapter 2, Section 10-2-7 (C) of the City Code on impact fees, the Finance Director shall provide an annual report to the City Council on the impact fees showing the source and amount of all moneys collected, earned, or received, the public improvements that were financed in whole or in part by impact fees, and any administrative expenses incurred by the impact fee fund.

The following table details the FY08-FY14 impact fees collected, interest earned, and the cash balance at the end of FY14:

Current Report

Impact Fee Revenue History

Revenues	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	Total Revenues	Cash Balance 6/30/14
Paved Trails	3,808	9,120	10,296	16,046	19,302	29,049	40,837	128,457	129,092
Park Maintenance Building	253	588	644	1,036	1,260	1,932	2,716	8,429	2,720
Emergency Services Center	7,572	50,504	20,557	30,793	41,537	63,038	109,464	323,465	129,365
City Hall	6,639	47,842	19,448	29,164	41,529	59,705	103,682	308,009	309,475
Stormwater	1,809	17,680	8,167	8,865	10,106	23,525	23,070	93,221	93,910
Total Special Revenue Fund	**$20,081**	**$125,734**	**$59,111**	**$85,904**	**$113,733**	**$177,249**	**$279,769**	**861,581**	**$664,562**
Interest in Fund 2399	$98	$3,831	$3,478	$2,482	$2,085	$921	$1,938	$14,834	
Water	$20,430	$92,559	$60,388	$95,149	$112,398	$158,583	$226,365	$765,872	$768,640
Wastewater	$25,643	$101,405	$45,105	$87,496	$114,046	$172,070	$232,422	$778,187	$473,940
Total Enterprise Funds	**$46,073**	**$193,965**	**$105,493**	**$182,645**	**$226,443**	**$330,652**	**$458,787**	**$1,544,058**	**$1,242,579**
Total Impact Fees	**$66,155**	**$319,699**	**$164,604**	**$268,549**	**$340,176**	**$507,901**	**$738,566**	**$2,405,639**	**$1,907,142**
Total 5% Admin Fees	**$3,308**	**$15,985**	**$8,230**	**$13,427**	**$17,009**	**$25,395**	**$36,928**	**$120,282**	

The FY14 impact fee collections all exceeded budget expectations. Year-to-date impact fee collections are trending very positively in conjunction with the increase in local construction activity.

The administrative expenses incurred by collecting the impact fees are charged at a rate of 5% in addition to the impact fee rates. The administrative charges are deposited into the General Fund or the respective Enterprise Funds.

The sources of all special revenue impact fees are from new construction and interest. Enterprise funds may also receive impact fees from new connections to the system.

Impact Fee Uses

Impact fees may be spent for public improvements, including, but not limited to, planning, land acquisition, right of way acquisition, site improvements, necessary off-site improvements, construction, engineering, architectural, permitting, financing, and administrative expenses, applicable impact fees or mitigation costs, and any other expenses which can be capitalized.

Impact fees may also be used to recoup public improvement costs previously incurred by the City to the extent that new growth and development will be served by the previously constructed improvements or incurred costs.

The following table details the FY08-FY14 impact fee expenditures:

Expenditures	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY14	Total Expenditures
Paved Trails	$0	$0	$0	$0	$0	$0	$0	$0
Park Maintenance Building	$253	$588	$0	$1,701	$1,264	$1,935	$0	$5,740
Emergency Services Center	$0	$0	$0	$108,788	$42,169	$0	$43,578	$194,535
City Hall	$0	$0	$0	$0	$0	$0	$0	$0
Stormwater	$0	$0	$0	$0	$0	$0	$0	$0
Total Special Rev Fund	$253	$588	$0	$110,489	$43,432	$1,935	$43,578	$200,275
Water	$0	$0	$0	$0	$0	$0	$0	$0
Wastewater	$0	$0	$0	$0	$0	$0	$198,388	$198,388
Total Enterprise Funds	$0	$0	$0	$0	$0	$0	$198,388	$198,388

During FY14, the Wastewater impact fees were used for the first time to fund capital projects due to the Plant Investment Fees in the Wastewater fund being fully expended in FY13. Water impact fees have not been used to-date since pre-existing Plant Investment Fees have been utilized for capital project funding. The cash balance of Plant Investment Fees in the Water fund totaled $201,193 on June 30, 2014. Paved Trails, Stormwater, and City Hall impact fees will be retained for future projects.

Recommendation

Staff respectfully requests that the City Council review and accept the annual report on impact fees.

Impact Fee Advisory Committee Minutes (DRAFT)

City Hall Council Chambers Conference Room
Monday, October 20, 2014, 10:00 a.m.

1. CALL TO ORDER – Don Kaltschmidt called the meeting to order. Committee members Don Kaltschmidt, Myra Appel, Jen Frandsen, and Dana Smith were present. City Staff present was City Manager Chuck Stearns. There were no public attendees.

2. REVIEW AND APPROVE THE MINUTES –Myra moved to approve the minutes. Jen seconded the motion. Minutes approved unanimously.

3. ANNUAL FINANCIAL REPORT – REVIEW AND RECOMMENDATION FOR THE CITY COUNCIL – Dana presented the annual financial report to the Committee highlighting the cash balances, revenue collections, and expenditures made to date.

   Chuck further described the reasons for the ESC and Parks Impact Fees being transferred to the TIF Fund. The impact fees are reimbursing the TIF Fund for financing of the Park Building and the construction of the ESC. Once TIF sunsets it will be kept in the Impact Fees Fund for possible future expansion of each building.

   Dana provided a quarterly update of the cash balance and Impact Fees spent as of September 30, 2014 for the Water and Wastewater Funds. Total Wastewater Impact fees spent in the first quarter FY15 was $400,696. Water Impact Fee expenditures totaled $1,255. An additional $201,193 that was budgeted for Water Impact Fees was covered by the remaining Plant Investment Fees on hand.

   Chuck noted that a significant portion of the Water and Wastewater Impact Fees used on the HWY 93 W project are for adding capacity for water and wastewater. These are the first big uses of Water and Wastewater Impact Fees.

   Jen Frandsen asked if the City can use Water Impact Fees for the Stoltz land easement acquisition. Chuck responded and noted that although we will get an asset, the purchase is not necessarily for expanding water rights/storage. Impact fees are not typically useable unless the project involves expansion of the capacity of the infrastructure.

   Chuck followed up regarding the budgeted projects for the Stormwater Impact fees. This included using Impacts fees for Armory Park Road drainage improvements (10% or $6,500 out of impact fees is budgeted). This will be the first time the Stormwater Impact Fees are used.

   Dana added that the Cash Balance in the Wastewater fund was $161,888 as of September 30th and the cash balance in the Water Impact Fees was $839,155.

   Don K. asked if there were any other questions or items of discussion regarding the report. Chuck asked that the committee decide if it would recommend the report to the City Council for approval and acceptance.

MOTION - Don K. asked for a motion to recommend the annual report to the City Council for approval. Jen Frandsen made a motion, Myra seconded.

Jen asked that an update be made to the report. Chuck and Dana noted that it would be included in the quarterly financial report by Dana.

The Committee unanimously approved the impact fee annual report and recommends it to the council.

4. COMMENTS FROM COMMITTEE MEMBERS – Jen Frandsen, being new to the committee, asked what the assessment rates were for each impact fee. Chuck said he would have to find out from Public Works and would provide that for Jen. Don K. mentioned it was a formula based assessment. Jen further inquired as the how the developers in the community feel about impact fees? Chuck noted that any issues or comments not needing assistance by the City Manager would have been dealt with by the Public Works Department and Public Works Director. However based on articles he has read, there is a little more support for impact fees among developers nationwide in what they pay as it provides for expansion. Most complaints would go to Public Works before going to Chuck. Don K. noted before going to Council, we checked out our competition and it was comparable. Myra further noted they are all different though.

   Dana discussed the need to maintain the Impact Fees currently have for future projects and not knowing what funding would be available in the future. Dana asked how to move forward with using the cash on hand for projects; specifically the Paved Trails account had a balance of $142K at the end of September 30th. Myra agreed that was her question as well. Chuck said getting easements is the difficult task for continuing the paved trails throughout the City. There have been some trail projects, but not paved and one used TIF funds. These funds could be used next year for trail capacity expansion. Dana and Chuck will follow up with Karin and John Wilson for next year's project. Chuck described the trails and the paths that could be completed using the Impact fees. The City has as easement w/ Pine Lodge and now needs to work with the MDT to complete the connection. Development to former North Valley Hospital site is up in the air so the trail progress through that site is unknown.

   The question was asked how the trails were funded in the past by Don K. Chuck noted the Federal Gas Taxes from a prior transportation bill (MDT) provided for Enhancement Funds for trails in the past. The most recent transportation bill provides for three uses including complete streets program, enhancements, and safe routes to school. These are now competitive grants. Whitefish used to get an earmarked amount for trails each year through MDT, but the last of the monies are going out on the trail for east 2nd to Armory Road to the dog park. The City has applied for two competitive grants and we were not awarded those grants. Going forward, funding of trails will be competitive grants, Impact Fees, Resort Tax and TIF. Wisconsin was built with a Federal earmark from Senator Baucus.

   Don K. asked if Myra had any additional comments. Myra had nothing else.

   Don K. commented that the Committee in the past has been concerned that there is $2.4 million accumulated Impact Fees and the Impact Fees have not been used. At one time we thought maybe we shouldn't have Impact Fees for the Water. Don K. asked the committee to think about the option of using the impact fees similar to the resort tax. Resort tax provides a credit

(tax rebate) to property taxpayers and an admin fee to business. Don K. did not see any laws prohibiting it in the Montana Code Annotated. Don K. agrees we should save some for a rainy day, but the committee should think about it going forward, may be we need to put a relief in case we get to a $10 million balance. Chuck stated that to address the concern we would need to either eliminate or reduce impact fees. This would be the appropriate relief. The City cannot do a tax rebate since it's a small group of people who pay the fee and the resort tax is more widely applicable. If the impact fees are abolished then a rebate would be made and or the Council could keep the money for future projects that qualified. A rebate would be administratively difficult. If you want relief, the best option is to propose or reduce. Myra read the statute which states the City must refund to the person owns the property at the time of rebate and it cannot go to other individuals or entities.

Jen Frandsen as why the City is not spending the money. Chuck – part of it is we do collect and save until needed. In prior years there were plant investment fees. Paved Trails is not hard and ESC and Park are reimbursing TIF, City Hall and Stormwater will be used in the coming year. All have a plan, but a little less is the Stormwater. The City does have a stormwater assessment, but the budget does bring down a lot of the stormwater funds. Only one project was proposed to use impact fees, only one really had expansion of services. When we get to State Park Road, it will have a big use of the stormwater impact fees. Water and Wastewater, Wastewater specifically, is financially tight and Water has been borrowing for projects. We will continue to watch for impact fee uses. Overall we are doing ok. Generally Impact Fees should be used within a reasonable time (5 years) of receipt, but it's not legislatively determined to be 5 years.

Chuck added that for Water Impact Fees, John Wilson, the Public Works Director has an expansion of the water treatment planned in about 2-3 year. Impact fees could totally fund this project since it is an expansion. Originally the estimate was $6 million. Anything we don't have impact fees to cover we will have to increase water rates. We should wait and see for Water. We would then not have to increase the rates for all water users, which is the idea of an Impact Fee. It is getting closer and closer.

Don K. said let's keep monitoring it. The economy is rocking again, but it can change significantly as we saw in 2008 and 2009.

Chuck stated during the great recession one incentive was that if there is a development project in the TIF boundaries (during a 3-4 month window) the TIF would pay the impact fees. If we see a slow down occurring then this incentive project could help. It doesn't benefit the entire City, but it's what we felt we could do since that is what TIF was geared to do and we didn't want to reduce Impact Fees. A reduction doesn't always generate development based on research done in the past. This incentive didn't generate much activity since financing of the projects could have had more of an impact.

Don K. agreed with Chuck, but it was a good improvement in the perception of the City helping development activities.

Jen asked how much was spent in TIF during this incentive. Chuck said not much.

Myra asked for an update regarding how much is in the TIF Fund.

Chuck - Annually the TIF receives about $4.5 million in revenue. The TIF is saving a portion for the new city hall and parking structure. Other expected uses are the former North Valley Hospital and the Idaho Timber location out west. Council may like to help the Western Building store/old Army Navy too. Any funds not used are paid back to the taxing jurisdiction at about 24% to the City, 25% to the County, and 50% to the Schools. The Council will attempt to use as much as possible by the time TIF expires in 2020.

Chuck noted that the City can start a new TIF district or multiple districts. Possibilities include 93 North and 93 South as part of the corridor plan. Infrastructure is sufficient on 93 south. Chuck has recommended that Public Works should try to get the infrastructure out the HWY40. Council will want to use it and not rebate the TIF funds. The City can do a new one or two, but it will be smaller and more commercial.

Don K. asked if there were any other comments. There were none.

5. OTHER BUSINESS – Don K. asked if there were any other business items. There were none.

6. PUBLIC COMMENT – Don K. asked for any public comment. No public attended the meeting.

7. ITEMS FOR NEXT AGENDA – Don K. asked for items to include on the agenda for the next meeting. Chuck asked if the committee would be interested in having a meeting during the budget formulation process. He noted that the budget process happens very fast. Often staff is working weekends and it can be somewhat late in the budget process. Public works has to provide the information first. However, we can schedule a meeting for the committee in April if the committee is interested.

   Jen – It could encourage more impact fee usage, but it is like a last minute decision. Having Dana and Chuck know we want to spend down the cash balances may be sufficient and then maybe we don't need to meet.

   Don K. – It's good to give input, but we do have a council representative, Jen Frandsen. Would be ok either way. If you want to try it we can in April and see if it works.

   Jen - Can we make recommendations on where to spend the money?

   Chuck said unless there is a project the Public Works identifies the Impact fee projects are somewhat limited on new projects. The Stumptown Inn and Kay Beller Park stairs and paving the trail by Stumptown Inn and Pine Lodge are currently paid with Resort Tax funds. Based on this meeting, let's use impact fees for those projects. If there are projects you would like to spear-head, provide it to Dana and Chuck for evaluation and then we can move forward.

DRAFT

Jen – Can we try to get a development community member to fill the Vacancy? If not, can we have another council person sit in on the meeting in case the vacancy is not filled by April.

Chuck said the City has been advertising every time a position is advertised but there has been no interest. If you have someone in mind let us know.

Myra read the City Code which allows the interim position to be filled by a City Council member.

Chuck will set a reminder to set up a meeting to work on budget in April.

8. ADJOURNMENT - Don K. asked for a motion to adjourn the meeting. Myra moved and Jen seconded.

DRAFT

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WHITEFISH CITY COUNCIL MINUTES
OCTOBER 20, 2014
SPECIAL SESSION, 5:00 PM

1. Call to Order

Mayor Muhlfeld called the meeting to order. Councilors present were Anderson, Sweeney, Feury, Hildner, and Frandsen. Councilor Barberis was absent. City Staff present were City Manager Stearns, City Clerk Lorang, and City Attorney VanBuskirk.

2. Interviews

The Mayor and Council conducted interviews with Linda Miller, applying for a vacancy on the Whitefish Housing Authority Board, and Rhonda Fitzgerald, applying for a vacancy on the Ad Hoc Future City Hall Steering Committee.

3. Public Comment - None

4. Appointments – Mayoral appointments.

Mayor Muhlfeld appointed Rhonda Fitzgerald to fill the vacancy on the Ad Hoc Future City Hall Steering Committee in the Member at Large position; and Linda Miller to the Whitefish Housing Authority to fill the remainder of a vacant term expiring December 31, 2014; and to fill the five-year term expiring December 31, 2019. The Council unanimously ratified the Mayor's appointments.

5. Adjournment - Mayor Muhlfeld adjourned the Special Session at 5:25 p.m.

_____
Mayor Muhlfeld

Attest:

_____
Necile Lorang, City Clerk

WHITEFISH CITY COUNCIL MINUTES
October 20, 2014
7:10 P.M.

1) CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Barberis, Frandsen, Anderson, Hildner, Feury and Sweeney. City Staff present were City Manager Stearns, City Clerk Lorang, City Attorney VanBuskirk, Finance Director Smith, Planning and Building Director Taylor, Public Works Director Wilson, Parks and Recreation Director Butts, Interim Fire Chief Page, and Police Chief Dial. Approximately 13 people were in the audience.

2) PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Marsha O'Neil to lead the audience in the Pledge of Allegiance.

3) PRESENTATION - Proclamation – Extra Mile day and recognition of Whitefish people and organizations that have gone the "extra mile" (p.30) (CD 00:50)

EXTRA MILE DAY PROCLAMATION

WHEREAS, Whitefish, Montana is a community which acknowledges that a special vibrancy exists within the entire community when its individual citizens collectively "go the extra mile" in personal effort, volunteerism, and service; and

WHEREAS, Whitefish, Montana is a community which encourages its citizens to maximize their personal contribution to the community by giving of themselves wholeheartedly and with total effort, commitment, and conviction to their individual ambitions, family, friends, and community; and

WHEREAS, Whitefish, Montana is a community which choose to shine a light on and celebrate individual and organizations within its community who "go the extra mile" in order to make a difference and lift up fellow members of their community; and

WHEREAS, Whitefish, Montana acknowledges the mission of Extra Mile America to create 500 Extra Mile cities in America and is proud to support "Extra Mile Day" on November 1, 2014; and

WHEREAS, Jake and Connie Heckathorn have contributed and continue to contribute an incredible amount of financial support and "sweat equity" to the Whitefish Community Library. The City of Whitefish acknowledges the many contributions you have made which include but are not limited to:

- Decades of active library-related volunteering, including everything from covering books to hosting Whitefish Community Library volunteer events;
- Helping to plan for, fundraise for, and implement the construction of the new library facility in downtown Whitefish;
- Purchasing thousands of dollars of books, materials, and assets for the Whitefish Community Library and specific library programs, with a notable and special emphasis on children's books;

- Being strong proponents for the Whitefish Library to become independent, including offering moral support, financial support, professional skills, and other expertise; and
- Being visionaries in helping the Whitefish Community Library be all it can be for our community.

WHEREAS, the Shephard's Hand, in addition to continuing to provide a free medical clinic and a free, weekly, community meal, began providing a free dental clinic in January, 2014. Each month, Community Meals serves over 500 meals, the Free Clinic services over 190 medical patients and 50 dental patients on average. In 2013, Shepherd's Hand Free Clinic provided over $800,000 worth of services to the underinsured, uninsured, those caught between Medicare and Medicaid, and for services not covered under the Affordable Care Act. The commitment and dedication from the hundreds of doctors, nurses, health care providers, and volunteers is unmatched in the valley, and a true testament to Shepherd's Hand's commitment to helping those less fortunate and in need of a helping hand.

NOW, THEREFORE, I, John Muhlfeld, Mayor of Whitefish, Montana do hereby proclaim November 1, 2014, to be Extra Mile Day. I urge each individual in the community to take time on this day to not only "go the extra mile" in his or her own life, but to also acknowledge all those who are inspirational in their efforts and commitment to make their organizations, families, community, country, or world a better place; and

I proclaim the City of Whitefish's and the community's thanks to Jake and Connie Heckathorn and the Shepherd's Hand, in particular Meg and Jay Erickson, for their efforts to go the "extra mile" during the past year and in previous years.

DECLARED this 20th day of October, 2014, by the Mayor of Whitefish.

/s/ John M. Muhlfeld, Mayor

Joey Kositzky, Whitefish Library Director, and Library Board Member Anne Moran, were in the audience to accept the Proclamation on behalf of Jake and Connie Heckathorn who could not be present tonight. Joey said Connie's words, upon hearing about this recognition, said they didn't deserve it but Joey said she, the Library Staff and the Library Board were pleased to hear of this acknowledgement of the Heckathorn's dedication and work for the Whitefish Library and felt it was, indeed, well deserved.

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) (CD 5:58)

Rebecca Norton, 530 Scott Avenue, thanked Councilor Hildner and the Council's efforts protecting the Whitefish River by limiting a portion of the river to manual powered craft and electric motors. Secondly, she said she has been attending the County's planning meetings and noted they aren't very well attended by other public, and encouraged the public to become more involved. The County is holding two work sessions regarding rural Whitefish zoning on October 29th and 30th at 6:00 p.m. at the Fairgrounds.

Gail Shay Linne, 106 Murray Avenue, spoke to the Council regarding her neighborhoods' letter that is listed as Agenda item 10a. Her neighborhood has grown quickly and they like the improved Hwy

93 West, but Murray Avenue is narrow and there are careless and speeding drivers using their road as an entrance to and exit from the new Veteran's Peace Park. She said they are looking for solutions.

Mayre Flowers, Citizens for a Better Flathead, 35 2nd Street West in Kalispell, said her remarks are a follow up to Rebecca's remarks about public participation in the County Planning work sessions and meetings and encouraged more public to become involved and work together with the County on their decision-making that will impact both out-of-city and in-city residents. She said they have a couple issues on the table that are inconsistent with Whitefish Zoning.

Dan Graves from the Chamber of Commerce Board of Directors, said he is here to serve as liaison between the Chamber and City.

Chris Bernat, 119 Wedgewood Lane, said she had a letter on the Council's agenda under item 10b, regarding the future city hall. She did not support demolition of the current city hall or a parking structure, but hoped the current building could be saved and refurbished either for continued use as a city hall or for another use; and supported a surface parking lot instead of a $7 million parking structure.

Ben Cavin, 2130 Houston Drive, said he had a comment regarding procedure and the placement of Public Comment on agendas and suggested it be at the first of the sessions instead of the last thing before adjournment.

5) COMMUNICATIONS FROM VOLUNTEER BOARDS (CD 19:26)

No Volunteer Board reports from the audience.

Councilor Sweeney, council representative on the Park Board, said the repair work on the Ice Rink is complete and the schedule is running smoothly again there. The Park Board continues to seek solutions to the tennis courts' continual stages of disrepair; along with possible funding and construction of new tennis courts. They have contacted the School District regarding the same. The Board is considering a request to paint pickleball lines on the Grouse Mountain courts.

Councilor Frandsen said the Impact Fee Advisory Committee met in their annual meeting today and she serves as the council representative on that Committee. The Committee had discussions regarding the need to meet a second time in the year next spring, to be more involved with the budget process.

Councilor Hildner, council representative on the Ad Hoc Future City Hall Steering Committee reported the Committee met last week with the architects who brought out their revised proposal; Scheme 1.5. The Committee considered it and carried on a lengthy discussion and will be bringing their recommendation to the Council at the November 3rd meeting.

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) (CD 23.25)

a) Minutes from the October 6, 2014 Council special session (p. 33)

b) **Minutes from the October 6, 2014 regular session (p.34)**
c) **Resolution No. 14-50; A Resolution adopting a map amendment to the 2007 Whitefish City-County Growth Policy, as requested by Four Fools, LLC, and Richard and Carol Atkinson and adopting findings with respect to such amendment (p. 48)**
d) **Ordinance No. 14-10; An Ordinance rezoning approximately 2.23 acres of land located at 510, 540 and 550 Wisconsin Avenue, Section 25, Township 31 North Range 22 West, Whitefish, Montana from WR-3 (Low Density Multi-Family Residential) to WB-1 (Limited Commercial District) and adopting Findings with respect to such rezone; (2nd reading) (p. 51)**
e) **Resolution No. 14-51; A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City a certain tract of land known as 1016 Park Avenue for which the owner has petitioned for and consented to annexation. (p.54)**

RESOLUTION NO. 14-50

A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City a certain tract of land known as 1016 Park Avenue, for which the owner has petitioned for and consented to annexation.

WHEREAS, Justin W. Kraske has filed a Petition for Annexation with the City Clerk requesting annexation and waiving any right of protest to annexation as the sole owner of real property representing 50% or more of the total area to be annexed, described and shown more fully on Exhibit A, attached hereto and made a part hereof. Therefore, the City Council will consider this petition for annexation pursuant to the statutory Annexation by Petition method set forth in Title 7, Chapter 2, Part 46, Montana Code Annotated; and

WHEREAS, services to the annexed area will be provided according to the City of Whitefish Extension of Services Plan, adopted by the City Council by Resolution No. 09-04 on March 2, 2009, as required by and in conformity with §§7-2-4610 and 7-2-4732, MCA, available at the office of the City Clerk; and

WHEREAS, it is the considered and reasoned judgment of the City Council of the City of Whitefish that the City is able to provide and has been providing municipal services to the area proposed for annexation. Further, it is hereby determined by the Whitefish City Council to be in the best interest of the City of Whitefish, and the inhabitants thereof, as well as the current and future inhabitants of the area to be annexed described herein, that the area be annexed into the City of Whitefish and it is hereby declared to be the intent of the City of Whitefish that the corporate boundaries of the City of Whitefish be extended to include the boundaries of the area described in the Petition for Annexation within the limits of the City of Whitefish.

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

Section 1: The corporate boundaries of the City of Whitefish are hereby extended to annex the boundaries of the area herein described in the Petition for Annexation, according to the map or plat thereof, on file and of record in the Office of the Clerk and Recorder of Flathead County, Montana,

legally described and shown more fully on the attached Exhibit A, incorporated herein by reference.

Section 2: The minutes of the City Council of the City of Whitefish, Montana, incorporate this Resolution.

Section 3: The City Clerk is hereby instructed to certify a copy of this Resolution so entered upon the October 20, 2014 Minutes of the City Council. Further that this document shall be filed with the office of the Clerk and Recorder of Flathead County. Pursuant to §7-2-4607, MCA, this annexation shall be deemed complete effective from and after the date of the filing of said document with the Flathead County Clerk and Recorder.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS 20TH DAY OF OCTOBER, 2014.

/s/ John M. Muhlfeld, Mayor

ATTEST:
/s/ Necile Lorang, City Clerk

Exhibit A

A tract of land situate, lying and being In Government Lot 4, Section 31, Township 31 North, Range 21 West, P.M.M., Flathead County, Montana, more particularly described as follows:

Commencing at the Southwest corner of Section 31; thence and along the Westerly boundary of Section 31
North 00°34'40" East, a distance of 376.68 feet to the Point of Beginning of the tract of land herein described; thence continuing and along the Westerly boundary of Section 31
North 00°34'40" East, a distance of 118.30 feet to the Southerly right of way of a 40 foot deeded county road; thence and along the Southerly right of way
South 89°52'00" East, a distance of 182.26 feet; thence
South 00°34'40" West, a distance of 118.30 feet; thence
North 89°52'00" West, a distance of 182.26 feet to the Point of Beginning.

Tract 1 of Certificate of Survey No. 3247.

EXCEPTING THEREFROM A tract of land situate, lying and being in Government Lot 4, Section 31, Township 31 North, Range 21 West, P.M.M., Flathead County, Montana, more particularly described as follows to wit:

Commencing at the Southwest comer of Section 31, Township 31 North, Range 21 West, P.M.M., Flathead County, Montana, at a point; thence along the West boundary of said Section 31
North 00°34'40" East, a distance of 376.68 feet to a point, which is the Southwest corner of that tract of land shown as Tract 1 of Certificate

of Survey No. 3247 (records of Flathead County); thence along the South boundary of said tract
South 89°52'00" East, a distance of 61.76 feet to a point and the True Point of Beginning of the tract of land herein described; thence
North 00°33'51" East, a distance of 118.28 feet to a point on the South right of way of a 40 foot deeded county road known as Park Avenue; thence and along said South right of way
South 89°50'19" East, a distance of 120.62 feet to a point which is the Northeast corner of said tract; thence and along the East boundary of said tract
South 00°37'42" West, a distance of 118.22 feet to a point and the Southeast comer thereof; thence and along the Southerly boundary thereof
North 89°52'00" West, a distance of 120.49 feet to the Point of Beginning.

Tract 1 of Certificate of Survey No. 7939.

Commonly known as: 1016 Park Avenue, Whitefish, MT 59937

Councilor Frandsen made a motion, second by Councilor Sweeney, to approve the consent agenda as presented. The motion passed unanimously.

7) PUBLIC HEARINGS (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30 minute time limit for applicant's land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)) (CD 23:36)

7a)Ordinance No. 14-11; An Emergency Ordinance pursuant to MCA Section 7-5-104, amending Whitefish City Code Title 4, Chapter 2, Section 4(A), and Title 12, Chapter 4, Section 21(D), regarding the City-wide preventative measures to avoid problems with animals (only reading) (p. 66)

Police Chief Dial gave the staff report. This emergency ordinance enacts city-wide regulations requiring animal resistant containers for residents and associations of residents or compliance with hour restrictions for rollout containers to be out on the street, only between 4 a.m. and 7 p.m. on the same day as the pickup, to match restrictions already in place for properties north of Denver Street and Bay Point Drive; and addresses changes to regulations for specific businesses located north of the Burlington Northern Santa Fe Railroad tracks. The key issue is resolving encounters with bears and other animals that are attracted to garbage; and making a substantial step towards reducing the threat of someone being hurt. The 3-month time period of this emergency ordinance will give staff the time to prepare a permanent ordinance to bring back to the Council for their consideration. Questions from the Council led Chief Dial to ask Bill LaVelle to address the Council. Mr. LaVelle had volunteered last year to patrol neighborhoods and place warning tickets on residential containers that were out of compliance. Mr. LaVelle said new animal resistant containers are out there but still need some adjustments to perfect their performance.

Mayor Muhlfeld opened the public hearing.

Gail Shay Linne, 106 Murray Avenue, spoke in support of the emergency ordinance, saying their neighborhood had cans tipped over that had been out overnight.

There being no further public comment, Mayor Muhlfeld closed the public hearing; noting a typo in the proposed ordinance on page 67 of the packet, 8th line of 2nd paragraph, a + sign in the middle of the word "roll-out"; then turned it over to the Council for their consideration.

Councilor Hildner made a motion, second by Councilor Barberis, to approve Ordinance No. 14-11; An Emergency Ordinance pursuant to MCA Section 7-5-104, amending Whitefish City Code Title 4, Chapter 2, Section 4(A), and Title 12, Chapter 4, Section 21(D), regarding the City-wide preventative measures to avoid problems with animals (only reading). The motion passed unanimously.

8) COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR (CD 35:45)

a) Consideration of recommendation from the Resort Tax Monitoring Committee to revise priorities of future Resort Tax street reconstruction projects (p. 75)

Public Works Director Wilson explained the Resort Tax Monitoring Committee's (RTMC) recommendation to amend the top twelve priorities for street reconstruction projects funded by Resort Tax. The priorities recommended are:

1. West 7th Street, Fairway Drive to Baker Avenue
2. Somers Avenue, South of East 2nd Street
3. State Park Road, South of the Railroad Tracks
4. East Edgewood Place, Wisconsin Avenue to east City Limits
5. Texas Avenue
6. East 5th Street, Baker Avenue to Pine Avenue
7. Denver Street, Wisconsin Avenue to Texas Avenue
8. 4th Street and Fir Avenue – East 4th Street, Pine Avenue to Willowbrook and Fir Avenue, East 2nd Street to East 4th Street
9. Armory Road, East 2nd Street to Armory Park
10. Karrow Avenue, West 2nd Street to West 7th Street
11. Glenwood Road
12. Iowa Avenue

East 7th Street, Kalispell Avenue to Columbia Avenue, was deleted, Director Wilson said, because its ranking was intended to coordinate with MDTs construction of a new bridge across the Whitefish River at 7th Street; which project is uncertain at this point, reducing the short term need to rebuild that block. Councilor Anderson, council representative on the RTMC, said he talked to the Committee about keeping the one block of East 7th on the list, if it is down at # 7 or 8, it is still several years down. Discussion followed.

Councilor Frandsen made a motion, second by Councilor Anderson, to approve the Resort Tax Street Reconstruction Priority List as recommended by the RTMC with the addition of the one block of East 7th Street as #8 and following Denver, and moving the remainder of the list down one number. The motion passed unanimously.

b) Consideration of Amendment #1 to design engineering contract with WGM Group for the water improvements project (p. 79)

Director Wilson explained that Amendment #1 to the 2013 consultant agreement with WGM Engineering for the 2014 Water Infrastructure Improvements Project provides a variety of final design and construction management services for the Columbia Avenue Bridge Water Main Replacement, the Central Avenue Water Main Replacement and the Hwy 93 N to Lion Mountain Loop Water Main Extension projects. Following some discussion City Manager Stearns reminded the Council of discussions during this fiscal year's budget sessions regarding needed improved pavement on lower Central Avenue, especially between 3rd and 4th streets; and he wondered if that could be included with this amendment, but using Tax Increment Funding for that portion not related to the water main project. Director Wilson said he hesitated to add it at this point; he would prefer to go forward as recommended tonight, and keep that in mind to reconsider when the Central Avenue Water Main project is further along with design and check into extra paving at that time. So, in six weeks to two months, they could possibly have another amendment for Council to consider, or come back to the Council with a report that it could be added without an amendment.

Councilor Feury made a motion, second by Councilor Anderson, to approve Amendment #1 to the consultant agreement with WGM Engineering for the 2014 Water Infrastructure Improvements Project in the amount of $74,215. The motion passed unanimously.

c) Consideration of approving construction contract for River Lakes Force Main wastewater project (p. 83)

Director Wilson said this project was anticipated and sufficient funds were approved in the FY 2015 Wastewater Fund budget. Following the required publication of the project six (6) bids came in which were reviewed by staff who recommend awarding the project to the lowest bidder; Pilot West Corporation from Bonners Ferry, Idaho. The results of the bid opening are posted in the packet on page 85.

Councilor Anderson made a motion, second by Councilor Feury, to award a construction contract for the River Lakes Force Main Project to Pilot West Corporation of Bonners Ferry, Idaho, in the amount of $201,044. The motion passed unanimously.

9) COMMUNICATIONS FROM CITY MANAGER (CD 56:01)

a) Written report enclosed with the packet. Questions from Mayor or Council? (p.87) –

Mayor Muhlfeld asked Interim Fire Chief Page if BNSF had contacted our Fire Department when they held a local training exercise last week, an internal boom deployment exercise. Chief Page said yes, we had representatives there from each shift, and it went really well. Mayor Muhlfeld requested that he and the rest of the Council be notified of upcoming additional training, he thought some would like to come and observe.

b) Other items arising between October 15th and October 20th – None.

c) Resolution No. 14-52; A Resolution adopting the Flathead County Pre-Disaster Mitigation Plan – 2014 Update (p. 104)

City Manager Stearns' staff report included information that Federal law, the Disaster Mitigation Act of 2000 and the subsequent federal regulations mandated mitigation planning requirements for state and local governments. Interim Fire Chief Joe Page was the City's representative on this process of updating the 2009 Pre-Disaster mitigation Plan in conjunction with the Flathead County Office of Emergency Services. In case of a local disaster, and for possible reimbursement from FEMA, an updated and current plan is required. Mayor Muhlfeld thanked Interim Fire Chief Page for his efforts.

Councilor Feury made a motion, second by Councilor Hildner, to approve Resolution No. 14-52; A Resolution adopting the Flathead County Pre-Disaster Mitigation Plan – 2014 Update. The motion pass unanimously.

10) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS (CD 59:43)

a) Letter from Murray Avenue residents asking to close Murray Avenue through to Veterans' Peace Park (p. 318)

Director Wilson stated the key issue was probably Emergency Services; but for his department; for garbage pickup and street maintenance, he didn't think it was in the best public interest to close the road. The Mayor asked Gail Shay Linne, 106 Murray Avenue, to return to the podium and speak again to the Council regarding this issue. Following discussion the Council requested staff conduct further review of this request and bring more information and a recommendation back for Council's consideration.

b) Letter from Christine Bernat regarding future City Hall (p. 319)

Christine Bernat's letter said she was submitting one last time a request that the original city hall building not be demolished in order to build a new city hall building on the same site. Councilor Anderson stated he thought the issue was structural, based on a couple reports we have received based on structural shortcomings; he asked Manager Stearns if he had any of those details from those reports. Manager Stearns said he has spoken to Christine Bernat in the past regarding her request; he could repeat a part of that information tonight from memory as he didn't have any of those reports with him. There are several problems. The Montana Department of Transportation has requested the ability for a greater turning radius for northbound traffic from Hwy 93 on East 2nd Street; and their current design of that rebuild brings the road up to the corner of the current building and doing away with any room for a sidewalk. Another reason, the building is not structurally sound to be earthquake-proof; which would have to be brought up to standards during any remodel of an old structure. An internal steel structure would be required to accomplish that which would be very expensive. This building was constructed in 1917; there are water leaks in the walls, poor or no insulation so it is cold in the winter and hot in the summer, and it is energy inefficient. The city recently hired an asbestos inspector who checked out every nook and cranny of the three buildings that make up this complex and came back with the statement "you folks need a new building." Manager Stearns said he thought the building could not be moved, nor could it be reused with an attached parking structure. The westerly brick building is almost 100 years old, but it is probably in better condition than either of the two buildings to the east of it. These buildings have been extensively studied and it has been decided that it is not a viable option to try to save any of it; and so a considerable investment has been made going forward with a new design. Mayor Muhlfeld thanked Manager Stearns and asked Council if there were further comments; there

were none. Christine Bernat asked to comment and Mayor Muhlfeld said her position is stated in her letter included in the packet.

c) Appointments to Committees not made during Special Session prior to tonight's meeting

All appointments had been made during the Special Session.

OTHER COUNCIL COMMENTS:

Councilor Frandsen said she agreed with the suggestion from Ben Cavin that Public Comment during work sessions be moved up on the agenda. Mayor Muhlfeld said that had been done in the past and asked City Attorney VanBuskirk to advise. Attorney VanBuskirk agreed, the Constitution requires that we make public participation possible and moving it up might enhance public participation.

Mayor Muhlfeld acknowledged Joe Gregory for his generous contribution to Whitefish Legacy Partners and earmarked for the Beaver Lakes Initiative. Mr. Gregory has donated $200,000 towards the $488,000 needed to close that initiative by yearend. On behalf of the City of Whitefish, Mayor Muhlfeld thanked Joe Gregory for his amazing contribution. In addition, this afternoon the Whitefish Community Foundation donated $100,000 to the Beaver Lakes Initiative at an event out at the Lion Mountain Trailhead, leaving only $188,000 necessary to raise by yearend; so the Mayor thanked both Joe Gregory and the Whitefish Community Foundation for their contributions.

Mayor Muhlfeld asked and Planning and Building Director Taylor said he would be attending the County's planning meetings on October 29th and 30th and would bring back updates from those sessions.

Councilor Sweeney said he agreed it was important to have city representatives to those Planning meetings, but also important that the public attends as well; residents of both in the city and out of the city, to give feedback to the County Commissioners – let them know what options they support. The public participation is important.

11. ADJOURNMENT (Resolution 08-10 establishes 11:00 p.m. as end of meeting unless extended to 11:30 by majority) (CD 1:21:36)

Mayor Muhlfeld adjourned the meeting at 8:32 p.m.

_____
Mayor John M. Muhlfeld

Attest:

_____
Necile Lorang, Whitefish City Clerk

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

October 28, 2014

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

RE: Bonsai Brewery Project llc, 549 Wisconsin Avenue; (WCUP 14-05)

Honorable Mayor and Council:

Summary of Requested Action: Graham Hart on behalf of Bonsai Brewery Project llc is proposing to operate a microbrewery and tasting room in an existing building at 549 Wisconsin Avenue. The property is currently developed with an existing building and is zoned WB-1 (Limited Business District). The Whitefish Growth Policy designates this property as "Neighborhood Commercial".

Planning & Building Department Recommendation: Staff recommended approval of the above referenced conditional use permit with ten (10) conditions set forth in the attached staff report.

Public Hearing: The applicant spoke at the public hearing on October 16, 2014 and no one else spoke. The draft minutes for this item are attached as part of this packet.

Planning Board Action: The Whitefish Planning Board met on October 16, 2014 and considered the request. Following the hearing, the Planning Board unanimously recommended approval of the above referenced conditional use permit with ten (10) conditions as contained in the staff report and adopted the staff report as findings of fact.

The Planning Board amended condition #2 to include 'no parking' signage along all of Denver Street, on both sides, between Wisconsin Avenue and Colorado Avenue. The condition is recommended to read as follows:

2. All existing and proposed parking shall be paved. No gravel parking shall be permitted. No parking shall be permitted within the Denver Street right-of-way. No parking shall be permitted within the Denver Street right-of-way between Wisconsin Avenue and Colorado Avenue on both sides of the streets. (§11-6)

UPDATE: A couple of issues came up during the hearing requiring follow-up from staff; these included Denver Street reconstruction and no parking signage.

The Planning Board members asked where Denver Street falls on the priority list of road reconstruction projects. The City Council updated this list at the October 20, 2014 meeting; Denver Street, between Wisconsin Avenue and Texas Avenue, is priority #7. The Public Works Department anticipates the project would be in 9-10 years.

View of Denver Street looking east from Wisconsin Avenue

View of Denver Street looking west from Colorado Avenue

After the addition of the 'no parking' recommendation as an amendment to condition #2 to require signage on both sides of Denver Street between Wisconsin and Colorado Avenues, staff followed-up with staff in other department to see if they had any questions or concerns with the recommended condition. The power to add 'no parking' along city rights-of-way rests solely with the Council under §6-2-4A. In the past, the Council has adopted a resolution along with a map identifying the area for 'no parking' and included an opportunity for public comment for those directly affected by the

proposal. Once the Council adopts a resolution for 'no parking', the Public Works Department is directed to install signage. This condition would require the applicant to request the Council's designation – the applicant would not be able to simply add no parking signage on Denver Street.

While Denver Street does not meet all the current city standards and will not be reconstructed within the next 10 years, Fire, Police and Public Works Departments did not see signing the entire street as necessary. None of the departments have had any access problems on Denver Street. On the north side of Denver Street, there are two single family homes, a vacant single family lot, two 4-plexes and one professional office. It appears the day to day parking needs are being met off-street. To the south of Denver, there is considerable vacant land, an empty office building and the subject building. It appears the day to day parking for this side of the street is also being met off-street.

The purpose of a Conditional Use Permit (CUP) is to assign conditions to the subject property for the particular use. It is uncommon to require an applicant to make off-site improvements in order to obtain a CUP. Staff would recommend the last sentence of condition #2 be struck and the original wording for the condition be approved with a minor amendment. As suggested by staff, the applicant could simply place a sign on his building to meet the condition. It will be in the applicant's interest to self-monitor their parking, as it is a condition of their approval.

If there is an interest or concern on behalf of the Council with on-street parking on Denver Street, this could be addressed in a different forum following the standard 'no parking' protocols identified in §6-2-4A.

Proposed Motion (Planning Board Recommendation):

- I move to approve WCUP 14-05 along with the Findings of Fact in the staff report and the amended ten conditions of approval, as recommended by the Whitefish Planning Board.

Alternative Motion (Staff Recommendation):

- I move to approve WCUP 14-05 along with the Findings of Fact in the staff report and ten conditions of approval, as recommended by the Whitefish Planning Board striking the last sentence in Condition #2. This condition will now read: "All existing and proposed parking shall be paved. No gravel parking shall be permitted. No parking shall be permitted within the Denver Street right-of-way <u>adjacent to the applicant's property</u>."

This item has been placed on the agenda for your regularly scheduled meeting on November 3, 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
Draft Minutes of 10-16-14 Planning Board Meeting

Exhibits from 10-16-14 Staff Packet

1. Staff Report – WCUP 14-05, 10-9-14
2. Adjacent Landowner Notice, 9-26-14
3. Advisory Agency Notice, 9-26-14
4. Email, Courtney Feldt, 10-1-14
5. Email, Phil Mac, 10-1-14
6. Email, Laurel Grady, 10-4-14
7. Email, Brendan Friel, 10-6-14
8. Email, Chad and Becca Corah, 10-6-14

The following were submitted by the applicant:

9. Application for Conditional Use Permit, 9-4-14

c: w/att Necile Lorang, City Clerk

c: w/o att Graham Hart, PO Box 1558 Whitefish, MT 59937

Exhibit A
Bonsai Brewery Project llc
WCUP 14-05
Whitefish Planning Board
Recommended Conditions of Approval
October 16, 2014

1. The project shall be in compliance with the plan submitted on September 4, 2014, except as amended by these conditions. Any significant deviation from the plans shall require approval.

2. All existing and proposed parking shall be paved. No gravel parking shall be permitted. No parking shall be permitted within the Denver Street right-of-way. <u>No parking shall be permitted within the Denver Street right-of-way between Wisconsin Avenue and Colorado Avenue on both sides of the streets.</u> (§11-6)

3. If any new impervious surface is created that exceeds 5,000 square feet, an engineered stormwater plan shall be submitted for review and approval to the Public Works Department. (Whitefish Engineering Standards, Section 5)

4. Water service may need to be upgraded to accommodate proposed use. Proposed flow requirements need to be evaluated. All wastewater discharges must be in compliance with all the rules and regulations of the wastewater utility per the Public Works Department. (Whitefish Engineering Standards, Section 3, 4)

5. Necessary business licenses, sign permits and a fence permit shall be obtained. (§3-1, §11-5-7, §11-3-11)

6. The existing building will need a professional design. This design shall be reviewed and approved by the Building Department.

7. The Fire Department requires the applicant to comply with all city fire codes for this classification of occupancy. (UFC)

8. All on-site lighting shall be dark sky compliant. (§11-3-25)

9. A landscaping plan that incorporates existing, healthy trees into the plan shall be reviewed and approved by the Planning Department prior to occupancy of the building. (§11-4)

10. The conditional use permit is valid for 18 months and shall terminate unless commencement of the authorized activity has begun. (§11-7-8)

DRAFT

WHITEFISH PLANNING BOARD
MINUTES OF MEETING
OCTOBER 16, 2014

CALL TO ORDER AND ROLL CALL

The regular meeting of the Whitefish Planning Board was called to order at 6:00 pm by Ken Stein. Board members present were Councilor Richard Hildner, Ken Meckel, Rebecca Norton, Melissa Picoli, and Ken Stein. John Ellis and Frank Sweeney were absent. Planning Director David Taylor, Senior Planner Wendy Compton-Ring and Planner II Bailey Minnich represented the Whitefish Planning and Building Department. Richard reminded attendees that he was substituting for Councilor Frank Sweeney who normally serves on the Whitefish Planning Board.

APPROVAL OF MINUTES

Richard moved and Ken M. seconded to approve the September 25, 2014, minutes. Motion passed unanimously.

PLANNING BOARD APPOINTMENTS

Following discussion, Ken S. moved and Rebecca seconded to select Ken M. as the Whitefish Planning Board Chair. Motion passed unanimously. Rebecca moved and Richard seconded to select Ken S. as the Vice Chair. Motion passed unanimously.

COMMUNICATIONS FROM THE PUBLIC (ITEMS NOT ON THE AGENDA)

None.

OLD BUSINESS

None.

BONSAI BREWING PROJECT, LLC, CONDITIONAL USE PERMIT REQUEST

Bonsai Brewing Project, LLC, is requesting a Conditional Use Permit to construct a microbrewery and tasting room. The proposed microbrewery would be located at 549 Wisconsin Avenue, and can be legally described as Lot 1AA, Denver Gardens in S25 T31N, R22W.

STAFF REPORT WCUP 14-05 (Compton-Ring)

Senior Planner Compton-Ring reviewed her staff report and findings.

Staff recommended adoption of the findings of fact within staff report WCUP 14-05 and that the Conditional Use Permit be recommended for **approval** to the Whitefish City Council subject to 10 Conditions of Approval.

Rebecca asked who checks landscaping and Wendy replied Planning staff reviews and approves it prior to occupancy. Richard asked about parking in the Denver Street right-of-way and about changing Condition 2 to say no parking on either side of Denver Street. He also asked staff if there is any plan to

rebuild Denver Street in the foreseeable future. He didn't think so and Wendy wasn't sure. Ken S. said not anytime soon as far as Resort Tax list goes.

APPLICANT / AGENCIES

Graham Hart from Bonsai Brewery, 123 Kalispell Avenue, said the Bonsai Brewery opened last year. Melissa asked about fences to prevent children from getting out on Wisconsin Avenue, a dog tie-up area, and a bike rack to encourage a family-friendly atmosphere. Graham said he would consider a fence and dog tie-up area. The Board asked about the smell during the brewing process because of the nearby Bed & Breakfast customers and other neighbors. Graham said the smell would be most obvious between the hours of 10 and 2, not early in the morning or late at night. Richard asked how they can monitor consumption of only 48 ounces per customer per day. Graham said they use the common practice of a consumption card system, which most breweries use, and patrons can only have three beers per day. The possibility of food service at the Brewery was discussed and Graham said they wouldn't be providing it in the near future, but were looking into the possibility of a food cart service. Richard said if the Brewery was encouraging pedestrian and bicycle transportation, how would people cross Wisconsin where the paths are located. Graham said they would do what they could, including adhering to the 48 ounce per day limit, but that people needed to monitor themselves. Ken S. suggested people could use Colorado Avenue. Rebecca told Graham she likes that the Brewery was started in Whitefish and questioned its anticipated growth. She asked about monitoring of the Brewery and Graham said all major changes must go through the state.

PUBLIC COMMENT

None.

MOTION

Rebecca moved and Ken S. seconded, to accept staff report WCUP 14-05, with 10 Conditions of Approval.

BOARD DISCUSSION

Richard made a motion to add Condition No. 11 requiring Denver Street between Wisconsin Avenue and Colorado Avenue be posted no parking on both sides. Rebecca seconded. Wendy will check with the Public Works and Police Departments regarding parking and bring their responses to the City Council meeting on November 3. Ken M. suggested Condition No. 2 be modified instead of adding a Condition. Richard agreed and suggested that Condition No. 2 be modified to read: *All existing and proposed parking shall be paved. No gravel parking shall be permitted. No parking shall be permitted within the Denver*

Street right-of-way between Wisconsin Avenue and Colorado Avenue on both sides of the streets. (§11-6)

Ken M. called for the question to vote on the amendment. Melissa, Ken M., and Richard were in favor; Rebecca and Ken S. opposed.

Melissa raised the possibility of requiring fencing to be solid to not allow a child to get through onto neighboring streets. Ken S. asked about highway fencing requirements and Wendy wasn't sure. Wendy suggested wording for an additional Condition as follows: *A fence shall be installed that conforms to the City's standards with openings not to exceed 4".* Graham asked why he should be required to install that type of fencing when other businesses weren't. He felt it would be a hardship as it would cost several thousand dollars. Ken M. said each situation is looked at separately and the Planning Board wasn't trying to create a hardship. Melissa decided not to make a motion, but both she and Rebecca asked Graham to be mindful of safety during his planning.

Ken S. called for the question on the motion stating he trusts Graham will make the Brewery safe, which is in his best interest. Rebecca seconded.

VOTE

The motion, with the amendment to Condition No. 2, passed unanimously. The matter is scheduled to go before the Council on November 3, 2014.

MONTANA DEVELOPMENT GROUP PLANNED UNIT DEVELOPMENT OVERLAY AND ZONE CHANGE

Montana Development Group is requesting a Planned Unit Development overlay and Zone Change in order to develop a 60-unit apartment project. The project is addressed at 6348 Highway 93 South and can be legally described as Lot 2, Dear Tracs Subdivision and a Portion of Tract 1 of COS 10669 in S1 T30N R22W.

STAFF REPORT WPUD 14-04/WZC 14-08 (Compton-Ring)

Planner Compton-Ring reviewed her staff report and findings. She noted that nine additional comment letters had been received since the packets were mailed out and she furnished copies to Board members.

Staff recommended adoption of the findings of fact within staff report WPUD 14-04 and that the Planned Unit Development for the Deer Track Residences be recommended for **approval** to the Whitefish City Council, and that the deviations to the zoning be granted, subject to 16 Conditions of Approval. Staff also recommended adoption of the findings of fact within staff report

BONSAI BREWERY PROJECT LLC
CONDITIONAL USE PERMIT
WCUP 14-05
October 9, 2014

This is a report to the Whitefish Planning Board and the Whitefish City Council regarding a request for a conditional use permit to operate a microbrewery and tasting room. This application has been scheduled before the Whitefish Planning Board for a public hearing on Thursday, **October 16, 2014**. A recommendation will be forwarded to the City Council for a subsequent public hearing and final action on Monday, **November 3, 2014**.

PROJECT SCOPE

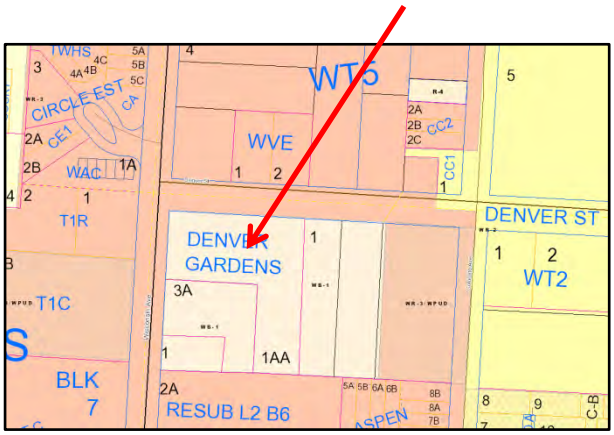
Graham Hart on behalf of Bonsai Brewery Project llc is proposing to operate a microbrewery and tasting room in an existing building at 549 Wisconsin Avenue. The applicant is proposing to use the existing parking area for the building and install a fenced exterior serving area along the front of the building. Deliveries will be made along Denver Street and refuse will also be located along Denver Street.

The brewery and tap room will operate under State Liquor Board requirements which limits hours of operation to 10 am to 8 pm daily, and they can only serve each customer a maximum of 48 ounces of beer per day. The focus will be on selling craft beer in the tap room. The applicant stated that he may sell a few kegs to local businesses, but has no current plans for bottling or greater distribution. While this brewery is technically a nano-brewery, our code does not differentiate between a nano-brewery and a micro-brewery, so the same requirements apply.

A. OWNER:

Graham Hart
Bonsai Brewery Project llc
PO Box 1558
Whitefish, MT 59937

B. SIZE AND LOCATION OF PROPERTY:



The project is located on a portion of Tract 1AA in an existing building. The property owner is in the process of completing a Boundary Line Adjustment. The project will be located on the front 194' of Tract 1AA and the new parcel will be 0.63 acres (27,443 square feet). The project is addressed as 549 Wisconsin Avenue and will be legally described as An Amended Plat of Lot 1AA Denver Gardens, Lot 1 S25 T31N R22W, P.M.M., Flathead County, Montana.

C. EXISTING LAND USE:

The subject property is currently developed with an older house that has been used for commercial purposes for the years including a professional office and a restaurant.

D. ADJACENT LAND USES AND ZONING:

North:	Professional office	WR-3
West:	Restaurant	WR-3
South:	Bed & Breakfast	WB-1
East:	Vacant	WB-1

E. ZONING DISTRICT:

The property is zoned WB-1 (Limited Business District). The purpose of the WB-1 District 'for limited commercial uses within or adjacent to residential district to meet certain convenience services catering to the daily needs of those residents living within one mile of the district.'

F. WHITEFISH CITY-COUNTY GROWTH POLICY DESIGNATION:

The Growth Policy designation is Neighborhood Commercial which corresponds to the WB-1 zoning district.

> "Neighborhood commercial is usually defined as commercial uses that mainly draw clientele from a smaller, sub-community area. Uses include convenience stores, personal services such as a barber shop or salon, and

agency offices such as a branch bank, real estate, or insurance. The purpose of neighborhood commercial is usually for the convenience of residents of nearby neighborhoods as well as passers-by. They tend to be pedestrian oriented, shorten vehicle trips, and generate far more non-motorized trips than general commercial, which is more often auto oriented."

G. UTILITIES:

Sewer:	City of Whitefish
Water:	City of Whitefish
Solid Waste:	North Valley Refuse
Electric:	Flathead Electric Co-op
Natural Gas:	Northwestern Energy
Phone:	CenturyLink
Police:	City of Whitefish
Fire:	Whitefish Fire Department

H. PUBLIC COMMENTS:

A notice was mailed to adjacent land owners within 150-feet of the subject parcel on September 26, 2014. A notice was emailed to advisory agencies on September 26, 2014. A notice of the public hearing was published in the *Whitefish Pilot* on October 1, 2014. As of the writing of this report, five letters in support of the request have been received. These are attached.

REVIEW AND FINDINGS OF FACT

This application is evaluated based on the "criteria required for consideration of a Conditional Use Permit," per Section 11-7-8(J) of the Whitefish Zoning Regulations.

1. Growth Policy Compliance:

Finding 1: The proposed use complies with Growth Policy Designation of Neighborhood Commercial because it is zoned WB-1 (Limited Business District) and the proposed use is consistent with the WB-1 zone.

2. Compliance with regulations. The proposal is consistent with the purpose, intent, and applicable provisions of these regulations.

The property is zoned WB-1 which conditionally permits microbreweries located on parcels with frontage on arterials. There are no proposed changes to the footprint of the building. The existing building is quite close to Denver Street on the side. Any proposed changes to the building will require full compliance with the zoning regulations. In addition, any exterior modifications will require compliance with the Architectural Design standards.

The applicant is proposing an exterior fenced seating area. The zoning standards limit fences to 48-inches bounding the front yard and up to 6½-feet along the sides and rear of the property. In addition, the city has a 'clear vision' standard to keep intersections clear. As part of the required Fence Permit city staff will verify these standards are being met.

Finding 2: The project complies with the zoning regulations because all the zoning standards are being met or will be met with conditions of approval.

3. Site Suitability. The site must be suitable for the proposed use or development, including:

Adequate usable land area: The subject parcel is over a ½ acre in size. There is adequate land area for the project.

Access that meets the standards set forth in these regulations, including emergency access: The existing access of Denver Street will remain. Suitable emergency access can be made from both Wisconsin Avenue and Denver Street.

Absence of environmental constraints that would render the site inappropriate for the proposed use or development, including, but not necessarily limited to floodplains, slope, wetlands, riparian buffers/setbacks, or geological hazards: The proposed development is not located within the 100-year floodplain nor within an area mapped for high groundwater. There are no water bodies within 200-feet the project.

Finding 3: Project is suitable for the site because there is adequate usable land area, access standards are met and there are no environmental constraints.

4. Quality and Functionality. The site plan for the proposed use or development has effectively dealt with the following design issues as applicable.

Parking locations and layout: The building is approximately 1,352 square feet, according to state of Montana CAMA data. This would require 14 parking spaces (1 space per 100 square feet of floor area). The proposed parking shown on the site plan is adequate and meets the City's zoning requirements.

Traffic Circulation: As mentioned previously in the report, the applicant is not changing the traffic circulation patterns of the parking area. Traffic will continue to access off Denver Street. Then vehicles will have the option to either utilize Wisconsin Avenue or Colorado Avenue.

Open space: The site plan has adequate open space.

Fencing/Screening: As described previously in this report, the applicant is proposing an exterior seating area in front of the building that will be enclosed by a

fence. The city's fencing standards will apply and will be confirmed at the time of Fence Permit issuance.

No other fencing or screening is proposed with this project.

Landscaping: There is a well-landscaped area to the west and south of the existing building. According to the application, this landscaping will be maintained. The landscaping regulations require landscaping to be brought up to current standards with a change in occupancy (§11-4-2A). Staff will review the existing landscaping to ensure it is meeting the city standards.

Signage: Staff has not seen any proposed signage. All new signage is required to obtain a permit from the Planning & Building office.

Undergrounding of new and existing utilities: The existing overhead utilities along Wisconsin Avenue cannot be underground.

Finding 4: The quality and functionality of the proposed development has effectively dealt with the site design issues because there is adequate parking, circulation and open space. A landscaping plan will be required to accompany the building plan and existing healthy trees should be incorporated into this plan.

5. Availability and Adequacy of Public Services and Facilities.

Sewer: Sewer is in place and adequate to service the project.

Water: Water services are currently available on site.

Storm Water Drainage: An engineered stormwater plan will be required to be reviewed and approved by the City Public Works Department, if any new impervious surface exceeds 5,000 square feet.

Fire Protection: The Whitefish Fire Department serves the site and response times and access are good. The proposed use is not expected to have significant impacts upon fire services.

Police: The City of Whitefish serves the site; response times and access are adequate. The proposed use is not expected to have significant impacts upon police services.

Streets: The project is accessed off of Denver Street. This is a paved street without curb, gutter or sidewalk. The project will utilize an existing driveway off Denver Street. No street improvements are proposed or required.

Finding 5: Municipal water and sewer are available. Response times for police and fire are not anticipated to be affected due to the proposed development. The property has adequate access to a city street, but there are no frontage improvements along Denver Street.

6. Neighborhood/Community Impact:

Traffic Generation: The existing streets should be able to handle any additional traffic.

Noise or Vibration: The proposal does have an exterior seating area that, according to the application, may occasionally have live music. The application also includes hours of operation from 10AM to 8PM – well within the requirements of the city noise ordinance. No vibration is anticipated to be generated from the proposed use. There could be temporary noises or vibrations associated with the tenant improvements, but these are not anticipated to be permanent impacts.

Dust, Smoke, Glare, or Heat: No impact is anticipated beyond what would be expected from a typical commercial use.

Smoke, Fumes, Gas, and Odor: No impact is anticipated with regards to smoke, fumes or gas. Breweries emit a slight odor of roasting cereal grain.

Hours of Operation: The hours of operation will be from 10AM to 8PM.

Finding 6: The proposed development is not anticipated to have a negative neighborhood impact. Negative impacts on noise, dust, smoke, odor or other environmental nuisances are not expected. All outdoor lighting is required to meet city standards.

7. Neighborhood/Community Compatibility:

The neighborhood is a combination of commercial and residential uses (single family and multi-family uses). The structural bulk and massing, density and scale of the project will not be changed from the current configuration. Any exterior

changes to the structure will require Architectural Review approval to ensure neighborhood compatibility. No changes are proposed at this time.

Finding 7: The project is compatible with the existing uses in the neighborhood because there are no proposed changes to the building, it fits within the context of the neighborhood and community character.

RECOMMENDATION

It is recommended that the Whitefish Planning Board adopt the findings of fact within staff report WCUP 14-05 and that this conditional use permit be recommended for **approval** to the Whitefish City Council subject to the following conditions:

1. The project shall be in compliance with the plan submitted on September 4, 2014, except as amended by these conditions. Any significant deviation from the plans shall require approval.

2. All existing and proposed parking shall be paved. No gravel parking shall be permitted. No parking shall be permitted within the Denver Street right-of-way. (§11-6)

3. If any new impervious surface is created that exceeds 5,000 square feet, an engineered stormwater plan shall be submitted for review and approval to the Public Works Department. (Whitefish Engineering Standards, Section 5)

4. Water service may need to be upgraded to accommodate proposed use. Proposed flow requirements need to be evaluated. All wastewater discharges must be in compliance with all the rules and regulations of the wastewater utility per the Public Works Department. (Whitefish Engineering Standards, Section 3, 4)

5. Necessary business licenses, sign permits and a fence permit shall be obtained. (§3-1, §11-5-7, §11-3-11)

6. The existing building will need a professional design. This design shall be reviewed and approved by the Building Department.

7. The Fire Department requires the applicant to comply with all city fire codes for this classification of occupancy. (UFC)

8. All on-site lighting shall be dark sky compliant. (§11-3-25)

9. A landscaping plan that incorporates existing, healthy trees into the plan shall be reviewed and approved by the Planning Department prior to occupancy of the building. (§11-4)

10. The conditional use permit is valid for 18 months and shall terminate unless commencement of the authorized activity has begun. (§11-7-8)

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

Public Notice of Proposed Land Use Action

The City of Whitefish would like to inform you that Bonsai Brewing Project llc is requesting a Conditional Use Permit in order to develop a microbrewery. The property is developed with commercial buildings and is zoned WB-1 (Limited Commercial District). The property is located at 549 Wisconsin Avenue and can be legally described as Tract 1AA, Denver Gardens in S25 T31N R22W.

You are welcome to provide comments on the project. Comments can be in written or email format. The Whitefish Planning Board will hold a public hearing for the proposed project request on:

Thursday, October 16, 2014
6:00 p.m.
Whitefish City Council Chambers, City Hall
402 E. Second Street, Whitefish MT 59937

The Whitefish Planning Board will make a recommendation to the City Council, who will then hold a public hearing and take final action on Monday, November 3, 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, October 6, 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.

PLEASE SHARE THIS NOTICE WITH YOUR NEIGHBORS

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

Date: September 26, 2014

To: Advisory Agencies & Interested Parties

From: Whitefish Planning & Building Department

The regular meeting of the Whitefish Planning Board will be held on Thursday, October 16, 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 these items 1, 2 on Monday, November 3, 2014 and items 3-8 on Monday, November 17, 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. A request by the Montana Development Group for a Planned Unit Development overlay and Zone Change in order to develop a 60-unit apartment project. The project is addressed at 6348 Highway 93 S and can be legally described as Lot 2, Dear Tracs subdivision and a Portion of Tract 1 of COS 10669 in S1 T30N R22W. (WPUD 14-04/WZC 14-08) Compton-Ring

2. A request by Bonsai Brewing Project llc for a Conditional Use Permit in order to operate a microbrewery. The project is addressed at 549 Wisconsin Avenue and can be legally described as Lot 1AA, Denver Gardens in S25 T31N R22W. (WCUP 14-05) Compton-Ring

3. A request by the City of Whitefish for a Zone Change on parcels recently annexed into City limits. The properties are developed with residential uses. The subject properties are located at 1722 and 1726 W. Lakeshore Drive and can be legally described as lots 18A, 19 & ABDRD-19 of Lake Park Addition Subdivision in Section 26, Township 31N, Range 22W. (WZC 14-02) Minnich

4. A request by the City of Whitefish for a Zone Change on parcels recently annexed into City limits. The properties are developed with residential uses. The subject properties are located at 2492, 2494, 2496, and 2498 E. Lakeshore Drive and can be legally described as lots 20, 21, 22, and 23 of Whitefish Lake Summer Homes Add1 Amd Subdivision in Section 14, Township 31N, Range 22W. (WZC 14-04) Minnich

5. A request by the City of Whitefish for a Zone Change on parcels recently annexed into City limits. The properties are developed with residential uses. The subject properties are located at 2520, 2522, and 2524 E. Lakeshore Drive and can be legally described as lots 7, 8, and 9 of Whitefish Lake

Summer Homes Add1 Amd Subdivision in Section 14, Township 31N, Range 22W. (WZC 14-05) Minnich

6. A request by the City of Whitefish for a Zone Change on parcels recently annexed into City limits. The properties are developed with residential uses. The subject properties are located at 2530 and 2532 E. Lakeshore Drive and can be legally described as lots 3 and 4 of Whitefish Lake Summer Homes Add1 Amd Subdivision in Section 14, Township 31N, Range 22W. (WZC 14-06) Minnich

7. A request by the City of Whitefish for a Zone Change on parcels recently annexed into City limits. The property is developed with residential uses. The subject property is located at 2405 Carver Bay Road and can be legally described as lot 3 of Whitefish Lake Summer Homes Amd L19 and 20 Subdivision in Section 14, Township 31N, Range 22W. (WZC 14-07) Minnich

8. A request by the City of Whitefish to amend §11-2A-3 WA Agricultural District, Conditional Uses, adding heliports and helipads. (WZTA 14-04) Taylor

Documents pertaining to these agenda items are 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 these proposals, phone 406-863-2410.

Wendy Compton-Ring

From: Wendy Compton-Ring <wcompton-ring@cityofwhitefish.org>
Sent: Friday, September 26, 2014 10:28 AM
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); Dan Graves (dgraves@skiwhitefish.com); Dennis Oliver (doliver@mt.gov); 'Eric Smith (eric.smith@northwestern.com)'; Gary Engman (gengman@mt.gov); Gary Krueger (gkrueger@flathead.mt.gov); Ginger Kauffman (gingerk@flatheadcd.org); Greg Acton; 'James Freyholtz (jfreyholtz@mt.gov)'; 'Joe Page' (jpage@cityofwhitefish.org); 'John Wilson'; 'Judy Williams (juwilliams@mt.gov)'; Karen Reeves; Karin Hilding (khilding@cityofwhitefish.org); '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)'; Mayre Flowers (flowers@digisys.net); Mayre Flowers (mayre@flatheadcitizens.org); North Valley Refuse (nvr@centurytel.net); 'Pamela Holmquist (pholmquist@flathead.mt.gov)'; 'Patti V (pattiv@flathead.mt.gov)'; 'Pris, Jeremy'; 'Randy Reynolds'; 'Rita Hanson (for Whitefish Water & Sewer District)'; Sherri Baccaro; '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'; William Reed (william.reed@bnsf.com)
Cc: David Taylor; Bailey Minnich (bminnich@cityofwhitefish.org)
Subject: October Whitefish Planning Board.
Attachments: 10-2014_PB meeting.pdf

Attached please find the notice for the October Whitefish Planning Board meeting.

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

Wendy Compton-Ring

From: Courtney Feldt <courtfeldt@gmail.com>
Sent: Wednesday, October 01, 2014 8:52 AM
To: wcompton-ring@cityofwhitefish.org
Subject: Support for Bonsai

I am writing in support of Bonsai Brewery applying for a conditional use permit to establish a microbrewery in Wisconsin Avenue corridor in Whitefish. As a long time resident I am very excited to see small businesses move into our neighborhood, especially one like Bonsai, that has a great local, friendly atmosphere with a great product.
Thanks,
Courtney Feldt
Iowa Avenue
Whitefish

Wendy Compton-Ring

From: Phil Mac <pmac007@gmail.com>
Sent: Wednesday, October 01, 2014 9:48 AM
To: wcompton-ring@cityofwhitefish.org
Subject: Brewery

That would be wonderful.

Pmac

Wendy Compton-Ring

From: Laurel <laurelgrady@hotmail.com>
Sent: Saturday, October 04, 2014 12:51 PM
To: wcompton-ring@cityofwhitefish.org
Subject: Bonsai Brewing Project

DATE: October 4, 2014
TO: Whitefish Planning Board
FROM: Laurel Grady
RE: Bonsai Brewing Project Conditional Use Permit

This email is in support of a Conditional Use Permit for Bonsai Brewing Project for their proposed new location. I am a neighbor of the site where the brewery wants to develop and would welcome a thriving business at that location. I am in favor of supporting local Montana small businesses. The City of Whitefish should support Wisconsin Avenue as a light commercial corridor of businesses that fit into the character of the neighborhood and provide residents that live north of the viaduct with options for dining, shopping and enjoying local craft brew. I feel the Brewery would be a good fit at the proposed site and in the neighborhood. Not every business wants to be, nor should be, located downtown and the City should develop limited, appropriate business zones in other neighborhoods. Thank you for listening.

Laurel Grady
476 Aspen Court
Whitefish, MT

Wendy Compton-Ring

From: brendan friel <worldbfriel@hotmail.com>
Sent: Monday, October 06, 2014 1:46 PM
To: wcompton-ring@cityofwhitefish.org
Subject: Bonsai Brewery

To whom it may concern,

I am just writing to you to show my support for the special use permit for Bonsai Brewery! I live on this side of the viaduct and would welcome this establishment to the neighborhood.

Thank you for your time and consideration with this matter!
Brendan Friel.

Wendy Compton-Ring

From: Chad and Becca Corah <corah@montanasky.us>
Sent: Monday, October 06, 2014 4:06 PM
To: wcompton-ring@cityofwhitefish.org
Subject: community support

Hi,

We are extremely excited about the possibility of Bonsai Brewing moving to the old site or Rising Sun Bistro. As we travel around the West with often search out small breweries to visit. I feel they provide a good sense of community, and hope that Bonsai will be able to relocate to this new location.

Chad and Becca Corah

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: _____

CONDITIONAL USE PERMIT

FEE ATTACHED $ 1,980
(See current fee schedule)

INSTRUCTIONS:

☐ A Site Review Meeting with city staff is required. Date of Site Review Meeting: 8/4/14

☐ 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 at 6:00PM in the Council Chambers at 402 E 2nd Street.

☐ 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 Name: Bonsai Brewing Project LLC
Project Address: 549 Wisconsin Ave
Assessor's Tract No.(s) To Be Surveyed Lot No(s) _____
Block # _____ Subdivision Name _____
Section 25 Township 31 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.

Owner's Signature[1] _____ Date 9/4/14

Graham Hart
Print Name

Applicant's Signature _____ Date _____

Print Name _____

Representative's Signature _____ Date _____

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

Revised 12-31-13

APPLICATION CONTENTS:

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

____ Conditional Use Permit Application – **11 copies**

____ Written description how the project meets the criteria in Section D – **11 copies**

____ Site Plan – **11 copies** The site plan, drawn to scale, which shows in detail your proposed use, your property lines, existing and proposed buildings, traffic circulation, driveways, parking, landscaping, fencing, signage, and any unusual topographic *features such as slopes, drainage, ridges, etc.*

____ Reduced copy of the site plan not to exceed 11" x 17" – **1 copy**

____ Where new buildings or additions are proposed, building sketches and elevations shall be submitted.

____ Electronic version of entire application such as .pdf

____ Certified adjacent owners list for properties within 150-feet of subject site – **1 copy**

____ Any other additional information requested during the pre-application process

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.

B. OWNER(S) OF RECORD:

Name: Graham Hart Phone: 406 253 0116

Mailing Address: PO Box 1558

City, State, Zip: Whitefish, MT 59937

Email: bonsaibrew@gmail.com

APPLICANT (if different than above):

Name: _____ Phone: _____

Mailing Address: _____

City, State, Zip: _____

Email: _____

TECHNICAL/PROFESSIONAL:

Name: _____ Phone: _____

Mailing Address: _____

City, State, Zip: _____

Email: _____

C. DESCRIBE PROPOSED USE: See Attached Pages

ZONING DISTRICT: WB-1

Proposed Use

I intend to lease and use the building, yard, and parking lot at 549 Wisconsin Avenue to operate my nanobrewery. A "nano" brewery is an extremely small version of a microbrewery, that produces less than 1,000 US Barrels (31,000 gallons) of beer per year. This business model is focused on taproom sales and not distribution. The location will house a brewing facility, taproom, and outdoor serving area. Bonsai Brewing Project is fully licensed and has been operational for 9 months now, we have been forced to move from our current location in the Mountain Mall.

Findings

1. Whitefish City-County Growth Policy

Bonsai Brewing Project is dedicated to the community of Whitefish and the potential that this area has for producing a good experience. My goal for this company is to reflect localized economy values and self sustainability as a motto for future success in the Flathead Valley. All spent grains from the brewing process will be fed to local livestock and the fixtures in the taproom will be constructed of recycled materials. I would also like to put some attention into increasing bike traffic and connecting the city bike community in general, to promote bike transportation.
Montana breweries are gaining acclaim in the country, and we currently host the third most breweries per capita in the US. The success and dedication of the Great Northern Brewery show that Whitefish is a good fit and has room for another brewery. I intend to take a different direction and focus on my taproom sales, distribution will be minimal and I don't plan on canning or bottling soon. I am focused on creating a good environment and great product for patrons to enjoy, a representation of our lifestyle in Whitefish, Montana. This location will be a great addition to the growing corridor to Big Mountain and will help to build the experience that the North side of the tracks has to offer.

2. Consistency with Provisions of the Regulations

The location sits in a WB-1 zone, which allows microbreweries to operate with a conditional use permit. I intend to operate lawfully under all city, state, and federal laws.

3. Location Suitability

This location is well suited for my business to operate lawfully and responsibility. There is ample parking and outdoor space for deliveries and increased traffic. The entrance is located off of Wisconsin and will allow traffic to flow better through that corridor when customers enter/exit our parking lot. The location sits

alongside Denver Ave and is easily accessed by emergency vehicles. There are no environmentally sensitive areas affected nearby.

4. Design Issues

A. The parking lot is located behind/East of the buildings, and is accessed from Denver Ave. The parking lot will feature 14 painted line spaces up front with 1 legal handicap spot.

B. The parking lot is well designed for traffic circulation with 2 entrances from Denver Avenue, off of the main traffic on Wisconsin Ave.

C. There is adequate open space around the building for an outdoor serving area in the front yard. There is a large garden directly south of the building that will remain and be tended to. On the North side, the building is located about 12 feet off the roadside and will allow for deliveries to happen without disrupting traffic or blocking off the parking lot.

D. There is a large outdoor serving area that will be fenced and gated. The fence will enclose the serving area completely and will be primarily accessed from inside the brewery. There will be a gate up front for foot and bike traffic to enter this area, and then the front door of the brewery, without needing to walk around the building.

E. The existing landscaping will remain as it is and will be well kempt. There is a large flower garden adjacent to the building, an open grass yard, and several large trees. Mostly perennial flowers and some small decorative trees and rock features are used there now.

F. There is a location for a roadside sign along Wisconsin Ave. It currently has been a "Ford Homes" sign for a couple years. I will abide by all signage laws and design something tasteful and appropriate.

G. No new utilities are needed.

H. No underground rerouting of utilities is needed.

5. Public Services and Facilities

A. The building is connected to municipal sewer service and will have adequate floor drains for the proposed use. All organic solids and dense wastewater material will be collected and recycled for livestock feed and/or compost.

B. The space is connected to municipal water service and has adequate supply and pressure for the proposed use. The forecasted water usage per year average for the first three years of open business is between 150,000-250,000 gallons.

C. Storm water drainage is grade maintained. The parking lot is graded to direct flow away from the yard and building.

D. There is sufficient access for the fire department as the building is located on the side of Denver Avenue

E. The building will be monitored for security 24 hours daily, with 3 or more cameras. Staff will be present from 8 am to 10 pm daily. There is sufficient access for the police department off the side of Denver Avenue.

F. The Building is located on Wisconsin Avenue and is accessible to all public.

G. There are no parks located adjacent to the location.

H. Sidewalks are adequate and well maintained along Wisconsin Avenue.

I. There is adequate access all along Wisconsin Avenue from downtown to the City Beach and Big Mountain Road for bikes and pedestrians via sidewalks and bike paths.

6. Impact on Neighborhoods

A. The increase of traffic to this area of Wisconsin Avenue will be fairly insignificant to the surrounding neighborhood.

B. Very little disturbance will reach the surrounding areas. There will be some aromas of hot cereal grains, and occasionally some low level music playing outside. This will all be confined to the noise ordinance and the brewery must stop serving at 8 pm, so traffic will disperse by 9 pm. I am confident that this small impact will go unnoticed or be unoffensive to the neighbors.

7. Hours of Operation

Hours of operation will be confined to between 10 am and 8 pm, and I can only serve 48 ounces of beer per customer per day, subject to Montana brewery laws.

8. Compatibility with Neighbors and Community

A. The Bonsai Brewing Project is a very small brewery that is designed to provide a high quality product to a local customer base.

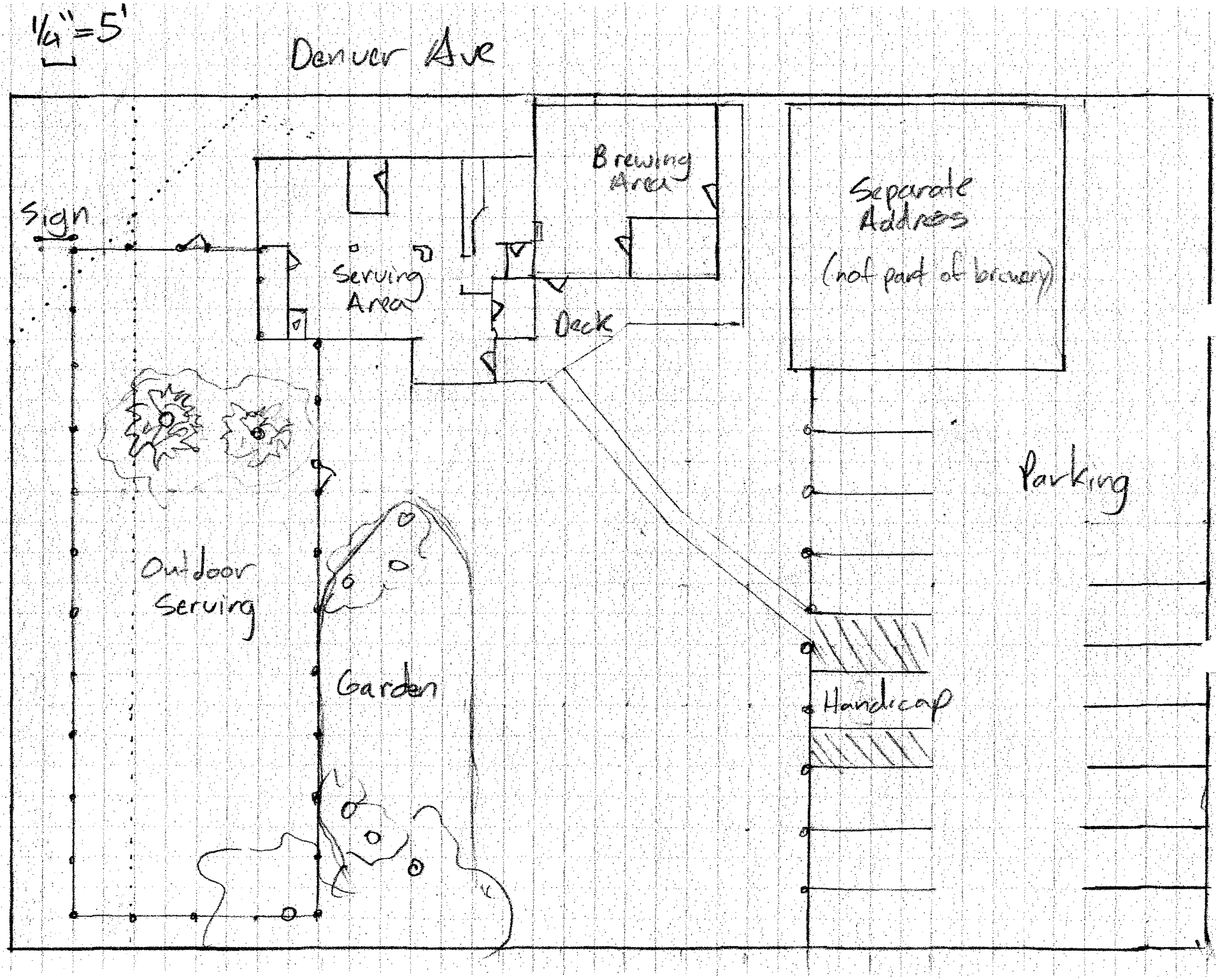
B. The small size of this business makes it an easy fit into our community. The

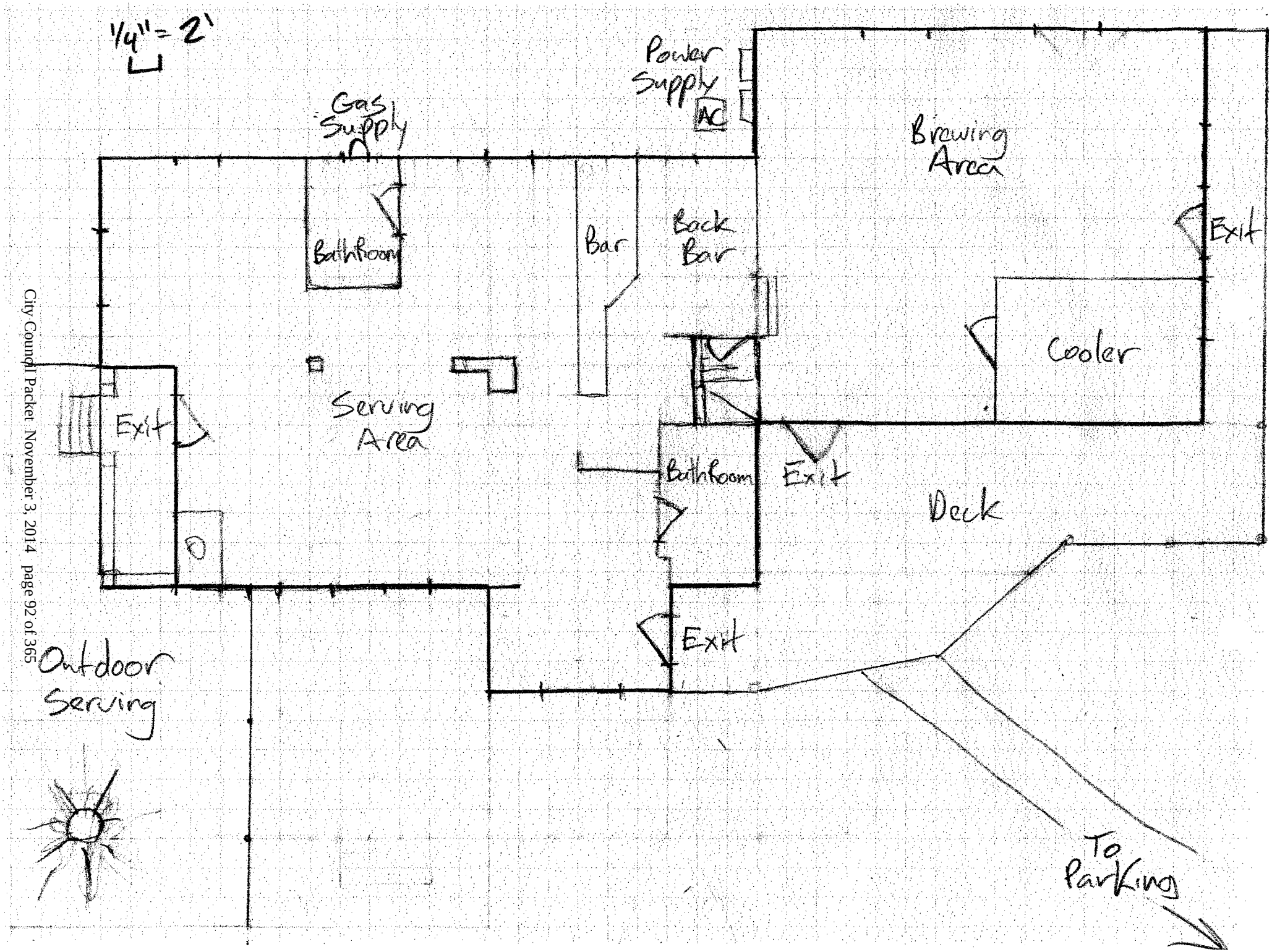
Great Northern Brewing Company is the only other brewery in town and is a much larger company that packages their products for distribution. I am confident that neither of us will impact the other in any negative way.

C. There is a large residential area surrounding this location. There are several commercial areas in this corridor but it does not have many restaurants and no "pub like" businesses. The surrounding businesses and residential areas could benefit from my brewery and I could also gain customers from them.

D. The population of the Flathead Valley can easily support a brewery of this size.

E. This business will have a focus on sustainable practices. I am going to construct the bar, stools, and tables of recycled materials acquired from the area, and incorporate natural elements into the designs. The intent of this size of brewery is to entice people to buy local goods and to contain those goods in reusable containers, which cuts down on energy use and waste produced from packaging. All organic waste matter from the brewing process will be saved to feed livestock or be used for compost. To me, this type of lifestyle epitomizes what it means to be a Montanan, and my goal is to reflect that attitude on to my customers.


1/4" = 5'
Denver Ave
Sign
Brewing Area
Serving Area
Deck
Separate Address
(not part of brewery)
Parking
Outdoor Serving
Garden
Handicap


1/4" = 2'
Power Supply
AC
Gas Supply
Brewing Area
Exit
Bathroom
Bar
Back Bar
Cooler
Serving Area
Exit
Bathroom
Exit
Deck
Exit
Outdoor Serving
To Parking

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ORDINANCE NO. 14-___

An Ordinance of the City Council of the City of Whitefish, Montana, rezoning approximately 1.050 acres of land to become a part of 6348 Highway 93 South, Section 1, Township 30 North, Range 22 West, Whitefish, Montana, from County R-2 (One Family Limited Residential) and B-2 (General Business) to City WLR (One-Family Limited Residential District) and WB-2 (Secondary Business District) and adopting Findings with respect to such rezone.

WHEREAS, Jeff Badelt and Sean Averill of Montana Development Group (Applicant), applied to the City of Whitefish for a rezone with respect to property owned by HDH Holdings, LLC, to become a part of 6348 Highway 93 South, and legally described as Tract 3ABM-100 in Section 1, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana; and

WHEREAS, in response to the application for a rezone, the Whitefish Planning & Building staff prepared Staff Report WZC 14-08, dated October 9, 2014, which analyzed the proposed rezone and recommended in favor of its approval; and

WHEREAS, at a lawfully noticed public hearing on October 16, 2014, the Whitefish Planning Board received an oral report from Planning staff, reviewed Staff Report WZC 14-08, received public comment, and thereafter voted unanimously to recommend in favor of the proposed zone change; and

WHEREAS, at a lawfully noticed public hearing on November 3, 2014, the Whitefish City Council received an oral report from Planning staff, reviewed Staff Report WZC 14-08, and invited public comment; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to approve the proposed rezone; and

WHEREAS, the proposed rezone meets zoning procedure and the criteria and guidelines for the proposed rezone required by MCA §§76-2-303 through 76-2-305 and WCC §11-7-12.

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 WZC 14-08 dated October 9, 2014, together with the October 28, 2014 letter of transmittal from the Whitefish Planning & Building Department, are hereby adopted as Findings of Fact.

Section 3: The real property to become a part of 6348 Highway 93 South, and legally described as Tract 3ABM-100 in Section 1, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana, previously zoned County R-2 (One Family Limited Residential) and B-2 (General Business) is hereby rezoned to City WLR (One-Family Limited Residential District) and WB-2 (Secondary Business District).

Section 4: The official Zoning Map of the City of Whitefish, Montana, be amended, altered and changed to provide that the rezone and zoning map amendment of the real property identified on the map attached hereto as Exhibit "A", and incorporated herein by reference, shall be designated City WLR (One-Family Limited Residential District) and WB-2 (Secondary Business District).

Section 5: The Zoning Administrator is instructed to change the City's official Zoning Map to conform to the terms of this Ordinance.

Section 6: 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 7: 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:

_____
Vanice Woodbeck, Assistant City Clerk

Rezone Area
Tract 3ABM-100
AKERS SUBDIVISION
DEAR
TRACS
SUB
PARK KNOLL LN
HWY
93
7CCA
7CC
7CE
7C
7CDA
7CD
7CBA
7CB
3ABC
3ABCB
3ABM
3ABL
3ABO
3ABN
3ABNA
3ABE
3ABB
3AA
1BDB
1BCA
1BC
1BB
1BE
3E

ORDINANCE NO. 14-___

An Ordinance of the City Council of the City of Whitefish, Montana, approving the Whitefish Crossing fka Deer Tracks Residences Planning Unit Development to develop a 60-unit apartment project on one parcel comprising approximately 4.493 acres of land to become a part of 6348 Highway 93 South, Whitefish.

WHEREAS, Jeff Bradelt and Sean Averill of Montana Development Group (Applicant), applied to the Whitefish Planning & Building Department for a Planned Unit Development (PUD) overlay to develop 4.493 acres into a 60-unit apartment project in five buildings (12 units per building), on the real property to become a part of 6348 Highway 93 South, and described as Lot 2 of Dear Tracs Subdivision and Tract 3ABM-100 in Section 1, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana; and

WHEREAS, in response to such application for PUD, the Whitefish Planning & Building Department prepared Staff Report WPUD 14-04, dated October 9, 2014, which reviewed and analyzed the proposed PUD, deviations to the zoning standards regarding building height standards and on-site parking, and recommended the proposed PUD and deviations to zoning be approved, subject to 16 conditions of approval; and

WHEREAS, following adjacent landowner notice, at a lawfully noticed public hearing on October 16, 2014, the Whitefish Planning Board considered the proposed PUD and staff report, received public input, and thereafter recommended approval of the PUD, subject to 15 conditions of approval, as amended and attached as Exhibit "A"; and

WHEREAS, at a lawfully noticed public hearing on November 3, 2014, the Whitefish City Council received Staff Report WPUD 14-04 and an oral report from Planning Staff, received public input, discussed the staff report, proposed findings of fact, deviations to the zoning standards regarding building height standards and on-site parking, subject to 15 conditions of approval in favor of the PUD, the Planning Board's recommendation of approval of the PUD, the zoning deviations and amended conditions of approval, invited public comment, and thereafter voted to approve the Whitefish Crossing fka Deer Tracks Residences PUD, Staff Report WPUD 14-04, Findings of Fact and deviations to zoning, subject to the 15 conditions of approval, as amended, attached as Exhibit "A", and incorporated herein by reference; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to approve the PUD, Staff Report WPUD 14-04, and deviation to zoning, subject to the 15 conditions of approval, attached as Exhibit "A", and adopt the Findings of Fact.

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 the Whitefish Crossing (fka Deer Tracks Residences) Planned Unit Development, and zoning deviation, subject to 15 conditions of approval, shown on Exhibit "A", Staff Report WPUD 14-04, and adopts the Findings of Fact.

Section 3: The City Council hereby approves the requested Whitefish Crossing Planned Unit Development to overlay the real property identified as Lot 2 of Dear Tracs and Tract 3ABM-100 in Section 1, Township 30 North, Range 22 West, to develop 4.493 acres into a 60-unit apartment project, subject to the conditions of approval, shown on Exhibit "A".

Section 4: The official zoning map of the City of Whitefish, Montana, be amended, altered and changed to provide that the real property identified as Lot 2 of Dear Tracs and Tract 3ABM-100 in Section 1, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana, shall have a Planned Unit Development Overlay, which shall modify the requirements of the underlying WLR (One-Family Limited Residential District) and WB-2 (Secondary Business District) zones and shall be subject to all of the requirements shown on Exhibit "A".

Section 5: The Zoning Administrator is hereby authorized and directed to amend the official zoning map to conform to the terms of this Ordinance.

Section 6: 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 7: 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:

_____
Vanice Woodbeck, Assistant City Clerk

Exhibit "A"
WHITEFISH CROSSING
WPUD 14-04
Approved Zoning Deviation and
Conditions of Approval

Zoning Deviation:

- **Building Height Standards.** The Applicant has requested a maximum of 39' 6".

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. The site and building shall meet all Fire Department standards for hydrants, access and the building itself. (IFC) All buildings shall meet Fire Department standards include sprinkling, FDC, alarm panels and utility controls located in close proximity to each building. (IFC)

5. Prior to the first phase, a snow storage plan shall be submitted to the Public Works Department for review and approval. Such plan shall ensure storage does not impede emergency access and it is not located within storm water facilities. (Engineering Standards, Chapter 5)

6. 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)

7. Refuse disposal areas shall be reviewed and approved by the Public Works Department and North Valley Refuse. (Engineering Standards)

8. A new approach permit shall be obtained from Montana Department of Transportation. Road plans shall be submitted to MDT for review and approval – this shall also include the drainage plan. The southern entrance into the dry cleaner shall be eliminated. (Finding 8)

9. Architectural review and approval shall be obtained prior to submitting an application for a building permit. (§11-3-3B) Strict adherence to §6.6.2., variation to multiple multi-family buildings, shall be met.

10. Due to similarities to other project names, this project shall be assigned a new project name prior to any other submittals to the City.

11. A maximum of two (2) affordable apartments shall be designated per building for a total of six (6) apartments. Apartments shall have a variety of number of bedrooms and location to serve the greatest variety of clients. The Whitefish Housing Authority will manage the apartments to ensure long-term affordability. This management agreement shall be submitted to the Planning Department prior to submitting a building permit application within Phase 1.

~~12. A parking agreement for 20 parking spaces shall be entered into by the developer. Evidence of such agreement shall be submitted to the Planning Department prior to submitting a building permit application within Phase 1.~~

~~13.~~12. A 60-foot right-of-way in a location identified by the Public Works Director shall be installed and dedicated to the City of Whitefish prior to submitting a building permit application within Phase 1. The developer shall enter into an agreement for the maintenance and snow removal responsibilities until such time as the street is connected to the future Baker Avenue extension.

~~14.~~13. A paved temporary cul de sac shall be constructed at the western end of the new City right-of-way. This shall be kept clear of snow for emergency access.

~~15.~~14. Prior to submitting applications for building permits for each phase, a report showing how conditions of approval have been met for each phase shall be submitted to the Planning Department for review and approval and it shall include:

- Architectural Review approval for all buildings within the phase
- Location and design for secure bicycle parking for each building shall be reviewed and approved.
- Detailed landscaping plan and pedestrian connection plan
- Tree removal phasing – no tree removal shall occur in any phase until the tree removal plan is approved. All healthy long-term trees outside building envelopes, parking and vehicular access shall be retained.
- Review of approved open space plan.
- Infrastructure within each phase shall be fully capable of supporting the development within the phase. Roads shall meet the Fire Department emergency access requirements.
- Emergency access shall be approved for each building pursuant to the IFC. This includes physical access to within 150-feet of all corners of the building, FDC on each building, Knox box, no parking, and snow plowing.
- Infrastructure, including streets, water, sewer, hydrants and drainage, for each phase shall be installed and operational prior to the submittal of a building permit. Financial security for other infrastructure/improvements yet to be installed may be approved in order to obtain a building permit.
- All easements associated with the phase shall be recorded and submitted to the City.
- No more than two years shall lapse between phases.

~~16.~~15. This approval is valid for 3-years from the date of City Council approval. (§11-2S-9C)

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

October 28, 2014

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

RE: Whitefish Crossing (formerly known as Deer Tracks Residences), 6348 Highway 93 S; (WPUD 14-04/WZC 14-08)

Honorable Mayor and Council:

Summary of Requested Action: Jeff Badelt and Sean Averill on behalf of Montana Development Group are proposing to develop a 60-unit apartment complex at 6348 Highway 93 S and rezone a portion of the property recently annexed into the city. The property is partially developed with a dry cleaning business and a drive thru coffee kiosk and is zoned WB-2 (Secondary Business District) and WLR (One-Family Limited Residential District). The Whitefish Growth Policy designates this property as "General Commercial" and 'Suburban Commercial".

The portion of the property proposed for rezone has County R-2 and County B-2 and they are proposed to be rezoned back to what they were zoned before the County Interim Zoning to WB-2 (Secondary Business District) and WLR (One-Family Limited Residential District).

Planning & Building Department Recommendation: Staff recommended approval of the above referenced zone change and the planned unit development along with the two requested zoning deviations subject to 16 conditions set forth in the attached staff report.

Public Hearing: The applicant spoke at the hearing and seven members of the public spoke at the hearing. The public voiced the following concerns:

- Density of the project, especially in relation to the underlying zoning
- Location of the affordable housing
- A request by the neighbors for more time to review the project
- Request for fencing on the west side of the project to buffer the neighborhood from adjacent landowners
- Inappropriate location for high density residential
- Traffic – an increase in volume and lack of a safe means to make left-hand turns
- Lack of usable open space for the residents

- Light pollution
- Doesn't comply with the Growth Policy
- Support for affordable housing – major concern

A number of letters and emails have come in regarding this proposal. These should be carefully reviewed by the City Council. The draft minutes for this item are also attached as part of this packet.

Planning Board Action: The Whitefish Planning Board met on October 16, 2014 and considered the request. Following the hearing, the Planning Board unanimously recommended approval of the above referenced zone change and adopted the staff report as findings of fact. The Planning Board also unanimously recommended approval of the above-referenced planned unit development with 15 conditions as contained in the staff report and adopted the staff report as findings of fact. The Planning Board did not recommend approval of zoning deviation to reduce the overall off-street parking and recommended striking condition #12 that would enable the project to find additional off-street guest parking from adjacent landowners through a shared parking agreement.

Proposed Motions:

- I move to approve WZC 14-08 along with the Findings of Fact in the staff report, as recommended by the Whitefish Planning Board.

- I move to approve WPUD 14-04 along with the Findings of Fact in the staff report, the 15 conditions of approval and the request zoning deviation to building height to no more than 39-feet 6-inches, as recommended by the Whitefish Planning Board

This item has been placed on the agenda for your regularly scheduled meeting on November 3, 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
Draft Minutes of 10-16-14 Planning Board Meeting

Exhibits from 10-16-14 Staff Packet

1. Staff Report – WPUD 14-04, 10-9-14
2. Staff Report – WZC 14-08, 10-9-14
3. Adjacent Landowner Notice, 9-25-14
4. Advisory Agency Notice, 9-26-14

5. Email, James Freyholtz, Montana Department of Transportation, 10-2-14
6. Email, Robert James, 10-6-14
7. Letter, Donald Spivey, 10-6-14
8. Letter, Tom Tornow, 10-6-14
9. Letter, David Hunt, 10-7-14

The following were submitted by the applicant:

10. Applications for Planned Unit Development/Zoning Map Amendment, 9-9-14

The following items were submitted after the Planning Board packets went out:

11. Letter, Mark Voelker, 10-13-14
12. Letter, Kathy Grant, 10-13-14
13. Email, Ryan Swager, 10-14-14
14. Email, Pamela Shaw, 10-14-14
15. Email, Sara Mytty, 10-14-14
16. Email, Rebecca Kyle, 10-14-14
17. Email, Nikkee Day, 10-14-14
18. Email, Phyllis & Jack Quatman, 10-15-14
19. Letter, Robert Horne, Jr., 10-16-14
20. Memo, Tom Tornow, handed-out at the meeting, 10-16-14
21. Letter/Map, Don Spivey, handed-out at the meeting, 10-16-14
22. Email, Paula Johnson-Gilchrist, 10-16-14

c: w/att Necile Lorang, City Clerk

c: w/o att Jeff Badelt & Sean Averill, MT Development Group 1380 Wisconsin Ave Whitefish, MT 59937
Dear Tracs, PO Box 1442 Whitefish, MT 59937
HDH Holdings llc PO Box 961 Whitefish, MT 59937
Eric Mulcahy, Sands Surveying 2 Village Loop Kalispell, MT 59901
Brett Walcheck, 48 North 151 Business Center Loop Kalispell, MT 59901
TAO, pllc 499 Main Street Boise, ID 83702
White Cloud Design PO Box 67 Whitefish, MT 59937

Exhibit A
Whitefish Crossing
WPUD 14-04
Whitefish Planning Board
Recommended Conditions of Approval
October 16, 2014

The Planning Board recommended approval of the following requested zoning deviation:

- **Building Height Standards.** The applicants have requested a maximum of 39'6"

And 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. The site and building shall meet all Fire Department standards for hydrants, access and the building itself. (IFC) All buildings shall meet Fire Department standards include sprinklering, FDC, alarm panels and utility controls located in close proximity to each building. (IFC)

5. Prior to the first phase, a snow storage plan shall be submitted to the Public Works Department for review and approval. Such plan shall ensure storage does not impede emergency access and it is not located within storm water facilities. (Engineering Standards, Chapter 5)

6. 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)

7. Refuse disposal areas shall be reviewed and approved by the Public Works Department and North Valley Refuse. (Engineering Standards)

8. A new approach permit shall be obtained from Montana Department of Transportation. Road plans shall be submitted to MDT for review and approval – this shall also include the drainage plan. The southern entrance into the dry cleaner shall be eliminated. (Finding 8)

9. Architectural review and approval shall be obtained prior to submitting an application for a building permit. (§11-3-3B) Strict adherence to §6.6.2., variation to multiple multi-family buildings, shall be met.

10. Due to similarities to other project names, this project shall be assigned a new project name prior to any other submittals to the city.

11. A maximum of two (2) affordable apartments shall be designated per building for a total of six (6) apartments. Apartments shall have a variety of number of bedrooms and location to serve the greatest variety of clients. The Whitefish Housing Authority will manage the apartments to ensure long-term affordability. This management agreement shall be submitted to the Planning Department prior to submitting a building permit application within Phase 1.

~~12. A parking agreement for 20 parking spaces shall be entered into by the developer. Evidence of such agreement shall be submitted to the Planning Department prior to submitting a building permit application within Phase 1.~~

13. A 60-foot right-of-way in a location identified by the Public Works Director shall be installed and dedicated to the City of Whitefish prior to submitting a building permit application within Phase 1. The developer shall enter into an agreement for the maintenance and snow removal responsibilities until such time as the street is connected to the future Baker Avenue extension.

14. A paved temporary cul de sac shall be constructed at the western end of the new city right-of-way. This shall be kept clear of snow for emergency access.

15. Prior to submitting applications for building permits for each phase, a report showing how conditions of approval have been met for each phase shall be submitted to the Planning Department for review and approval and it shall include:
    - Architectural Review approval for all buildings within the phase
    - Location and design for secure bicycle parking for each building shall be reviewed and approved.
    - Detailed landscaping plan and pedestrian connection plan
    - Tree removal phasing – no tree removal shall occur in any phase until the tree removal plan is approved. All healthy long-term trees outside building envelopes, parking and vehicular access shall be retained.
    - Review of approved open space plan
    - Infrastructure within each phase shall be fully capable of supporting the development within the phase. Roads shall meet the Fire Department emergency access requirements.
    - Emergency access shall be approved for each building pursuant to the IFC. This includes physical access to within 150-feet of all corners of the building, FDC on each building, Knox box, no parking, and snow plowing.
    - Infrastructure, including streets, water, sewer, hydrants and drainage, for each phase shall be installed and operational prior to the submittal of a building permit. Financial security for other infrastructure/improvements yet to be installed may be approved in order to obtain a building permit.
    - All easements associated with the phase shall be recorded and submitted to the city.
    - No more than two years shall lapse between phases.

16. This approval is valid for 3-years from the date of City Council approval. (§11-2S-9C)

Street right-of-way between Wisconsin Avenue and Colorado Avenue on both sides of the streets. (§11-6)

Ken M. called for the question to vote on the amendment. Melissa, Ken M., and Richard were in favor; Rebecca and Ken S. opposed.

Melissa raised the possibility of requiring fencing to be solid to not allow a child to get through onto neighboring streets. Ken S. asked about highway fencing requirements and Wendy wasn't sure. Wendy suggested wording for an additional Condition as follows: *A fence shall be installed that conforms to the City's standards with openings not to exceed 4".* Graham asked why he should be required to install that type of fencing when other businesses weren't. He felt it would be a hardship as it would cost several thousand dollars. Ken M. said each situation is looked at separately and the Planning Board wasn't trying to create a hardship. Melissa decided not to make a motion, but both she and Rebecca asked Graham to be mindful of safety during his planning.

Ken S. called for the question on the motion stating he trusts Graham will make the Brewery safe, which is in his best interest. Rebecca seconded.

VOTE

The motion, with the amendment to Condition No. 2, passed unanimously. The matter is scheduled to go before the Council on November 3, 2014.

MONTANA DEVELOPMENT GROUP PLANNED UNIT DEVELOPMENT OVERLAY AND ZONE CHANGE

Montana Development Group is requesting a Planned Unit Development overlay and Zone Change in order to develop a 60-unit apartment project. The project is addressed at 6348 Highway 93 South and can be legally described as Lot 2, Dear Tracs Subdivision and a Portion of Tract 1 of COS 10669 in S1 T30N R22W.

STAFF REPORT WPUD 14-04/WZC 14-08 (Compton-Ring)

Planner Compton-Ring reviewed her staff report and findings. She noted that nine additional comment letters had been received since the packets were mailed out and she furnished copies to Board members.

Staff recommended adoption of the findings of fact within staff report WPUD 14-04 and that the Planned Unit Development for the Deer Track Residences be recommended for **approval** to the Whitefish City Council, and that the deviations to the zoning be granted, subject to 16 Conditions of Approval. Staff also recommended adoption of the findings of fact within staff report

WZC 14-08 and that the map amendment be recommended for **approval** to the Whitefish City Council.

Rebecca questioned where the extra 20 parking spots might come from in order to meet Condition No. 12. Wendy thought maybe from the nearby Pizza Hut, or the Organic Dry Cleaner business.

Richard asked about the ingress and egress on Highway 93 S and no traffic study required, does this and the Hampton Inn to the south create a cumulative effect? Wendy said no cumulative effect was talked about and each was addressed separately. Neither the city nor Montana Department of Transportation required the applicant to submit a Traffic Impact Study.

Rebecca wanted to know if the Planning Board could request a traffic study. Wendy said the applicant has done everything the City and MDT have asked them to do as far as providing information.

Ken S. said the applicant should be able to explain the plan. He asked about the continuation of Baker Avenue and Wendy said it will continue to be piecemeal and the Hampton Inn to the south will dedicate some right-of-way.

Rebecca asked if the parcel on Highway 93 S currently occupied by the dry cleaners and coffee hut had separate owners or were part of the project. Wendy said that would be covered in the applicant's presentation.

APPLICANT / AGENCIES

Sean Averill welcomed everyone and thanked them for their time. He gave a Power Point presentation on the project, which includes five 12-plex units and is now called Whitefish Crossing, rather than Deer Tracks Residences. His partner on the project is Jeff Badelt. He said Whitefish has a great need for housing. The Whitefish Housing Authority currently has a six-year waiting list, and it will be getting six affordable housing units in this project. A poll of Whitefish Property Management, The Landlord, Five Star Rental, and At Your Service rental agencies showed they all average 0% vacancy. Sean explained a lot of research had gone into choosing this site and these would be long-term versus seasonal rentals. He said this project includes providing a 60' east-west corridor for a public right-of-way between Highway 93 South and Baker Avenue, with sidewalks on both sides. He felt impacts to the neighborhood will be minimal, especially with the Hampton Inn going in to the south. The project proposed to combine WLR

and WB-2 zones, and excludes the front chunk of property currently occupied by the dry cleaners and coffee hut. The coffee hut will be where the new road will be constructed, so won't be staying. Their architect, TAO out of Boise, does apartments exclusively. Sean wanted to discuss two of the conditions, 1) requirement to extend the right-of-way to the edge of the Baker Avenue right-of-way as it would just involve cutting down a lot of trees; 2) the requirement to provide 20 additional parking spaces and 3) the requirement to plow and maintain the public right-of-way.

Rebecca asked how the stormwater draining system would work. Brent Foley, 48 North, civil engineers on the project, explained it involves conveyance systems to underground infiltration systems under parking area. Large chambers hold large volumes of water collect water and then direct it into soil more slowly in an out-of-the way area.

Rebecca asked about the 20 extra parking spaces and Sean said they could probably get them, but he didn't think they should have to provide more than the 120 they had planned since giving the east-west corridor, which would include 17 on-street parking spaces. Sean said he owns the parcel where the dry cleaners is located. They are a long-term tenant and hope to stay.

Richard referred to Condition No. 11 and asked how the units designated for affordable housing will be divided - 1, 2 or 3 bedroom units - as the staff report just says "a variety". He wanted to know if there would be deed restrictions for the six Whitefish Housing Authority units, and how we would ensure the six units wouldn't be put off until the end. Wendy referred him to the language of Condition No. 11 which states, "A maximum of two (2) affordable apartments shall be designated per building for a total of six (6) apartments." Sean said rates are set by HUD which the WHA administers and he will let Lori Collins pick based on their needs. Richard was concerned about the lack of adequate parking and how parking would be restricted for RVs and boats, etc. Sean said there are two spots per unit and tenants will need to be responsible for the parking of their two units. Rebecca asked if parking is covered and Sean said there are carport structures over each row of parking. Sean asked the City to reconsider Condition No. 14 regarding maintenance and snow removal on the public right-of-way being the responsibility of the developers until Baker goes in. Public Works doesn't want to have to maintain the street. Richard asked Sean if they had considered dropping the ground floor 4-1/2' underground to keep the buildings under the height

restriction. Sean said they could probably change the roof but it wouldn't be as interesting. Rebecca said some of the public comments she read are concerned about open space. Sean said there is a community area and green buffer and they think it is sufficient for an in-town living situation and is considerable for most apartment complexes.

PUBLIC COMMENT

Tom Tornow, attorney, 309 Wisconsin Avenue, was asked to speak on behalf of homeowners in the Park Knoll neighborhood, and read a prepared a memo. They agree affordable housing is needed, but according to the Whitefish City Code, density limits must be adhered to. WLR zone is limited to five units per acre or less. They asked where the affordable housing units will be located. They think one of the affordable housing units should be in WLR (western) zone, and that maybe there should be high density near Highway 93 South and the WLR zone could have fewer units. They units could be developed on the front part of the land currently occupied by the dry cleaners for high-density apartment units instead of keeping the cleaners there.

Don Spivey, 117 Park Knoll Lane, one of neighbors affected also spoke. He said Park Knoll subdivision currently has 16 lots and 13 houses. He and his neighbor were noticed by Planning staff, but both were out of town, so didn't see the notice until the final day of the comment period. He asked that the matter be delayed until the November meeting. Wendy said posting requirements were followed, but the Planning Board could decide to postpone.

Don read a prepared comment stating the Park Knoll homeowners want the zone change to be denied for several reasons. According to the staff report, there will be 14.7 units per acre, and not enough open space. He feels residents who rent versus own don't maintain their homes like owners, and that the wooded area will be used by apartment tenants for dog walking and other unsavory uses, and that fire and vandalism is of great concern. He also thinks providing 120 parking spaces when 140 are required is a real problem, and parking for visitors should be required to be within the apartment complex. They understand the attractiveness of the roof line, but want the height maximum to stay within the zoning regulations of 35'. They also felt a traffic study should be a requirement, and that the estimated increase in expected traffic should be closer to 600 trips per day instead of 366 mentioned in staff report. Don thinks if the City Council chooses to go forward with this proposal that there should be a fence required to separate this property from Park Knoll subdivision to cut down on vandalism

and fire possibilities.

Rebecca asked who owns the woods between the property for the proposed project and Park Knoll. He stated one gentleman is building a house on that property and is only allowed to build one home on the seven-acre parcel.

Judy Spivey, 117 Park Knoll, read a statement asking the Planning Board to recognize the property should be used for commercial or a motel and she felt the project does not fit criteria of continuity, consistency and thoughtful planning.

Karen Giesy, 121 Park Knoll Lane, representing herself and her husband, Roger Giesy. They supports the need for apartments in Whitefish but feel Highway 93 South has been developed as commercial and doesn't think a 60-unit apartment space is an appropriate use of this land. They feel there are too many people trying to get out on Highway 93 South and doesn't think it's safe for people trying to get their children to school or for teenage drivers. She said there are transients living in the wooded area and it becomes a place where fires are started and vandalism occurs. She said she is talking about Mr. Hamilton's property.

Jenny Connelly and husband John live at 105 Park Knoll Lane, and they already have a hard time getting out of the subdivision to get kids to school, etc., and they're worried about increased traffic. Also concerned about how much light pollution, and about the safety of kids playing so close to Highway 93 South. She thought maybe the old hospital site or the nearby abandoned trailer park might be a better option.

Chris Hyatt, on behalf of Whitefish Chamber, 307 Spokane, spoke in support of the project, with no disrespect to Park Knoll residents, as the need for affordable housing is one of most important issues in Whitefish.

David Hunt, 113 Park Knoll Lane, speaking for himself and his wife, Linda, agreed with comments by Tom Tornow and Don Spivey. They support the goals of the Growth Policy, but don't think this project moves us forward and that safety is too big of a factor. He also objected to the density and scale and felt high density to the front of property would be more acceptable. He definitely wants a traffic study if the project moves forward.

BOARD DISCUSSION

Melissa wanted it noted that she works for Mr. Averill at The Lodge at Whitefish Lake.

Ken M. asked Wendy to address the density of this project and

she said it is standard practice to allow for blending of densities through the PUD process

MOTION (WZC 14-08) Rebecca moved and Ken M. seconded to approve staff report WZC 14-08.

BOARD DISCUSSION Richard said the two need to go together and Wendy said the property was annexed recently so the zone change really needs to happen as a housekeeping issue. Rebecca thanked staff for their patience. Ken S. called for question on zone change.

VOTE The motion passed unanimously and the matter is scheduled for City Council on November 3, 2014.

MOTION (WPUD 14-04) Rebecca moved and Ken M. seconded to approve staff report WPUD 14-04 for the sake of discussion with the conditions outlined.

BOARD DISCUSSION Richard wondered if Melissa should recuse herself since she works for Mr. Averill. Melissa stated she would have no financial gain from approval or denial of this project, that she would not have recognized Mr. Averill by sight, and that thought she could act separately from her employment in regard to this project.

Richard thinks cumulative effects of increased traffic is worthy of study, especially for left-hand turns out of the development and the potential for traffic accidents. He said he would not be able to vote for approval of the project based on the number of parking spaces currently proposed, and thinks the requirement of 140 parking spaces should be met. He thought the height element to the extent possible should stay consistent with height regulations. He also suggested the developer pursue further the density issue in the entire development. He likes the affordable housing and deed restriction for that, but wants to know where affordable housing will be located. These issues would need to be fully satisfied to his satisfaction before he could support this project. He felt Bob Horne's comments are well received. Until these four items are fully flushed out, he would not forward this to Council as would be major considerations for Council.

Sean said he understood the parking issue and it could be changed. He said they could make the reduced height work, but it probably wouldn't look as nice. He said they have painstakingly looked around Whitefish and think this is a good place for this development. He doesn't think all homeowners feel the same as Don and that he doesn’t speak for all of them.

Brent addressed the traffic issues. Since this goes right into a MDT ROW, a traffic study is not required. They have spoken extensively with James Freyholtz, from the MDT and from a transportation engineering standpoint following a preliminary analysis, MDT decided not a concern. Brent said turning is an issue and human error is an issue. Ken S. asked what would be necessary before reducing the speed limit from 45 to 35 could be accomplished. Brent explained he didn't know exactly the conditions when MDT would re-evaluate speed limits. Ken S. asked who determines where stop lights go and whether there is a logical place for a traffic light. Brent said it was an excellent question for MDT. Rebecca asked if MDT requires payment from developers for their analysis and whether the City requests a study. Brent said no payment is required.

Rebecca said she spoke with Wendy and Mary VanBuskirk, about notice requirements, and even though we legally noticed the public, she doesn't know if adequate time was provided to review what is planned, since the packet wasn't available until last Thursday. She's in favor of the project with some changes, and supports affordable housing for everyday workers in Whitefish. She feels there are some problems with the location as we haven't had high density in this area. She would like the project to stick with the 35' height restriction. She didn't think the Hampton Inn should not have been granted a height variance, but they did. She thinks fire safety is a concern. She wanted to see a delay until the November meeting for time to see if we could get a MDT traffic study or someone to come in and help us evaluate. She felt there was enough concern from the neighbors for a delay, and thinks less density at the back end as a better buffer for the neighbors would be nice but didn't know how that would affect the developers' plans, price, etc.

Ken S. said he is less concerned about height than traffic, and that the height change adds character to the project.

Melissa said she is in favor of this project because she really feels this type of housing is needed, and knows people who need it. She suggested maybe the unsavory use of the woods behind the area could be because the area has an abandoned feel and that possibly it would be better if there were more people around. She suggested they put up dog cleanup stations. She's happy about the affordable housing, but even more excited about workforce housing.

Ken M. feels a delay might help especially if people aren't comfortable about the traffic situation.

Rebecca said the engineers are trying to do a good job following their manuals, but felt maybe we could try to get them to come out. Wendy said James Freyholtz, MDT, has already been very involved and is convinced they have done what they feel is necessary.

Eric Mulcahy said WB2 is the most intense zoning district we have and we could allow a grocery store or large business in that location that attracts a lot of volume of traffic. Because of the way this area in zoned, Highway 93 South was designed to accommodate large traffic volumes and is very adequate to handle the amount of increased traffic from this project. Regarding setting speed limits, they do a speed study and look at what rates people are driving and throw out the highest 15% and lowest 15% and reach an average. He is the planner for Polson and Columbia Falls and this summer had a project in Polson for Walgreens generating 1,000 more trips a day and that didn't warrant a traffic study from MDT.

Ken M. felt traffic study wouldn't be resolved in a month so feels shouldn't delay for that reason.

Ken S. called for the question.

Richard asked for a friendly amendment and wanted *"...designated per building for a total of six (6) apartments"* portion of Condition No. 11 to be clarified. Following discussion and explanation by Wendy, Richard was satisfied with the way it was written. He wanted to add a deed restriction to this property and Wendy thought that might be a good suggestion. Ken S. wondered what would happen if there was no one who needed an affordable housing unit. Sean thought the management agreement with the Whitefish Housing Authority would do the same thing. Wendy said she did run Condition No. 11 by Lori Collins of the Housing Authority and Lori was happy with it. Lori is out of town tonight, but will be at the Council meeting on November 3rd to address questions. Richard made a motion to strike Condition No. 12, which would essentially mean that City standards apply to parking. Rebecca seconded. Motion passed unanimously.

Ken M. called for question on the PUD.

VOTE

The motion, with the removal of Condition No. 12, passed unanimously with roll-call vote, and the matter is scheduled for City Council on November 3, 2014.

ZONE CHANGE ON

Request by the City of Whitefish for a Zone Change on parcels

DEER TRACK RESIDENCES
STAFF REPORT
PLANNED UNIT DEVELOPMENT; WPUD 14-04
OCTOBER 9, 2014

A report to the Whitefish Planning Board and the Whitefish City Council regarding a request by Jeff Badelt and Sean Averill of Montana Development Group for a Planned Unit Development (PUD) to develop a 60-unit apartment project. A public hearing is scheduled before the Whitefish Planning Board on October 16, 2014 and a subsequent hearing is set before the City Council on November 3, 2014.

I. PROJECT SCOPE

The applicant is proposing a Planned Unit Development overlay in order to develop a 60-unit apartment project. The applicant is proposing five buildings with 12-units per building. The density of the project is 14.7 dwelling units per acre. The applicant is proposing to utilize the density bonus, as permitted in the PUD chapter, in order to obtain the number of units requested. The buildings will be located to the west of the Organic Dry Cleaner business which will remain. Access to the buildings will be off a newly constructed east-west city right-of-way. This new road will intersect with Highway 93 S on the east and the future Baker Avenue extension on the west. Each building will have a parking lot.

As part of the PUD, exceptional landscaping will be required and a minimum of 30% open space needs to be provided. As part of the open space, a club house, garden and tot lot will be available for all the residents.

The new road will be built to meet city standards – including curb, gutter, sidewalks, street trees and street lightings. The eastern intersection of the new road with Highway 93 S will have separate lanes for right and left-hand turn lanes. The road will terminate on the west in a suitable temporary cul de sac until the connection with the future Baker Avenue extension can be made. The applicant is also proposing on-street parking on the north side of this new right-of-way.

The dry cleaner currently has two driveway accesses onto Highway 93 S. Montana Department of Transportation has requested the southern driveway be removed so the dry cleaner will access only off the new city road. There are no other proposed changes to the Highway 93 S frontage.

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

- **Building Height Standards.** The maximum building height in the WB-2 and the WLR zoning districts is 35-feet. The applicants are requesting 39'6" in order to have a 4:12 roof pitch.
- **On-site parking.** The Off-Street Parking regulations require 2.33 parking spaces per residential unit. This standard would require a total of 140 parking spaces. The applicant is proposing 120 parking spaces which equates to 2 parking spaces per unit. They point to having smaller units with less bedrooms as justification for this deviation.

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

- 10% affordable housing units (six units)
- Implementation of the 2007 Whitefish Transportation Plan through the dedication of a 60-foot right-of-way connection between the future Baker Avenue extension and Highway 93 S.

A. Applicant:

Jeff Badelt & Sean Averill
Montana Development Group
1380 Wisconsin Avenue
Whitefish, MT 59937

Owners:

Dear Tracs llc
PO Box 1442
Whitefish, MT 59937

HDH Holdings llc
PO Box 961
Whitefish, MT 59937

Technical Assistance:

Sands Surveying
2 Village Loop
Kalispell, MT 59901

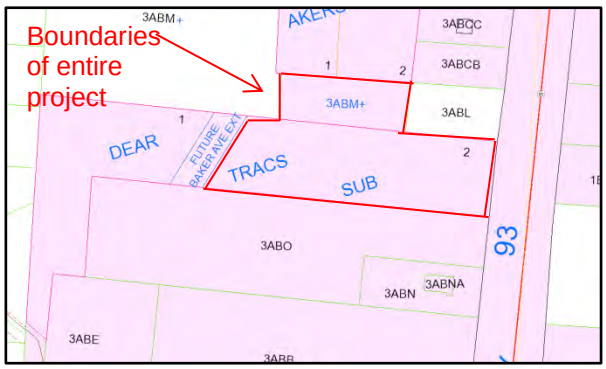
48 North PC
151 Business Center Loop
Kalispell, MT 59901

TAO, pllc
499 Main Street
Boise, ID 83702

White Cloud Design
PO Box 67
Whitefish, MT 59937

B. Location:

The subject project is located at 6348 Highway 93 S and can be legally described as Lot 2 of Dear Tracs Subdivision and a Portion of Tract 1 of COS 10669 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 Organic Dry Cleaners and a drive thru espresso stand. The Organic Dry Cleaner is not a part of this project nor part of the PUD calculations (density, open space parking, etc.). The eastern portion of the tract is zoned WB-2 (Secondary Business District) and the western portion 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:	commercial	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 September 26, 2014. A notice was mailed to advisory agencies on September 26, 2014. A notice was published in the *Whitefish Pilot* on October 1, 2014. As of the writing of this report, staff has received four letters with concerns about the project. These letters are attached for review. Concerns included:

- Neighbor noticing
- Density

- Change in neighborhood character – especially in light of recently approved projects
- Lack of open space amenities
- Access onto Highway 93 S
- Request the Planning Board public hearing be postponed to allow for more neighborhood review
- Traffic safety
- Portion of the application that includes rezoning to city designations

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 WLR and WB-2 are being met with this application, with the exception of the requested deviations.

The WLR (One-Family Limited Residential District) Purpose and Intent:

> Intended for residential purposes to provide for single-family homes in a low-density setting, connected to municipal utilities and services.

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. There are no environmentally sensitive areas according to the city maps. 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 storm water facilities. There are a number of trees to the west that should be evaluated for incorporation into the landscaping. The city's landscaping standards give credit for retaining trees.

Finding 2: Staff finds the 'preserve and/or enhance environmentally sensitive areas of the site' criterion is not applicable to this project.

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, 33% of the entire property is devoted to open space areas that include: landscaping, a club house with a workout facility and BBQ area, a tot lot and a community garden area. 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. The buildings are setback 175-feet or more from Highway 93 S and range in setback from approximately 15 to 20-feet from the new city right-of-way.

Finding 4: The project is providing usable open space because the project a club house that includes a workout facility and a BBQ area, a tot lot and a community garden. The project has 33% open space, which exceeds the 30% PUD requirement.

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 an 80-foot right-of-way dedication for the future Baker Avenue extension. On the other side of the 80-foot right-of-way, to the west is a single family neighborhood. The area to the west is heavily wooded, which is part of the neighborhood's character. Long-term healthy trees should be incorporated into the design of the project.

This project is required to obtain Architectural Review prior to submitting any building permit. The multi-family standards require developments with more than one multi-family structure adhere to the 'visual variety' standard. The intent of this standard is to avoid visual monotony while encouraging a high quality design theme. The standards go on to describe the various elements that could be used and the standard the Committee will use to ensure the standard is met.

The applicant is requesting the building height deviation in order to design a 4:12 pitched roof. By adding interest to the roof of the building, it will have a more pleasing architecture. These buildings will be among the tallest in this neighborhood. Earlier this year, the Council approved the Hampton Inn to the

south to exceed the building height – they proposed a building that is mostly 31-feet with varying roof elements no taller than 42-feet.

Finding 5: The project is preserving and protecting the character and qualities of the neighborhood because it is not located immediately adjacent to single family residential, it will retain healthy long-term trees, the building will be placed over 100-feet from the front property line and by proposing a 4:12 roof pitch. Further review by the Architectural Review Committee, including the multiple multi-family standard, 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/residential property because it is served by all public services and facilities.

F. Provide effective buffers or transition between potentially incompatible uses of land. The proposal is a permitted use in the WB-2 and WLR with a PUD overlay. It is adjacent to other permitted uses or undeveloped land. 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 residential uses are located; however, an 80-foot right-of-way is in between this project and the single family zoning and neighborhood.

Finding 7: The applicant is not proposing an incompatible use where an effective buffer or transition is needed because there are no immediately adjacent incompatible uses.

G. Facilitate street continuity and connectivity, and attractive high quality streetscapes. The Baker Avenue Extension project is on 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 proposed east-west connector with the Baker Avenue extension is an important part of developing the grid system in Whitefish. The right-of-way will be dedicated prior to submitting a building permit application for the first building. The street will have an attractive streetscape as the street will include a street trees, sidewalks and street lights. The submitted plan shows considerable landscaping between the street extension and the buildings.

The Public Works Department is not requiring a Traffic Impact Study (TIS) with this project, as Highway 93 S, a state right-of-way, is the only access and is built to full-capacity. It is expected total daily traffic would be 366 trips per day.

Montana Department of Transportation (MDT) did not require a TIS either. MDT is requiring a new approach permit and they would like to review the plans for the new road – including the drainage plans. They suggest the new road have two lanes – one for left-hand turns and one for right-hand turns. Finally, MDT requested the southern entrance into the dry cleaner be eliminated.

Finding 8: An attractive, high quality streetscape is being developed because landscaping will be installed along the right-of-way; along with street trees and street lights. 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 that would connect Highway 93 S and the future Baker Avenue extension at some point in the future.

H. <u>Provide pedestrian and bicycle facilities and encourage transportation alternatives.</u> The applicant is proposing to install new sidewalks on both sides of the new street that will connect to the existing sidewalk system along Highway 93

S. There are also sidewalks within the development that connect to the sidewalks on the new street and to the open space amenities.

The final design of the new east-west connector will be determined through review with the Public Works Department and will meet all city standards. The plan, as shown, does not include any bike lanes. Staff will recommend the inclusion of bike racks to further this goal.

Finding 9: The project is providing pedestrian facilities to encourage transportation alternatives because sidewalks are being installed and a condition requiring bicycle facilities will be incuded.

I. Provide affordable housing. The applicant is taking advantage of the density bonus; therefore, is required to provide 10% affordable housing. The applicant is proposing to provide six (6) units at an affordable rate. The applicant intends to work with the Whitefish Housing Authority to manage the units for long-term affordability.

Finding 10: The applicant is providing affordable housing because they are setting aside 10% of the project (six units) to be managed by the Whitefish Housing Authority for long-term affordability.

J. Provide a variety of residential product type while avoiding a monotonous and institutional appearance. This project is only providing one residential product type (apartments) within the development; however, they are providing 1-3 bedroom units within the complex. The applicant will be required to obtain Architectural Review approval and one of the standards is to ensure that multiple multi-family structures do not look the same. There are many suggested opportunities to ensure variety of the buildings within the Architectural Review standards.

Finding 11: Staff finds the applicant will 'avoid a monotonous and institutional appearance' will be met through review by the Architectural Review Committee because of the multiple multi-family standards. However, the applicant is only proposing one residential product type.

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.

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."

Housing – Goal 1: "Ensure an adequate supply and variety of housing product types and densities, at affordable prices, to meet the needs of Whitefish's existing and future workforce, and for senior citizens."

Housing – Goal 2: "Maintain a social and economic diversity of Whitefish through affordable housing programs that keep citizens and members of the workforce from being displaced."

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 is requiring a new approach permit and they would like to review the plans for the new road – including the drainage plans. They suggest the new road have two lanes – one for left-hand turns and one for right-hand turns. Finally, MDT requested the southern entrance into the dry cleaner be eliminated.
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

Considerations from §11-7-12E	Staff Report Section Reference/Comments
	sets no binding precedent for any other zone change or PUD proposal.
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.	The Planning Board and the City Council should consider the historical and established use patterns, including trends, when making a decision on the project. See Section II.D.

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 39½-feet. The applicant has requested this height in order to design 4:12 pitch roofs instead of a flat roof which is more visually pleasing. The applicant has pointed to ensuring an attractive design to fit better into the neighborhood.

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 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
- Knox box near the FDC and Alarm panel

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. In the past the Council has approved buildings to exceed the maximum building height in order to facilitate an attractive design, but each request needs to be reviewed on a case by case basis.

Staff supports this building height deviation.

Off-Street Parking Standards. The applicant is requesting a deviation to the off-street parking standards. They are proposing 2 parking spaces per unit versus the standard of 2.3 spaces per unit. The applicant is providing 120 parking spaces versus 140

spaces. The applicant points to the similar projects in surrounding jurisdictions where 1.7 parking spaces is more than adequate. In addition, the applicant is proposing 17 on-street parking spaces with the design of the new roadway that could potentially be used for guest parking.

The Public Works Department has not determined whether or not on-street parking will be a component of this city street. While the street for many years may only serve this development, once the future Baker Avenue extension is realized, this street will provide an important connection between Baker Avenue and Highway 93 S and on-street parking may not be suitable. Therefore, this parking may not be available

Staff would like to see the applicant enter into an agreement with a surrounding property owner(s) to provide 20 off-street parking spaces for guests. Whether these parking spaces are for guests or residents this could be valuable needed parking – especially if no on-street parking is permitted. Staff will suggest this as a condition of approval.

As conditioned, staff supports this off-street parking deviation.

IV. RECOMMENDATION

It is recommended that the Whitefish Planning Board adopt the findings of fact in staff report WPUD 14-04 and recommend to the Whitefish City Council that the Planned Unit Development for the Deer Tracks Residences 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. The site and building shall meet all Fire Department standards for hydrants, access and the building itself. (IFC) All buildings shall meet Fire Department standards include sprinklering, FDC, alarm panels and utility controls located in close proximity to each building. (IFC)

5. Prior to the first phase, a snow storage plan shall be submitted to the Public Works Department for review and approval. Such plan shall ensure storage does not impede emergency access and it is not located within storm water facilities. (Engineering Standards, Chapter 5)

6. 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)

7. Refuse disposal areas shall be reviewed and approved by the Public Works Department and North Valley Refuse. (Engineering Standards)

8. A new approach permit shall be obtained from Montana Department of Transportation. Road plans shall be submitted to MDT for review and approval – this shall also include the drainage plan. The southern entrance into the dry cleaner shall be eliminated. (Finding 8)

9. Architectural review and approval shall be obtained prior to submitting an application for a building permit. (§11-3-3B) Strict adherence to §6.6.2., variation to multiple multi-family buildings, shall be met.

10. Due to similarities to other project names, this project shall be assigned a new project name prior to any other submittals to the city.

11. A maximum of two (2) affordable apartments shall be designated per building for a total of six (6) apartments. Apartments shall have a variety of number of bedrooms and location to serve the greatest variety of clients. The Whitefish Housing Authority will manage the apartments to ensure long-term affordability. This

management agreement shall be submitted to the Planning Department prior to submitting a building permit application within Phase 1.

12. A parking agreement for 20 parking spaces shall be entered into by the developer. Evidence of such agreement shall be submitted to the Planning Department prior to submitting a building permit application within Phase 1.

13. A 60-foot right-of-way in a location identified by the Public Works Director shall be installed and dedicated to the City of Whitefish prior to submitting a building permit application within Phase 1. The developer shall enter into an agreement for the maintenance and snow removal responsibilities until such time as the street is connected to the future Baker Avenue extension.

14. A paved temporary cul de sac shall be constructed at the western end of the new city right-of-way. This shall be kept clear of snow for emergency access.

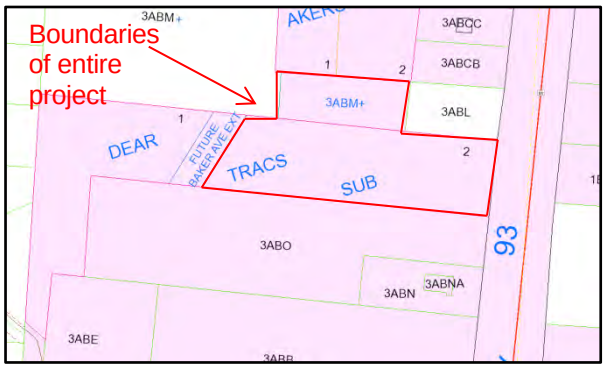
15. Prior to submitting applications for building permits for each phase, a report showing how conditions of approval have been met for each phase shall be submitted to the Planning Department for review and approval and it shall include:
    - Architectural Review approval for all buildings within the phase
    - Location and design for secure bicycle parking for each building shall be reviewed and approved.
    - Detailed landscaping plan and pedestrian connection plan
    - Tree removal phasing – no tree removal shall occur in any phase until the tree removal plan is approved. All healthy long-term trees outside building envelopes, parking and vehicular access shall be retained.
    - Review of approved open space plan
    - Infrastructure within each phase shall be fully capable of supporting the development within the phase. Roads shall meet the Fire Department emergency access requirements.
    - Emergency access shall be approved for each building pursuant to the IFC. This includes physical access to within 150-feet of all corners of the building, FDC on each building, Knox box, no parking, and snow plowing.
    - Infrastructure, including streets, water, sewer, hydrants and drainage, for each phase shall be installed and operational prior to the submittal of a building permit. Financial security for other infrastructure/improvements yet to be installed may be approved in order to obtain a building permit.
    - All easements associated with the phase shall be recorded and submitted to the city.
    - No more than two years shall lapse between phases.

16. This approval is valid for 3-years from the date of City Council approval. (§11-2S-9C)

DEER TRACKS RESIDENCES
ZONE CHANGE
STAFF REPORT WZC 14-08
OCTOBER 9, 2014

A report to the Whitefish Planning Board and the Whitefish City Council regarding a request by Montana Development Group to rezone a portion of their property back to Whitefish zones in order to facilitate the requested Planned Unit Development (WPUD 14-04). The request is to change the zoning from County R-2 (One Family Limited Residential) and B-2 (General Business) to City WLR (One-Family Limited Residential District) and WB-2 (Secondary Business District). This request is scheduled before the Whitefish Planning Board for public hearing on Thursday, October 16, 2014 at 6:00 PM. A recommendation will be forwarded to the City Council for a subsequent public hearing on Monday, November 3, 2014 at 7:10 PM. Both hearings will be held in the Whitefish City Council Chambers.

BACKGROUND



This Zoning Map Amendment application request accompanies a Planned Unit Development (PUD) request. (WPUD 14-04) The purpose of the Zoning Map Amendment is to rezone approximately 1 acre of property recently annexed into the city back to a Whitefish zone. This area was subject to the recent County Interim zoning. The applicant is not pursuing zoning that is different than what it was prior to the application of the Interim Zoning on September 9, 2014. When the applicant met with staff this summer, there was no reason for the rezone request as it had Whitefish zoning and that zoning facilitated their development request. However, since the applicant will be using city water and sewer for the entire project, it needed to be annexed and rezoned back to city zoning. The City does not have an agreement with the County to implement County zoning.

PROJECT SCOPE

The applicant is requesting a zone change on the back portion of the lot from County R-2 (One Family Limited Residential) to City WLR (One-Family Limited Residential District).

Purpose of WLR: Intended for residential purposes to provide for single-family homes in a low-density setting, connected to municipal utilities and services.

	WLR	**R-2**
Minimum Lot Area:	15,000 square feet	20,000 square feet
Front Yard Setback:	25-feet	20-feet
Side Yard Setback:	15-feet	10-feet
Rear Yard Setback:	20-feet	20-feet

	WLR	R-2
Maximum Height:	35-feet	35-feet
Permitted Lot Coverage:	30% maximum	30% maximum

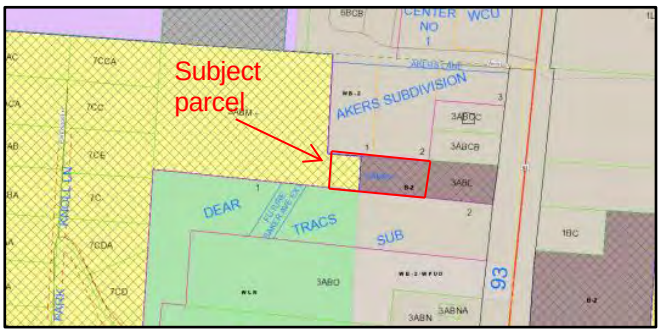
The applicant is requesting a zone change on the front portion of the lot from County B-2 (General Business) to City WB-2 (Secondary Business District).

Purpose of WB-2: 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.

	WB-2	B-2
Minimum Lot Area:	n/a	7,500 square feet
Front Yard Setback:	20-feet	20-feet
Side Yard Setback:	20-feet when abutting residential district or right-of-way, otherwise, none	5-feet
Rear Yard Setback:	20-feet when abutting residential district or right-of-way, otherwise, none	15-feet
Maximum Height:	35-feet	35-feet
Permitted Lot Coverage:	30% maximum	n/a

A. Property Owner:
HDH Holdings llc
PO Box 961
Whitefish, MT 59937

Applicant:
Montana Development Group
Attn: Jeff Badelt & Sean Averill
1380 Wisconsin Avenue
Whitefish, MT 59937



B. Size and Location:
The property can be legally described as Tract 3ABM-100 in Section 1, Township 30N, Range 22W, P.M.M., Flathead

County, Montana. It is 1.050 acres in size.

C. Existing Land Use, Zoning and Growth Policy Designation:

The property is currently undeveloped. The property is zoned with County designations of R-2 and B-2. The Whitefish Growth Policy calls for both Suburban Residential and General Commercial.

D. Adjacent Land Uses, Zoning and Whitefish Growth Policy Designations:

North:	Commercial	WB-2	General Commercial
West:	Vacant	R-2	Suburban Residential
East:	Pizza Hut parking lot	WB-2	General Commercial
South:	Vacant	WLR & WB-2	Suburban Residential & General Commercial

E. Public Notice:

Notice was mailed to adjacent land owners within 150-feet of the subject properties on September 26, 2014. A notice was sent to advisory agencies on September 26, 2014. A notice was published in the *Whitefish Pilot* on October 1, 2014. As of the writing of this report, staff has received four letters with concerns about the project. Most of the concerns are with the development proposal itself; however there is some concern and confusion surrounding the purpose/reason for the rezone request and its necessity. These letters are attached for review.

F. Utilities

Sewer:	City of Whitefish
Water:	City of Whitefish
Solid Waste:	North Valley Refuse
Electric:	Flathead Electric Co-op
Gas:	Northwestern Energy
Phone:	Centurylink
Police:	City of Whitefish
Fire:	City of Whitefish
Roads:	State of Montana/City of Whitefish

<u>REVIEW AND FINDINGS OF FACT:</u>

This request is reviewed in accordance with the Whitefish Zoning Regulations Section 11-7-10 and based on statutory criteria on the purposes of zoning (76-2-304 & 305 M.C.A.).

The Whitefish Zoning Jurisdiction Regulations set forth the process for rezoning property and the considerations that both the Planning Board and the City Council must make in order to approve an amendment. While some of these considerations are not applicable as the existing and proposed zoning districts already address them, several considerations need to be reviewed in light of the proposed zoning district. The following is a review and discussion of considerations applicable to the proposed zoning district.

A. Made in Accordance with a Growth Policy.

Finding 1: The proposed zone change to WB-2 is in accordance with the Growth Policy because it complies with the General Commercial. The WLR zoning is consistent with the Urban land use designation and not the Suburban Residential land use designations; however, the WLR zoning is what the property was zoned prior to the Interim County zoning.

B. Secure safety from fire, panic and other dangers.

Finding 2: The proposed zone change will secure safety from fire, panic and other dangers because the city standards and zoning standards will be reviewed at the time of development.

C. Promote the public health, public safety and general welfare.

Finding 3: The proposed zone change promotes public interest, health, comfort and general welfare because it is in conformance with the Growth Policy.

D. Facilitate the Adequate Provision of Transportation, Water, Sewerage, Schools, Parks and other Public Requirements.

Finding 4: The proposed zone change facilitates the adequate provision of transportation, water, sewerage, schools, parks and other public requirements because it is located inside city limits and is served by all public services and facilities.

E. Reasonable Provision of Adequate Light and Air.

Finding 5: The proposed zone change provides reasonable provision of adequate light and air because the zoning and other city standards will prevent the overcrowding of the land through setbacks, engineering standards and conformance with the Building Code.

F. The Effect on Motorized and Non-motorized Transportation Systems.

Finding 6: The proposed zone change in and of itself will not have an effect on motorized and non-motorized transportation systems because the zoning and other city standards will be reviewed at the time of development.

G. Promotion of Compatible Urban Growth.

Finding 7: The proposed zone change will promote compatible urban growth because the property is served by public services and facilities, it is within walking distance to many urban amenities, is surrounded by urban and suburban-scale

residential development and is consistent with the proposed Growth Policy land use designations of General Commercial and Suburban Residential.

H. Consideration to the character of the district and its particular suitability for particular uses.

Finding 8: The proposed zone change considers the character of the district and its particular suitability for particular uses with the proposed project because it is the comparable city zoning designations.

I. Conserving the Value of Buildings.

Finding 9: 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.

J. Encouraging the Most Appropriate Use of Land Throughout the Jurisdictional Area.

Finding 10: The proposed zone change encourages the most appropriate use of land throughout the jurisdictional area because the proposed zoning is what is was prior to the County Interim Zoning.

K. That Historical Use and Establish Use Patterns and Recent Change in Use Trends will be Weighed Equally and Consideration not be Given One to the Exclusion of the Other.

Finding 11: The Planning Board and the City Council should consider the historical and established use patterns, including trends, when making a decision on the project

RECOMMENDATION

It is recommended that the Whitefish Planning Board Report adopt staff report WZC 14-08 findings of fact and recommend to the Whitefish City Council the map amendment be **approved**.

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

Public Notice of Proposed Land Use Action

The City of Whitefish would like to inform you that Montana Development Group is requesting a Planned Unit Development overlay in order to develop a 60-unit apartment project. (WPUD 14-04) In addition, the applicant will be rezoning approximately 1 acre of property recently zoned by Flathead County to comparable Whitefish zones to facilitate their project. (WZC 14-08) This property was annexed into the city limits on September 15, 2014. The property is developed with a dry cleaner business and is zoned WB-2 (Secondary Business District) and WLR (One-Family Residential District).The property is located at 6348 Highway 93 S and can be legally described as Lot 2, Dear Tracs subdivision and a Portion of Tract 1 of COS 10669 in S1 T30N R22W.

You are welcome to provide comments on the project. Comments can be in written or email format. The Whitefish Planning Board will hold a public hearing for the proposed project request on:

Thursday, October 16, 2014
6:00 p.m.
Whitefish City Council Chambers, City Hall
402 E. Second Street, Whitefish MT 59937

The Whitefish Planning Board will make a recommendation to the City Council, who will then hold a public hearing and take final action on Monday, November 3, 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, October 6, 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.

PLEASE SHARE THIS NOTICE WITH YOUR NEIGHBORS

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

Date: September 26, 2014

To: Advisory Agencies & Interested Parties

From: Whitefish Planning & Building Department

The regular meeting of the Whitefish Planning Board will be held on Thursday, October 16, 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 these items 1, 2 on Monday, November 3, 2014 and items 3-8 on Monday, November 17, 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. A request by the Montana Development Group for a Planned Unit Development overlay and Zone Change in order to develop a 60-unit apartment project. The project is addressed at 6348 Highway 93 S and can be legally described as Lot 2, Dear Tracs subdivision and a Portion of Tract 1 of COS 10669 in S1 T30N R22W. (WPUD 14-04/WZC 14-08) Compton-Ring

2. A request by Bonsai Brewing Project llc for a Conditional Use Permit in order to operate a microbrewery. The project is addressed at 549 Wisconsin Avenue and can be legally described as Lot 1AA, Denver Gardens in S25 T31N R22W. (WCUP 14-05) Compton-Ring

3. A request by the City of Whitefish for a Zone Change on parcels recently annexed into City limits. The properties are developed with residential uses. The subject properties are located at 1722 and 1726 W. Lakeshore Drive and can be legally described as lots 18A, 19 & ABDRD-19 of Lake Park Addition Subdivision in Section 26, Township 31N, Range 22W. (WZC 14-02) Minnich

4. A request by the City of Whitefish for a Zone Change on parcels recently annexed into City limits. The properties are developed with residential uses. The subject properties are located at 2492, 2494, 2496, and 2498 E. Lakeshore Drive and can be legally described as lots 20, 21, 22, and 23 of Whitefish Lake Summer Homes Add1 Amd Subdivision in Section 14, Township 31N, Range 22W. (WZC 14-04) Minnich

5. A request by the City of Whitefish for a Zone Change on parcels recently annexed into City limits. The properties are developed with residential uses. The subject properties are located at 2520, 2522, and 2524 E. Lakeshore Drive and can be legally described as lots 7, 8, and 9 of Whitefish Lake

Summer Homes Add1 Amd Subdivision in Section 14, Township 31N, Range 22W. (WZC 14-05) Minnich

6. A request by the City of Whitefish for a Zone Change on parcels recently annexed into City limits. The properties are developed with residential uses. The subject properties are located at 2530 and 2532 E. Lakeshore Drive and can be legally described as lots 3 and 4 of Whitefish Lake Summer Homes Add1 Amd Subdivision in Section 14, Township 31N, Range 22W. (WZC 14-06) Minnich

7. A request by the City of Whitefish for a Zone Change on parcels recently annexed into City limits. The property is developed with residential uses. The subject property is located at 2405 Carver Bay Road and can be legally described as lot 3 of Whitefish Lake Summer Homes Amd L19 and 20 Subdivision in Section 14, Township 31N, Range 22W. (WZC 14-07) Minnich

8. A request by the City of Whitefish to amend §11-2A-3 WA Agricultural District, Conditional Uses, adding heliports and helipads. (WZTA 14-04) Taylor

Documents pertaining to these agenda items are 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 these proposals, phone 406-863-2410.

Wendy Compton-Ring

From: Wendy Compton-Ring <wcompton-ring@cityofwhitefish.org>
Sent: Friday, September 26, 2014 10:28 AM
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); Dan Graves (dgraves@skiwhitefish.com); Dennis Oliver (doliver@mt.gov); 'Eric Smith (eric.smith@northwestern.com)'; Gary Engman (gengman@mt.gov); Gary Krueger (gkrueger@flathead.mt.gov); Ginger Kauffman (gingerk@flatheadcd.org); Greg Acton; 'James Freyholtz (jfreyholtz@mt.gov)'; 'Joe Page' (jpage@cityofwhitefish.org); 'John Wilson'; 'Judy Williams (juwilliams@mt.gov)'; Karen Reeves; Karin Hilding (khilding@cityofwhitefish.org); '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)'; Mayre Flowers (flowers@digisys.net); Mayre Flowers (mayre@flatheadcitizens.org); North Valley Refuse (nvr@centurytel.net); 'Pamela Holmquist (pholmquist@flathead.mt.gov)'; 'Patti V (pattiv@flathead.mt.gov)'; 'Pris, Jeremy'; 'Randy Reynolds'; 'Rita Hanson (for Whitefish Water & Sewer District)'; Sherri Baccaro; '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'; William Reed (william.reed@bnsf.com)
Cc: David Taylor; Bailey Minnich (bminnich@cityofwhitefish.org)
Subject: October Whitefish Planning Board.
Attachments: 10-2014_PB meeting.pdf

Attached please find the notice for the October Whitefish Planning Board meeting.

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

Wendy Compton-Ring

From: Freyholtz, James <jfreyholtz@mt.gov>
Sent: Thursday, October 02, 2014 2:54 PM
To: Wendy Compton-Ring
Cc: Oliver, Dennis
Subject: 60-unit apartment project PUD: 6348 HWY 93 S

Wendy,

Thanks for notifying the Montana Department of Transportation (MDT) regarding the proposed 60-unit apartment project. The proposal is located in Whitefish at 6348 Hwy 93 South.

The owners will need to obtain a new approach permit from MDT for the access to Hwy 93. The owner's engineer has already been in contact with MDT regarding the proposal. Our initial comments were that the second existing approach to the property should be eliminated and there should be separate lanes for right & left turners exiting their approach. MDT also has some drainage concerns and will thus want to review their drainage plan as part of an approach permit approval.

Please feel free to contact me if you have any questions.

James Freyholtz, P.E.
Kalispell Area Traffic Engineer
Montana Department of Transportation (MDT)
(406) 751-2066

Wendy Compton-Ring

From: ROBERT JAMES <jamesrn@shaw.ca>
Sent: Monday, October 06, 2014 2:52 PM
To: wcompton-ring@cityofwhitefish.org
Cc: Don & Judy Spivey
Subject: Re: Response to Public Notice -60 Unit Apartment Project WPUD 14-04

Wendy, thank you for your prompt reply.
I do appreciate your explanation on the timing of the mailout, but irrespective of the date you advise Notices were sent out, the fact remains that were not received until late week. Therefore the time frame of 15 days for the notice being served may not have been met.
My request to provide adequate time for us as community members directly affected by this proposed apartment complex still stands. We have simply not had adequate time to review all the materials as they have not yet been made available to us as of this date.
Additionally, since the information package will not be available until October 10th. That only only leaves 3 business days for people to review the full package prior to the Planning Board Meeting date of October 16th. This is simply not satisfactory as it fails to provide enough time for an adequate review by the surrounding community or third party representatives and consultants they may wish to retain.
Please reply accordingly to my request above.
Robert James
132 Park Knoll Lane

Sent from my BlackBerry 10 smartphone on the TELUS network.
Original Message
From: Wendy Compton-Ring
Sent: Monday, October 6, 2014 12:04 PM
To: 'ROBERT JAMES'
Reply To: Wendy Compton-Ring
Cc: 'Don & Judy Spivey'
Subject: RE: Response to Public Notice -60 Unit Apartment Project WPUD 14-04

Thank you for your comments. They will be forwarded onto the Planning Board and Council for their consideration.

To answer a couple of your questions, our regulations require a 15-day notice period to adjacent landowners within 150-feet of the proposal. These notices were mailed out on September 25th - 21 days before the Planning Board hearing. Also, I have attached a copy of the map and list of names showing the 150-foot buffer from the boundaries of the project. This list is generated and certified by the Flathead County GIS Department. You are correct that not all the owners within the subdivision are noticed - only those within 150-feet. I should point out that the map includes all of Tract 3ABM, but only a portion of this tract is included in the project - about an acre of land right behind the Pizza Hut parking lot.

The Planning Board meeting is on October 16th and the City Council is scheduled for November 3rd.

The entire Planning Board packet will on the city's webpage - under Planning Board no later than Friday, October 10th. Let me know if you need any other information or have any more questions.

-----Original Message-----
From: ROBERT JAMES [mailto:jamesrn@shaw.ca]
Sent: Monday, October 06, 2014 11:20 AM
To: wcompton-ring@cityofwhitefish.org
Cc: Don & Judy Spivey
Subject: Fw: Response to Public Notice -60 Unit Appartment Project WPUD 14-04

October 6 2014

To Whitefish Planning Department:

Re: Response to undated Public Notice requesting comments on the referenced 60 Suite Apartment project WPUD-14-04.

My comments are as follows:
NOTICE:
-Notice timing was too short for residents in the area affected by this proposal.
Notice was only received by a fraction of the residents of Park Knoll Community.
Please confirm the date do service compiles with the regulations for service,
- Only 25% of the residents of the Park Knoll Community received this notice. Please confirm that all people affected and in close proximity to the project were properly served Notice.

Impact of Project:
-the impact of this project of some 120 - 180 new people living in the immediate area is significant and devastating to existing residents in the immediate area.
> -Density of this 60 suite project is unacceptably high, and it's
disappointing that the Planning Department would have even accepted this projector approval in it's current form.

-this proposed increase in population this very small space, coupled with the density of already approved Hampton's Motel Project virtually ensures the quality of life for the existing residents in the area will be utterly and completely destroyed.
-my question is, why is none of this taken into consideration by the Planning Board when approving new ultra high-density projects?This is not New York nor Hong Kong where surface space is at a premium. This is Whitefish, a place we know and love and where privacy is valued.
-Block E of the complex backs onto the proposed Baker Avenue route and what will be the impact of this on the people living in Block E when this road is built.
-playgrounds and green space for residents of the proposed project. A BBQ area and a bit of a playground is hardly adequate recreational facilities for the population density being proposed.
-A population increase of this size requires the developer to provide significantly more green space and recreational facilities than is being offered. There are no existing playgrounds in the immediate area.

Safety:
Access and egress to Hwy. 93 is a major safety issue with existing residents in the area.

With the Hampton's development under way, a 60 suite apartment complex that will have an estimated occupancy of 120 - 180 people driving in and out of this apartment complex several times a day onto Highway 93 is completely unacceptable. People risk being hurt and risk being killed.
The extension of the proposed Baker Avenue is shown on the preliminary plan.
What consideration has been given to having the developer and contribute to the Construction of the Baker Avenue extension and provide access and egress via that much safer route?
This would also provide necessary access for Fire Trucks when needed.

Conclusion:
There are quality of life issues not only for future apartment dwellers, but also existing residents living in the immediate area that require addressing.
There are safety issues that require addressing.
There is a need for more time to study and properly respond to this Notice and in that regard I respectfully request the Thursday October 16, 2014 City Council Meeting be rescheduled for one month to Thursday November 13th to allow interested and affected parties to have time to adequately respond.
Please forward all replies to the undersigned by email.

Robert N James
132 Park Knoll Lane
Whitefish, MT 59937
jamesrn@shaw.ca

October 6, 2014

Memo to: Whitefish Planning Board and Staff

Subject Planning Board Hearing on WPUD 14-04
October 16, 2014

From: Don Spivey, Park Knoll Estates homeowner.

Planning Board members and staff,

I have several comments and concerns based on the brief Public Notice received last week.

Time to respond

I believe only two homeowners in the Park Knoll subdivision received a notice and both those parties were out of town last week. The notice calls for a response by end of day today—Oct.6. The homeowners association would like to respond with an informed and reasoned manner. However, there is neither time or adequate information available to accomplish that today. I understand the staff report will not be available until Oct. 10 and assume that document will clarify and provide much needed information. The public hearing is scheduled less than one week later (3 business days) leaving us again with limited time to develop a response from the Homeowners Association. Accordingly we would respectfully request that the Planning Board hearing be rescheduled to the November meeting.

Zoning

The brief zoning comments in the notice are unclear with the donut transition and then back into the city via annexation. The current zoning for that property is unclear but apparently a rezoning consideration is part of the application. The prior WLR city zoning would be preferable to me and probably to the Homeowners Association. ,Hopefully, the staff report will clear up the confusion.

Density

The proposed density is totally out of character with this neighborhood (which we all chose because of the existing WLR zoning). The additional 120-200 residents packed into that confined space will put substantial additional pressure on all the homeowners in the area. There appears to be very limited open space (club house and tiny playground) for those residents and there will be a tendency to take advantage of adjacent open lands abutting our subdivision for exploring—walking pets, etc. with probable impacts in our neighborhood. I would respectfully request consideration be given to a substantial reduction in the unit density. Not rezoning the approximately one acre parcel from a residential classification would be a good start. That would also provide open space providing better green space and recreational support for the remaining homeowners.

Traffic

Already approved is a hotel/motel on the adjacent lot to the south_with 70+ rooms. This hotel/motel, with associated staff, will already introduce substantial additional congestion onto US 93 in that area. The traffic from 60 additional units (with many cars) will make US 93 ingress/egress for those wanting to go north toward the center of Whitefish and well as persons traveling north on US 93 wishing to turn into either of these two developments a nightmare as well as a serious safety issue.. I was told by the Department of Transportation that legally, making a left turn from or into those subdivision requires a clear path all the way into the desired lane before starting. Most drivers don't follow that rule—rather they wait to find access to the center lane and then wait there for a chance to enter the lane of choice If you've ever tried to deal with this problem you can only imagine the increased challenge and safety exposure all this additional traffic will have. It will create another opportunity for more accidents for sure. This is another good reason to reduce the density.

Conclusion

I'm concerned that the information available without the staff report does not allow time to adequately and responsibly respond to this proposal--thus our request to reschedule to the planning board meeting to November.

I am concerned about the density and how that will impact our neighborhood for the reasons mention above and would recommend the planning board and staff find ways to reduce it—not rezoning the 1 acre parcel might be a good start.

I am concerned about the traffic impact in an area already dealing with this challenge--clearly a major problem and safety exposure. Density reduction would help with this as well.

I need clarification about the zoning activity which seems complex involving changes to county classification and them back to city zoning after annexation. Hopefully, the staff report will clarify this.

I look forward to meeting with all of you at the planning board meeting—hopefully, rescheduled to November.

Respectfully.

Don Spivey
117 Park Knoll Lane
Whitefish, MT 59937
862-7733

Thomas T. Tornow, P.C., *Attorneys-at-Law*

309 Wisconsin Avenue, Whitefish, MT 59937
Telephone: (406) 862-7450 Facsimile: (406) 862-7451 Website: www.tornowlaw.com

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assistant@tornowlaw.com

October 6, 2014

Wendy Compton-Ring
Whitefish Planning & Building Department
Via email: wcompton-ring@cityofwhitefish.org

Re: Lot 2, Dear Tracs

Dear Ms. Compton-Ring:

I am the attorney for residents of the Park Knoll neighborhood, which will be adversely impacted by the rezoning and high density apartment complex proposed on the above referenced property.

Our first concern is that my clients have just learned of the proposal and have not had the opportunity to review the Staff Report. For example, we have no information regarding how many bedrooms (and therefore likely occupants) there are in the 60 apartments, or how the proposed rezoning fits within the City's Master Growth Policy Plan or any applicable transportation plans. Having an opportunity to review the Staff Report prior to the close of written comment is important for meaningful public participation. As such, we request that the Planning Board postpone its public hearing until its next meeting to give my clients and the public in general an opportunity to review the Staff Report and be prepared to provide informed comment. Also, please email me a copy of the Staff Report as soon as it is available.

Our second concern is the dead-end access. This creates an unacceptable danger to the apartment residents, the first responders, and the neighborhood, should there be a fire or other emergency. Apartment dwellers fleeing a fire or other emergency will obstruct incoming responders. With the proposed density, even a cul de sac is grossly insufficient and a second emergency ingress and egress is needed to accommodate the proposed density.

Our third concern is density and the resulting traffic hazards. The proposed 60 units together with the approximately 70 hotel units on the adjoining property will create an extreme traffic hazard on Highway 93, which has only the middle "suicide lane" for turning vehicles. Between the apartment residents and the hotel guests using exits so close together, this short stretch of Highway 93 will be a dangerous traffic bottleneck.

Our fourth concern is the lack of park land or other open space. Between the proposed 60 units together with the approximately 70 hotel units on the adjoining property, children playing and people walking their dogs or just looking for a quiet place to walk will invade into the Park Knoll neighborhood. At a minimum, the applicant should be required to provide on-site open space sufficient to accommodate the expected occupancy of the 60 apartments.

Our fifth concern is that this property was just rezoned by the County, then annexed into the City and then apparently rezoned WB-2 and WLR. Now the applicant is asking for it to be rezoned again. We suggest that the City let the dust settle and examine how this newly annexed property fits into its growth policy before rezoning it yet again.

These are my clients' immediate concerns. I am sure we will have more after we have the opportunity to review the Staff Report.

If you have any questions or desire further information, please contact me at your convenience.

Sincerely,

THOMAS T. TORNOW, P.C.

Thomas T. Tornow

By: Thomas T. Tornow

cc (*via* email): Clients

David Hunt
113 Park Knoll Ln
Whitefish, MT 59937

October 6, 2014

Whitefish Planning Department
PO Box 158
Whitefish, MT 59937

Whitefish Planning Department and Staff,

This letter is in response to Public Notice of Proposed Land Use Action calls for comment on WPUD 14-04. I am a resident of the Park Knoll Subdivision since 2002, owner of our residence in Park Knoll since 1999 and currently Vice President of the Park Knoll Home Owners Association. I have addressed my comments to the PUD in topic areas below:

1. Notification & Comment period
   Only a few of the home owners in Park Knoll Subdivision received notice of the upcoming project. In addition, most of those were not in town last week so the actual time to respond with comments for inclusion in packets to the Planning Board members is just a few hours. Clearly, a proposed project of this magnitude requires thorough consideration and the expressed timeframes do not provide sufficient time for investigation and commentary. Obviously, we have not had time to provide notice and hold a subdivision meeting for discussion, nor are staff reports with details on this proposal yet available to anyone. I strongly urge that this issue be rescheduled to provide a more realistic public comment period.

2. Zoning changes
   With limited information for the project available it is not clear what zoning changes are being proposed but I would strongly object to any rezoning that changes use from WLR (One-Family Residential) to a less restrictive use that would enable multi-family buildings. All Park Knoll homeowners have invested in our homes with the knowledge and understanding that the bordering undeveloped areas were WLR thus preserving the area as a single family residential neighborhood.

3. Density
   With the recent approval of a hotel project just the south of this proposed project, area traffic will already be significantly increasing. This project has the potential to add an additional 120 – 180 residents on top of that which would add significant traffic in an already congested area. Even now, without the new hotel and this proposed project, wait times of several minutes are not uncommon when trying to turn north onto 93 from Park Knoll Lane. Thus adding traffic on this proposed scale will only increase an existing traffic hazard.

I respectfully ask that this action be rescheduled to give proper time to better understand this proposal and address the expressed concerns and those of others in the neighborhood.

Sincerely,

David Hunt

Deer Track Residences

Application of

Planned Unit Development (PUD)

For Montana Development Group

Prepared by

SANDS Engineering, Inc.

THE ARCHITECTS OFFICE

White Cloud Landscape Design

48 NORTH p.c. Civil Engineering Services

July 2014

Whitefish Planning & Building Dept.
PO Box 158
510 Railway Street
Whitefish, MT 59937
Phone: (406) 863-2410 Fax: (406) 863-2409

APPLICATION FOR PLANNED UNIT DEVELOPMENT

FEE ATTACHED $3419.00 **(See current fee schedule)**

PROJECT NAME Deer Track Residences

1. NAME OF APPLICANT: Montana Development Group. Attn: Jeff Badelt and Sean Averill
2. MAIL ADDRESS: 1380 Wisconsin Avenue
3. CITY/STATE/ZIP: Whitefish, MT 59937 PHONE: (406) 890-8195 (Jeff)
4. E-mail (Optional; not for official notifications.) Jeff@MTDevGroup.com

NAME AND ADDRESS OF OWNER IF DIFFERENT THAN APPLICANT:

5. NAME: Dear Tracs LLC
6. MAIL ADDRESS: P.O. Box 1442
7. CITY/STATE/ZIP: Whitefish, MT 59937 PHONE: _____
8. E-mail (Optional)_____

9. NAME: HDH Holdings, LLC
10. MAIL ADDRESS: P.O. Box 961
11. CITY/STATE/ZIP: Whitefish, MT 59937 PHONE: _____
12. E-mail (Optional)_____

TECHNICAL ASSISTANCE: Sands Surveying, Inc
MAIL ADDRESS: 2 Village Loop
CITY/STATE/ZIP: Kalispell, MT 59901 PHONE: (406) 755-6481
E-mail (Optional) eric@sandssurveying.com

TECHNICAL ASSISTANCE: 48 North PC
MAIL ADDRESS: 151 Business Center Loop
CITY/STATE/ZIP: Kalispell, MT 59901 PHONE: (406) 756-4848

E-mail (Optional)__brett@48-n.com_____

TECHNICAL ASSISTANCE: __TAO, PLLC_____

MAIL ADDRESS: ___499 Main Street_____

CITY/STATE/ZIP:_Boise, ID_____ PHONE:__(208) 343-2931

E-mail (Optional)__matt@taoidaho.com_____

TECHNICAL ASSISTANCE: __White Cloud Design_____

MAIL ADDRESS: ___P.O. Box 67_____

CITY/STATE/ZIP:_Whitefish, MT 59937_____ PHONE:__(406) 863-2828

E-mail (Optional)__johnny@whiteclouddesign.com_____

If there are others who should be notified during the review process, please list those.

_____

Check One:

_X_ Initial Planned Unit Development proposal

___ Amendment to an existing Planned Unit Development

A. Property Address: _6348 Highway 93 S, Whitefish_____

B. Total Area of Property: _4.493 Acres_____

C. Legal description including section, township & range: _____

_Lot 2 of Dear Tracs Subdivision and a Portion of Tract 1 of COS 10669 in Section 1, T30N, R22W, P.M.M., Flathead County

D. The present zoning of the above property is: _WLR and WB-2

E. Please provide the following information in a narrative format with supporting plans, drawings, renderings, photos, or other format as needed:

a. An overall description of the goals and objectives for the development of the project.

The proposed Deer Track Residences PUD will create 60 residential apartments in five buildings plus a club house. There is an existing dry cleaner business located on the property which encumbers 0.415 acres for building, parking, landscaping, and access. To address density see the following table:

Density Table for Montana Development Group Property

Zoning	Acreage	Density w/o Bonus	Density w/ Bonus
WLR	1.44 Ac	4.3 units (3 units per acre)	7.2 units (5 units per acre)
WB-2	3.049 – 0.415 = 2.634 Ac	34.2 units (13 units per acre)	52.7 units (20 units per acre)
Total area devoted to Apartments	4.074 Ac	38 units	60 units

The project will have an overall density of 14.7 units per acre when the dry cleaner property is subtracted.

The applicants will utilize the density bonus provisions of the PUD standards and as such will provide 10% of the units or six units as rent regulated affordable housing. The Applicants have been working with the Whitefish Affordable Housing Office and have secured a letter of support for the creation of the affordable housing units. The six units will be dispersed evenly through the three apartment buildings. As part of the partnership between the Montana Development Group and Whitefish Housing Authority (WHA), the WHA will pre-approval qualified renters based on income and the rents of the six units will be set at the HUD standard for affordable rents for the qualified renters.

The overall goal of the developers is to provide nice clean rental apartments for persons looking for this type of housing in Whitefish. Rents in Whitefish have been on the rise and persons in the service and retail industry are having a hard time finding decent rental housing in the City.

As a PUD, the applicants are required to provide 30% of the area as open space but propose 33% of the site in landscaped area. Amenities provided in the open space include a BBQ area for the residents, tot lot, and the preservation of trees at the rear of the property. The project will incorporate a Club House with office and workout facilities and community garden area.

Maintenance of the project will be typical of such use. The property will be under single ownership and the owner will contract with a landscape business for care and maintenance of the green areas. Maintenance of the units will be contracted with a rental or building management service so they remain in good condition, inside and out. CC&R's are not applicable to this project as the units will not be sold individually.

b. In cases where the development will be executed in phases, please include a phasing plan.

The development of the infrastructure will occur in a single phase (City Street, sewer water storm drainage, parking, etc). The building will go in in three phases with buildings A and B going in the first year, buildings

C and D going in the second year and Building E going in the third year. The applicant may accelerate the building construction if contractor coordination can be addressed.

c. 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 proposed Deer Track PUD blends to zoning districts with different densities. The density table provided in item (a) previous, shows the acreage breakdown per zoning district and the density allotted.

Setbacks- The WLR portion of the property has setbacks of 25 feet Front, 15 feet side, and 20 feet rear. The WB-2 portion of the property has setback of 20 feet front, 20 feet side when abutting residential and 20 feet rear when abutting residential. We are utilizing the setback provisions provided for in the underlying zoning district. As the property is a single tract of record the front will be the Highway, the sides are the north and south property lines, and the rear is the Baker Street extension.

Height – 35-feet in both zones. The proposed development is requesting a deviation to the Height standards with a request of 39.5 feet for the maximum height. This slight deviation allows the project to have a 4:12 pitched roof providing a more pleasing architectural elevation particularly when viewed from a distance. This is preferred over a flat roof that would meet the 35 foot height limits but looks more institutional.

Use – The use complies with the PUD provision which set a residential unit count for both zoning districts.

Lot coverage – WLR 30% and WB-2 n/a The proposed development will comply with the maximum lot coverage of the zoning districts. The Lot coverage for the apartments and clubhouse is 18%.

Parking – The Whitefish Zoning Code requires 2.33 off-street parking spaces per unit or 140 spaces for the complex. The applicants are requesting a deviation from the Code and propose 2 off-street parking spaces per unit for a total of 120 parking spaces for the apartments. The architects for the project have designed apartment buildings from Missoula to Spokane to Boise and their experience has shown that 1.7 parking spaces per unit meet the needs of the renters and their guests. In addition 15 of the 60 apartment units will be one bedroom units which typically have a lower parking need than two or three bedroom

units. The reduction in parking also reduces the impervious surface on the site which in turn reduces the run-off. The applicants believe the proposed parking will meet the need of the residents and provides a better site plan. The PUD Plan proposes a City street accessing the property and connecting to the Baker extension on the west end of the property. The street width is be sized to accommodate parking on one side of the street. The on-street parking along the north side of the street would accommodate 17 parking spaces. If we count the off-street and on-street parking there will be 137 spaces which would accommodate guest parking for the units.

d. 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 proposed development creates 60 apartment units and a small club house along with the existing dry cleaner building on 4.493 acres of property. The PUD is designed to create 1.37 acres of Landscaped area on the 4.074 acres devoted to the apartments which equals 33% of the site.

The Open space will be used as open areas, a tot lot for children and a community BBQ area, community garden area for residents of the apartments.

e. The manner in which services will be provided such as water, sewer, storm water management, schools, roads, traffic management, pedestrian access, recreational facilities and other applicable services and utilities.

The property is located along Highway 93 South and is within the City limits of Whitefish. Highway 93 provides the only access into the property at present. Highway 93 consists of four lanes with an center turn median and will easily accommodate the proposed traffic of the apartment building. The rear of the property abuts the Baker Street extension which is currently not built as there are only small segments of the right-of-way dedicated to date. The development is located within School District #44 (Whitefish) for public schools. The Whitefish School System has updated and expanded the Central School and is in process of a major remodel of the High School. Pedestrian paths provide circulation along the Highway 93 corridor. The proposed pedestrian paths in the development will connect to the existing walk/bike paths along the Highway. The nearest public park is the Smith Field Complex which is only ¾ of a mile to the Southeast. The River Trail is only ¼ mile to the east as the crow flies and can be accessed at JP Road to the south or Greenwood Drive to the north. The proposed development will provide a club house with workout facilities, a community BBQ area, play equipment for children, and a community garden area.

Improvements to the proposed subject site include the addition of increased impervious surface such as roofs, pavement, and concrete. These improvements will lead to an increase in runoffs and modify the drainage pattern within the confines of the subject site. The majority of the onsite conveyance will occur via sheet flow from the impervious surface to curb and gutters along the proposed roads. Inlet catch basins will be located at the low spots of the curb and gutters to collect the flows. The flows will be conveyed from the catch basins via conveyance pipes to an underground detention facility.

The proposed underground detention facility will be designed to store the excess stormwater runoff associated with the increased imperviousness created from the proposed improvements. The facility will consist of StormTech SC-740 chambers, which will provide adequate storage. The proposed StormTech chambers are designed for multiple uses including residential developments and installation under parking lots and commercial roadways. One of the key advantages of the StormTech chamber system is its design flexibility. Chambers may be configured into beds or trenches of various sizes or shapes. They can be centralized or decentralized, and fit on nearly all sites. Chamber lengths enhance the ability to develop on both existing and pre-developed projects. The systems can be designed easily and efficiently around utilities, natural or man-made structures and any other limiting boundaries.

Water and Sanitary Sewer for the project will connect to the public systems that are owned and operated by the City of Whitefish. A portion of the proposed buildings will utilize the existing in-place systems that are immediately adjacent to the subject property via service connections. The remaining buildings will utilize service connections from the extension of new water and sewer mains. These new main line water and sewer extensions will be located within the proposed public right of ways. In addition to the main line extensions, other improvements include the placement of fire services lines to accommodate fire suppression sprinkler systems for the proposed buildings and additional fire hydrants.

Storm Drain, water, and sewer systems will be designed, constructed, and tested in accordance with the current editions of the Engineering Standards for the City of Whitefish, Montana Department of Environmental Quality, and the Montana Public Works Standards Specifications

f. 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.

The property is bordered on the North by the Pizza Hut and the Big Mountain Lodge (Zoned WB-2); on the South by the old Wendy's and future hotel site along with retail and professional Office (Zoned WB-2);

on the East by Les Schwab Tires and Dalen Dentistry (Zoned WB-2); and on the West by the Baker Extension, a vacant tract of land and beyond that the Park Knoll Subdivision (Zoned WLR).

The proposed development, consisting of 60 residential apartment units in five buildings will be located to the rear of the existing dry cleaner building located at the front of the property. The Multi-family residential use creates a good transition from the Highway oriented commercial use and the single family uses further to the west. The proposed use also fills in the area between the commercial use along the highway and the future Baker Avenue extension which someday will become a significant north/south collector street that will ease congestion on Highway 93 and provide local access to business services. The multi-family use should not impact the adjacent commercial development but instead could bring business to some of these uses and provide housing for some of the employees of the businesses.

Photo taken looking east from the center of the project towards the old Wendy's Building and the Carpet Studio.

Photo Taken looking west towards the Baker Extension and the tree line on the west edge of the property.

Photo taken looking northeast toward the Pizza Hut.

g. How the plan provides reasonable consideration to the character of the neighborhood and the particular suitability of the property for the proposed use.

The majority of the property is in the WB-2 (General Commercial) Zone and as such most of the neighboring uses are commercial type uses. However, most of the commercial use is located close to the front of the

property along the highway and do not extend very far to the west. This leaves a large swath of ground that is mostly vacant between the business use and the proposed Baker Extension. The proposed multi-family use is a good transitional use between the intensive commercial use and the low intensity use of single family residential located to the west.

h. How the development plan will further the goals, policies and objectives of the Whitefish Growth Policy.

The Land Use Element of Whitefish Growth Policy specifically provides the Zoning Classifications that comply with the land use category depicted on the Future Land Use Map. The Deer Track Residences property is split between two land use categories: the General Commercial (Red)) on the eastern 3.049 acres and the Suburban Residential (Yellow) on the western 1.444 acres.

According to the Land Use Element, properties designated General/Highway Commercial is defined 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, professional office, auto sales and services, hotel/motels, supermarkets, shopping centers, or clusters, and convenience shopping, including the dispensing of motor fuels, Primarily 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." The last sentence of this definition contemplates multi-family residential as a compatible use and a use that can transition from commercial to single family residential.

The Whitefish Growth Policy also records the dilemma of the need to provide high density residential development in the City to accommodate a diversity of housing options and the general lack of acceptable of multi-family development in their neighborhoods. This is addressed in Chapter 3, Section on Growth and the Section on Development Density.

Chapter 5 of the Whitefish Growth Policy provides a detailed account of the "affordable housing" debate in the City and outlines the mechanisms the City has developed to encourage the development community to construct affordable housing. The primary tool the City uses in the density bonus in the PUD section of the Zoning Code which gives a developer a density bonus in exchange for including 10% of the units in a affordable housing program through a partnership with the Whitefish Housing Authority.

The proposed development will provide a new multi-family rental apartment use to the housing supply in Whitefish. This in turn provides for new, clean housing options for the persons working in the retail and service industry which is typically on lower end the income scale. These people typically are not in the market for home ownership but they want to live close to their work place. In addition 10% of the units will be restricted rent units where the maximum rent is 30% of a family's income and who are at or below 125% of the medium family income

i. If affordable housing is a component of the project, describe how the project is implementing the standards in Section 11-2S-3.B.

The applicants are taking advantage of the density bonus provided in the PUD section of the Zoning Code. In exchange, they will provide 10% or six units as predetermined affordable housing through a partnership with the Whitefish Housing Authority. The Whitefish Housing Authority has provided a letter of support for this project and a commitment to work with the applicants in managing the units for long term affordability.

j. Submit site plans, drawings and schematics with supporting narratives where needed that include the following information:

(1). Total acreage and present zoning classifications;
(2). Zoning classification of all adjoining properties;
(3). Density in dwelling units per gross acre;
(4). Location, size, height and number of stories for buildings and uses proposed for buildings;
(5). Layout and dimensions of streets, parking areas, pedestrian walkways and surfacing;
(6). Vehicle, emergency and pedestrian access, traffic circulation and control, including pedestrian and bikeway linkages to existing and/or proposed trails beyond project boundaries;
(7). Location, size, height, color and materials of signs;
(8). Location, height, and material of fencing and/or screening;
(9). Location and type of landscaping;
(10). Location and type of open space and common areas;
(11). Proposed maintenance of common areas and open space;
(12). Property boundary locations and setback lines
(13). Special design standards, materials and / or colors;
(14). Proposed schedule of completion and phasing of the development, if applicable;
(15). Covenants, conditions and restrictions (CC&Rs);
(16). Any other information that may be deemed relevant and appropriate to allow for adequate review.

See attached maps and drawings

If the Planned Unit Development involves the division of land for the purpose of conveyance, a preliminary plat shall be prepared in accordance with the requirements of the subdivision regulations.

Please note that the approved final plan, together with the conditions and restrictions imposed, shall constitute the zoning for the district. No building permit shall be issued for any structure within the district unless such structure conforms to the provisions of the approved plan.

The signing of this application signifies that the aforementioned information is true and correct and grants approval for Whitefish Planning & Building staff to be present on the property for routine monitoring and inspection during review process.

_____ _____

(Applicant Signature) (Date)

_____

Print Name

APPLICATION PROCESS

APPLICABLE TO ALL ZONING APPLICATIONS:

A. Pre-Application Meeting:

A discussion with the planning director or designated member of staff must precede filing of this application. Among topics to be discussed are: Master Plan or Growth Policy compatibility with the application, compatibility of proposed zone change with surrounding zoning classifications, and the application procedure.

B. Completed application form.

C. Application fee per schedule, made payable to the City of Whitefish. See current fee schedule.

D. A bona fide legal description of the subject property and a map showing the location and boundaries of the property.

E. Adjoining Property Owners List from Flathead County GIS Department.

Please consult the with staff of the Whitefish Planning & Building Department for submittal dates and dates for the Planning Board meeting at which it will be heard in order that requirements of state statutes and the zoning regulations may be fulfilled. The application must be accepted as complete forty-five (45) days prior to the scheduled Planning Board meeting.

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

PETITION FOR ZONING MAP AMENDMENT
WHITEFISH ZONING JURISDICTION

FEE ATTACHED__$2,376.00_____ (See current fee schedule)

NAME OF APPLICANT: __Montana Development Group, Attn: Jeff Badelt and Sean Averill_____

MAIL ADDRESS: _1380 Wisconsin Ave_____

CITY/STATE/ZIP: __Whitefish, MT 59937_____ PHONE: _(406) 890-8195 (Jeff)

E-Mail (Optional; not for official notification.) _Jeff@MTDevGroup.com_____

INTEREST IN PROPERTY: __Contract to Buy_____

PLEASE COMPLETE THE FOLLOWING:

A. Address of the property: _6348 Highway 93 South, Whitefish_____

B. Legal Description: (Subdivision Name, Lot & Block and/or Tract Number (Section, Township, Range) __A portion of Tract 1 of COS 10699 in Section 1, T30N, R22W, P.M.M., Flathead County

(Attach sheet for metes and bounds)

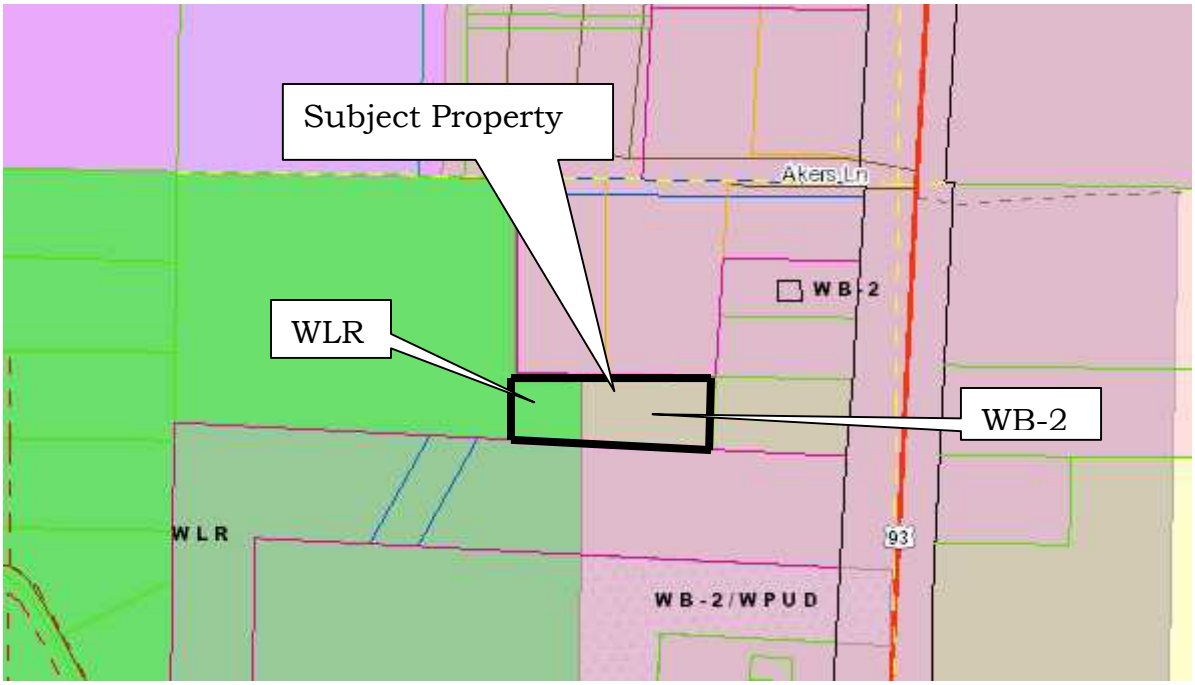
C. Land area in zone change (ac) __1.050 Acres_____

D. The present zoning of the above property is: _R-2 and B-2

E. The proposed zoning of the above property is: WLR and WB-2

F. State the changed or changing conditions that make the proposed amendment necessary:

The subject property is located in the "Doughnut" of Whitefish and up until very recently was zoned WLR and WB-2. Since the Supreme Court decision and action by the County to convert Whitefish's extra territorial zoning to a County zone, this request became a necessary procedural item. This is essentially the "initial" zoning step that in the future will accompany annexation into the City. The applicants have been working with the City since June of this year and this step was not originally anticipated, but given the above described events is need to proceed with the project.



Source: Flathead County GIS (9/9/14)

HOW WILL THE PROPOSED ZONE CHANGE ACCOMPLISH THE FOLLOWING:

A. Promote public health, public safety, and general welfare:

The proposed zone change will promote public health and general welfare as this property has been zoned WLR/WB-2 for the past 25 years at least and was only recently converted to a County zone.

B. Secure safety from fire and other dangers:

The subject property is within the Whitefish Fire Service Area. The new Fire Station/Police Department is located approximately 1/2 mile from the subject zone change. Water and sewer mains are currently located adjacent to the subject site and is available on the east, west, and south boundaries. There are no streams, wetlands, or associated floodplains on the subject property.

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

The subject property is located just off Highway 93 south and is part of a larger project that proposes to construct a City Street to serve the property. The request only re-establishes the City zoning that was in place up until very recently. The property is proposed to be served by City Sewer and Water.

D. Provide reasonable provision of adequate light and air:

The proposed zoning has height and setback requirements that provide for light and air. These bulk and dimensional requirements have been on the property for at least 25 years.

E. Effect motorized and nonmotorized transportation systems:
As mentioned previously, the proposed zone change is located in close proximity to Highway 93 which will provide access to a development proposed with a PUD and accompanies this zone change application. The PUD addresses access which has been worked through with the Whitefish Public Works Department and the Montana Department of Transportation.

F. Promote compatible urban growth:
The proposed zone change re-establishes the old Whitefish Zoning which was very recently converted to urban County zoning. There is no change to density or land use with this proposal as up until mid-July had the zoning which the applicant is requesting.

G. Consider the character of the district and its particular suitability for particular uses:
The character of the district is primarily commercial. There is an existing hotel directly to the north, a proposed hotel directly to the south, restaurant, dry cleaners, and professional office adjacent to the proposed property. The property directly west is currently vacant but with an urban residential density. The proposed zoning matches up with the neighboring City zoning.

H. Protect and conserve the value of buildings:
The proposed zoning fits with adjacent land use and zoning. The applicants are only requesting the zoning that they had previous to the Jurisdiction change.

I. Encourage the most appropriate use of land throughout the jurisdictional area:
The Whitefish Growth Policy designates the subject property as Suburban Residential and Commercial. The proposed zoning will match what was previously placed on the site by the City of Whitefish.

L. That historical uses and established use patterns and recent change in use trends will be weighed equally and consideration not be given one to the exclusion of the other:

The proposed zoning is not out of character with neighboring land uses which are both historical and anticipated in the future by the Growth Policy. Therefore the proposed zone change does balance historical use and future trends.

The signing of this application signifies approval for Whitefish Planning & Building staff to be present on the property for routine monitoring and inspection during approval process.

_____ _____

(Applicant Signature) (Date)

_____

Print Name

APPLICATION PROCESS

APPLICABLE TO ALL ZONING APPLICATIONS:

A. Pre-Application Meeting:

A discussion with the Planning & Building Director or designated member of staff **is highly recommended**. Among topics to be discussed are: Master Plan or Growth Policy compatibility with the application, compatibility of the proposed zone change with surrounding zoning classifications, and the application procedure.

B. Completed application form.

C. Application fee per current fee schedule, made payable to the City of Whitefish.

D. The application must be accepted as complete by the City staff **forty five (45) days prior** to the date of the planning board meeting at which it will be heard in order that requirements of state statutes and the zoning regulations may be fulfilled.

E. Application Contents:

1. Petition for zone change signed by the real property owners representing at least 65% of the land area for which the change in zoning classification is sought.

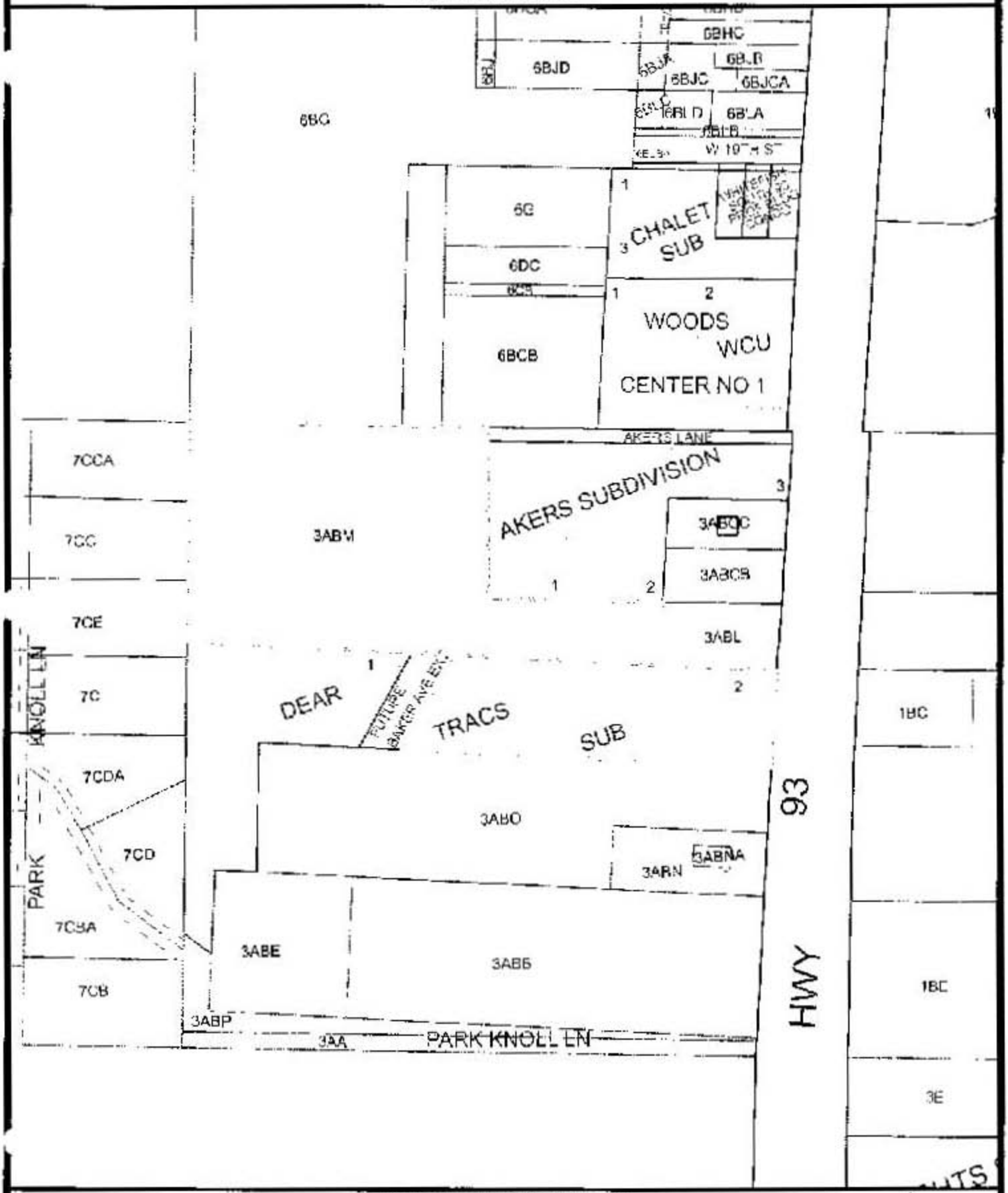
2. A map showing the location and boundaries of the property.

3. Adjoining Property Owners List from Flathead County GIS Department.

4. A title report, ownership report or zoning report of the subject property.

DEAR TRACTS SUB LOT 2 AND TR 3ABM IN S01 T30N R20W PMM

150 FOOT OWNERSHIP



FLATHEAD COUNTY GIS

Date: 7/22/2014
Project: 150 Foot Buffer

The areas depicted on this map are for illustrative purposes only and do not necessarily meet mapping surveying or engineering standards. Deriving conclusions from this map is done at the user's risk.

DEAR TRACTS SUB LOT 2 AND TR 3ABM IN S01 T30N R2OW PMM

150 FOOT OWNERSHIP LIST

ASSRNO	Name	Address	TRACT_ID	Rec_Code
0001109				
	DALEN, GARY L & ANNETTE S			
		1120 MONEGAN RD WHITEFISH MT 59937		
			3022X01-XXX-1BC	1M
0013130				
	HDH HOLDINGS LLC			
		PO BOX 961 WHITEFISH MT 59937		
			3022X01-XXX-6BG-SEPTN	1M
0181450				
	DALEN LIVING TRUST, ETHELYN LORRAINE			
		6335 US HIGHWAY 93 S WHITEFISH MT 59937		
			3022X01-XXX-1BB	1M
	DALEN SR FAMILY TRUST, HAROLD A			
		6335 US HIGHWAY 93 S WHITEFISH MT 59937		
			3022X01-XXX-1BB	21
0195850				
	KINCHELOE, ADAM & TRACY			
		526 SILVERLEAF DR WHITEFISH MT 59937		
			3022X01-DTS-1	1M

ASSRNO	Name	Address	TRACT_ID	Rec_Code
0405850				
	HDH HOLDINGS LLC			
		PO BOX 961 WHITEFISH MT 59937		
			3022X01-XXX-SBG-NANDWPTN	1M
0473695				
	EREKSON, KIMBERLEY			
		129 PARK KNOLL LN WHITEFISH MT 59937		
			3022X01-XXX-7CC	2?
	EREKSON, KRISTINA			
		129 PARK KNOLL LN WHITEFISH MT 59937		
			3022X01-XXX-7CC	1M
0473701				
	SPIVEY, DONALD R & JUDITH E			
		117 PARK KNOLL LN WHITEFISH MT 59937		
			3022X01-XXX-7C	1M
0502140				
	CHALET MOTEL INC			
		6430 HIGHWAY 93 S WHITEFISH MT 59937		
			3022X01-AKE-2	1M
0506080				
	DEAR TRACS LLC			
		PO BOX 1442 WHITEFISH MT 59937		

ASSRNO	Name	Address	TRACT_ID	Rec_Code
			3022X01-DTS-2	IM
0758950				
	SFP-B LIMITED PARTNERSHIP			
		PO BOX 3330 BEND OR 97708		
			3022X01-XXX-1BCA	IM
0954502				
	WHITEFISH RV PARK INC			
		6400 US HIGHWAY 93 S WHITEFISH MT 59937		
			3022X01-XXX-6BCB	IM
0954700				
	AKERS HOSPITALITY INC			
		PO BOX 8086 RAPID CITY SD 57709		
			3022X01-AKE-1	IM
			3022X01-AKE-1-100	IM
0971793				
	HIGH PLAINS PIZZA INC			
		AD% HIGH PLAINS PIZZA PO BOX 2438 LIBERAL KS 67905		
			3022X01-XXX-3ABCB	IM
0971946				
	HIGH PLAINS PIZZA INC			
		PO BOX 2438 LIBERAL KS 67905		
			3022X01-XXX-3ABL	IM

ASSRNO	Name	Address	TRACT_ID	Rec_Code
0971947				
	HDH HOLDINGS LLC			
		PO BOX 961 WHITEFISH MT 59937		
			3022X01-XXX-3ABM	1M
0972925				
	WEST REVOCABLE TRUST, BONNIE S			
		6334 US HIGHWAY 93 S WHITEFISH MT 59937		
			3022X01-XXX-3ABN	1M
0975035				
	EREKSON, KIMBERLEY			
		129 PARK KNOLL LN WHITEFISH MT 59937		
			3022X01-XXX-7CCA	21
	EREKSON, KRISTINA C			
		129 PARK KNOLL LN WHITEFISH MT 59937		
			3022X01-XXX-7CCA	1M
0975134				
	WEHR, SHIRLEY LAUREL			
		83 DERN RD KALISPELL MT 59901		
			3022X01-XXX-IMP1023-3ABCC	1M
0975728				
	R & P HOLDINGS LLC			
		6336 US HIGHWAY 93 S WHITEFISH MT 59937		

ASSRNO	Name	Address	TRACT_ID	Rec_Code
			3022X01-XXX-3ABNA	1M
0976405				
	GIESY, ROGER CRAIG & KAREN MARIE			
		PO BOX 4717 WHITEFISH MT 59937		
			3022X01-XXX-7CE	1M
0977816				
	WEHR, SHIRLEY LAUREL			
		150 N MAIN KALISPELL MT 59901		
			3022X01-XXX-3ABCC	1M
0983346				
	HC 112 LLC			
		200 PARKHILL DR WHITEFISH MT 59937		
			3022X01-XXX-3ABO	1M
E001330				
	CITY OF WHITEFISH			
		PO BOX 158 WHITEFISH MT 59937		
			3022X01-DTS-FUTUREBAKERAVEEXTENSION	1M
E025599				
	CITY OF WHITEFISH			
		PO BOX 158 WHITEFISH MT 59937		
			3022X01-XXX-2B	1M

Flathead Co. Plat Room
800 S. Main Room 105
Kalispell, Mt. 59901

APPROVED 7/23/14

"Protecting You or Our Business"
21" Sixth Main Street * P.O. Box 73
Kalispell, Montana 59903
Phone: (406) 752-7000 * Title Fax: (406) 752-7207
Escrow Fax: (406) 257-6968
307 Spokane Avenue * Suite 101
P.O. Box 4750
Whitefish, Montana 59937
Phone: (406) 862-7000 * Fax: (406) 862-7330
www.sterlingtileservices.com * E-mail: info@sterlingtileservices.com

ZONING REPORT

Order No.: 61281

To: Sands Surveying, Inc.
Eric Mulcahy
2 Village Loop Rd.
Kalispell MT 59901

Date: July 30, 2014

Re: HDH Holdings LLC and Deer Tracs LLC

Fee: $150.00

The assurances referred to on the face page are:

According to Sterling Title Services' property records relative to the following described real property (but without examination of the Company records maintained and indexed by name):

TRACT 1:

Tract 1 of Certificate of Survey No. 10669, located and being in the Northwest Quarter of the Southeast Quarter (NW¼SE¼) of Section 1, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana.

TRACT 2:

Lot 2 of Dear Tracs Subdivision, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

The last recorded instruments purporting to transfer title to said real property is:

Quitclaim Deed:
Grantor: Howard D. Hamilton
Grantee: HDH Holdings, LLC
Recorded: October 15, 2007 as Document #200700031597, records of Flathead County, Montana.
Affects: Tract 1

Quit Claim Deed
Grantor: Dear Tracs, LLC, a Montana Limited Liability Company
Grantee: Dear Tracs, LLC, a Montana Limited Liability Company
Recorded: September 23, 2010 as Document #201000021823, records of Flathead County, Montana
Affects: Tract 2

This report is based on a search of our tract indexes of the records of the Flathead County Courthouse. This is not a title or ownership report and no examination of the title to the aforementioned real property has been made. No liability beyond the amount paid for this report is assumed for this reason. Sterling Title Services is not responsible beyond the amount paid for this report in connection with any errors and/or omissions contained herein.

No examination has been made of the records of Sterling Title Services maintained and indexed by name, nor has an examination been made regarding matters affecting any deed(s) of trust or mortgage(s) shown in this Zoning Report, or other matters which may affect any such deed(s) of trust or mortgage(s). No report is made regarding any liens, claim of lien, defects or encumbrances other than those specifically set forth in this report. If this report was requested by reference to a *street address*, no assurances or guarantees are made that the aforementioned real property is the same as the address provided to Sterling Title Services. No examination has been made with respect to the identity of the party named in the last recorded instrument purporting to transfer title to the aforementioned real property, or with respect to the validity, legal effect or priority of any matter reflected in this report.

If you are interested in additional services or title insurance coverage, or questions about additional services available, please contact Sterling Title Services at 406-752-7000 or visit our website at http://www/sterlingtitleservices.com.

Thank you for your continued business.

Report prepared by:

Authorized Countersignature

Tracy Martin
Sterling Title Services

After recording return to:

Vincent G. Rieger
Law Office of Vincent G. Rieger, P.C.
4 Meridian Court
Kalispell, MT 59901

Taxes to:

HDH Holdings, LLC
P.O. Box 961
Whitefish, MT 59937

200700031597 Fees: $14.00 by: JL
QUIT CLAIM DEED by VINCENT G RIEGER
Date 10/15/2007 Time 2:15 PM Page: 1 of 2
Paula Robinson, Flathead County Montana

097/947

APPROVED 10-15-2007

QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, the receipt of which is acknowledged, the undersigned,

Howard D. Hamilton,

hereby quitclaims to:

HDH Holdings, LLC, a Montana limited liability company, whose mailing address is P.O. Box 961, Whitefish, Montana 59937,

real property in Flathead County, Montana, described as follows.

That portion of the Northwest one-quarter of the Southeast one-quarter (NW1/4SE1/4) of Section 1, Township 30 North, Range 22 West, Principal Meridian, Montana, Flathead County, Montana, described as follows:

Beginning at the Northwest corner of said NW1/4SE1/4; thence South 89°36'21" East and along the northerly boundary of said NW1/4SE1/4 a distance of 642.80 feet; thence South 360.00 feet; thence
South 89°36'21" East 351.27 feet; thence
South 02°33'08" West 136.75 feet; thence
North 87°42'01" West 991.19 feet to the Westerly boundary of said NW1/4SE1/4; thence North 00°18'01" East and along said Westerly boundary a distance of 463.68 feet to the point of beginning and containing 8.061 acres of land more or less.

TO HAVE AND TO HOLD unto the Grantee and to the Grantee's heirs, successors and assigns forever.

DATED this 12th day of October, 2007.

Howard D. Hamilton

STATE OF MONTANA)
:ss
County of Flathead)

This instrument was acknowledged before me on October 12, 2007 by Howard D. Hamilton.

Notary Public for the State of Montana
Printed Name of Notary: Vincent G. Rieger
Residing at Kalispell, Montana
My Commission Expires: April 1, 2008

VINCENT G. RIEGER
STATE OF MONTANA

201000021833
Page: 1 of 1
Fees: $11.00
9/23/2010 10:34 AM
Paula Robinson, Flathead County MT by MC

Lot 2
DEAR TRACS SUB

RETURN AFTER RECORDING TO: *DEAR TRACs, LLC*
PO BOX 1442
WHITEFISH, MT 59937

TAXES TO: *DEAR TRACs, LLC*
PO BOX 1442
WHITEFISH, MT 59937

0195850, 0213400 w/survey

QUIT CLAIM DEED

GRANTOR: DEAR TRACs, LLC, a Montana Limited Liability Company
PO Box 1442, Whitefish, MT 59937

GRANTEE: DEAR TRACs, LLC, a Montana Limited Liability Company
PO Box 1442, Whitefish, MT 59937

LEGAL DESCRIPTION

Tract 1 of Certificate of Survey No. 12024, located in the Northwest 1/4 of the Southeast ¼ of Section 1, Township 30 North, Range 22 West, according to the map or plat thereof on file in the office of the Clerk and Recorder of Flathead County, Montana.

BLA 701 se

**SUBJECT TO CURRENT EASEMENTS, COVENANTS, MORTGAGE(S), RESERVATIONS AND ENCUMBRANCES OF RECORD

For valuable consideration, the receipt of which is hereby acknowledged, the GRANTOR does hereby grant, convey, remise, release and forever quitclaim unto the GRANTEE all of its right, title and interest in and to the above described real property located in Flathead County, Montana.

GRANTOR: DEAR TRACs, LLC, a Montana Limited Liability Company

V. James Carbo

V. JAMES CARBO, a managing member of DEAR TRACs, LLC.

Curt McIntyre

CURT MCINTYRE, a managing member of DEAR TRACs, LLC.

Approved 9/23/10

STATE OF Montana)
SS
County of Flathead)

This instrument was acknowledged before me on the 21 day of September, 2010, by V. James Carbo and Curt McIntyre, managing members of DEAR TRACs, LLC

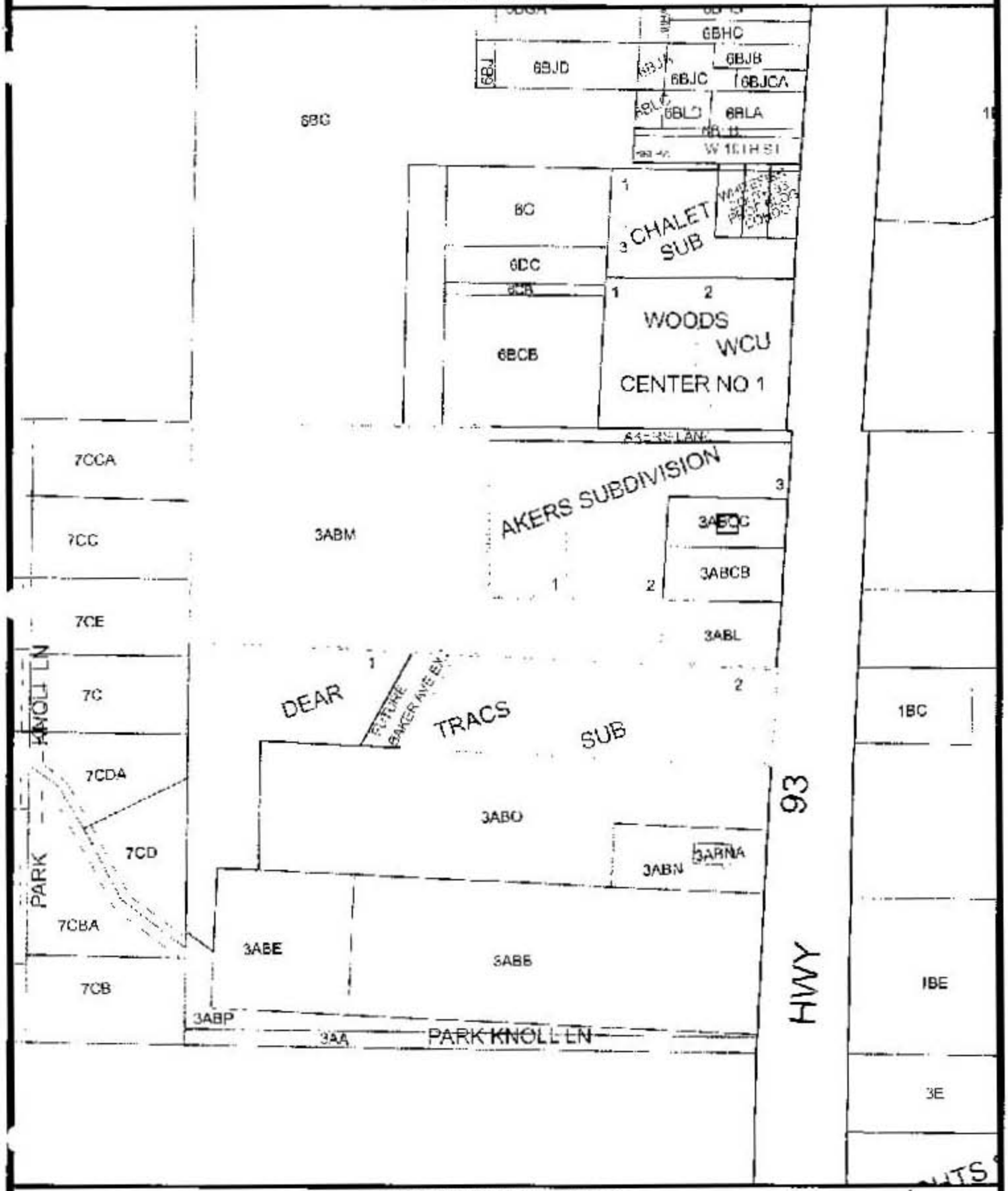
(SEAL)

KAREN L. CORDI
NOTARY PUBLIC for the
State of Montana
Residing at Whitefish, Montana
My Commission Expires
July 6, 2014

x Karen L. Cordi
Printed Name: Karen L. Cordi
Notary Public for the State of Montana
Residing in Whitefish, MT
My Commission Expires: 7-06-2014

DEAR TRACTS SUB LOT 2 AND TR 3ABM IN S01 T30N R20W PMM

150 FOOT OWNERSHIP



FLATHEAD COUNTY GIS

Date: 7/22/2014
Project: 150 Foot Buffer

The areas depicted on this map are for illustrative purposes only and do not necessarily meet mapping surveying, or engineering standards. Deriving conclusions from this map is done at the user's risk.

The Whitefish Housing Authority
PO Box 1237, 100 East 4th Street, Whitefish, MT 59937
Phone: 862-4143 Fax: 862-4107

July 21, 2014

Mr. Jeff Badelt
Montana Development Group

RE: Support for the application of Montana Development Group for the proposed construction of rental units on property located off Highway 93.

As the director of the Whitefish Housing Authority, I support the application of Montana Development Group for the above referenced construction project. I applaud your commitment to house moderate and low-income households in our community.

Given our current heavy load of housing needs in Whitefish, I support the construction of apartments for low-income residents.

Sincerely,

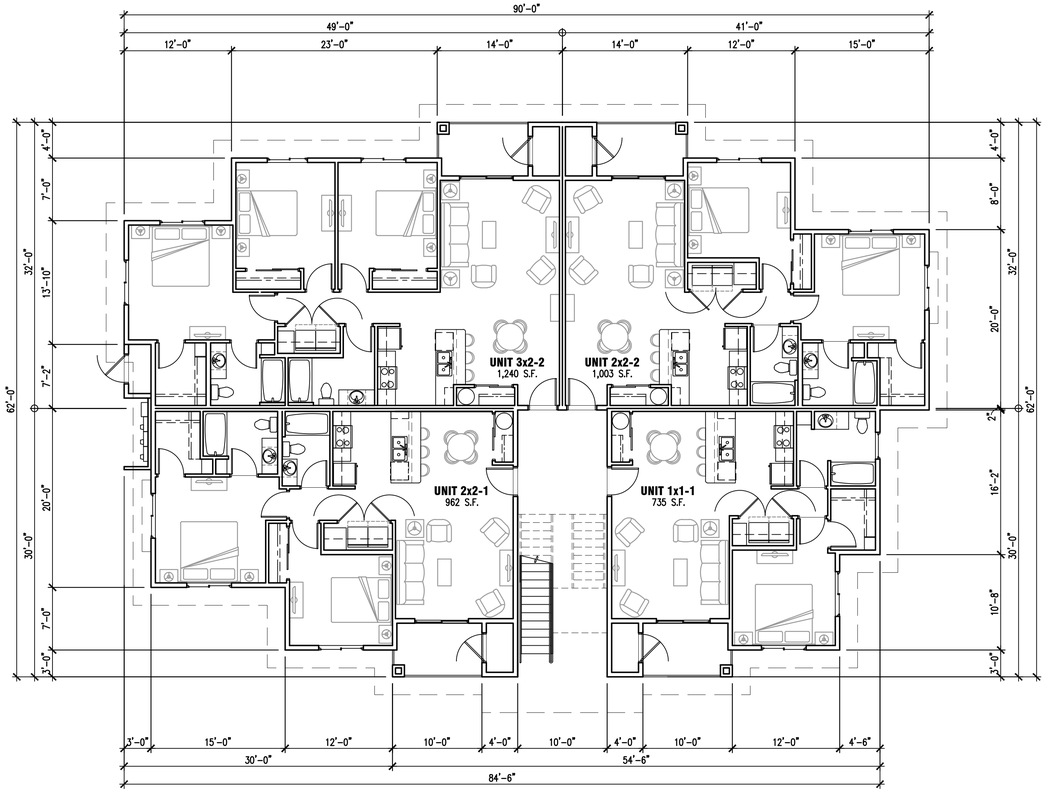
Lori Collins
Executive Director

From: "Janice Sattizahn" <NVR@MontanaWasteSystems.com>
Date: September 9, 2014 at 10:25:45 AM MDT
To: <Jeff@MTDevGroup.com>
Subject: FW: ENCLOSURE INFO - NVR
Reply-To: <NVR@MontanaWasteSystems.com>

From: Janice Sattizahn [mailto:NVR@MontanaWasteSystems.com]
Sent: Tuesday, September 02, 2014 2:06 PM
To: 'Jeff@MTDevGroup.com'
Cc: 'office@montanawastesystems.com'
Subject: ENCLOSURE INFO - NVR

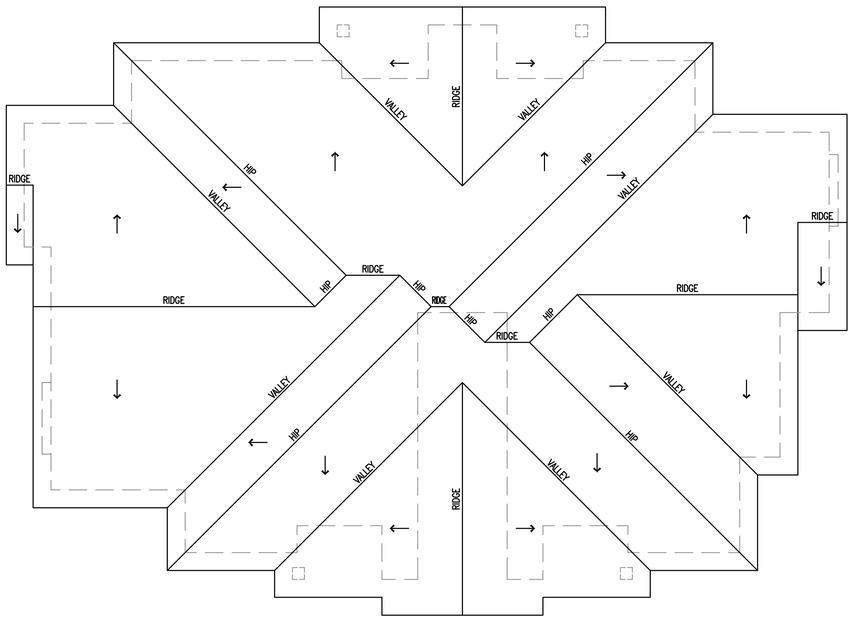
JEFF, AS PER YOUR REQUEST THESE ARE THE DIMENSIONS OF A 6YD FL - 86" WIDE X 68 " DEEP & 8YD FL - 86" WIDE X 86" DEEP.

GATE OPENING CLEARANCE NEEDS TO BE AT LEAST 11 FEET WIDE. CLEARANCE FROM FRONT TO BACK: 1 FOOT FROM CONTAINER TO GATE AND 2 FEET FROM BACK OF WALL TO CONTAINER IN ENCLOSURE, MAKING A TOTAL OF 3 FEET CLEARANCE. THIS IS FOR WALLED ONLY, NO ROOF. ANY QUESTIONS CALL ME AT 862-4381. THANKS, TOM



APARTMENT BUILDING FIRST FLOOR PLAN

SCALE: 1/8" = 1'-0" SECOND AND THIRD FLOOR SIMILAR



APARTMENT BUILDING ROOF PLAN

SCALE: 1/8" = 1'-0"

THE ARCHITECTS OFFICE PLLC
PRICE SANDERS COOPER RHEES RUBY
499 MAIN STREET (208) 343-2931
BOISE, IDAHO 83702 TAOIDAHO.COM

PROJECT

MONTANA DEVELOPMENT GROUP

DEER TRACK RESIDENCES

6348 U.S. HIGHWAY NO. 93
WHITEFISH, MONTANA

SEAL

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FILE

DATE
JULY 31, 2014

FILE NO.
14-535 SD2.0

DRAWN
MATT RHEES

REVISIONS

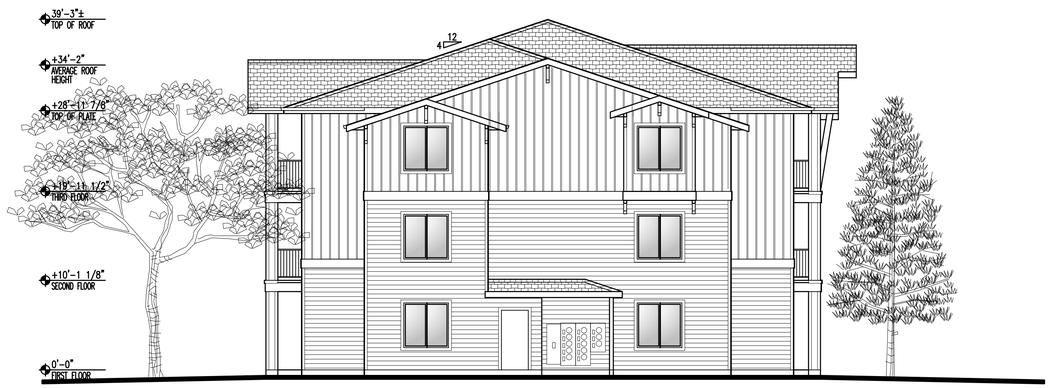
SHEET

SD2.1

SCHEMATIC DESIGN

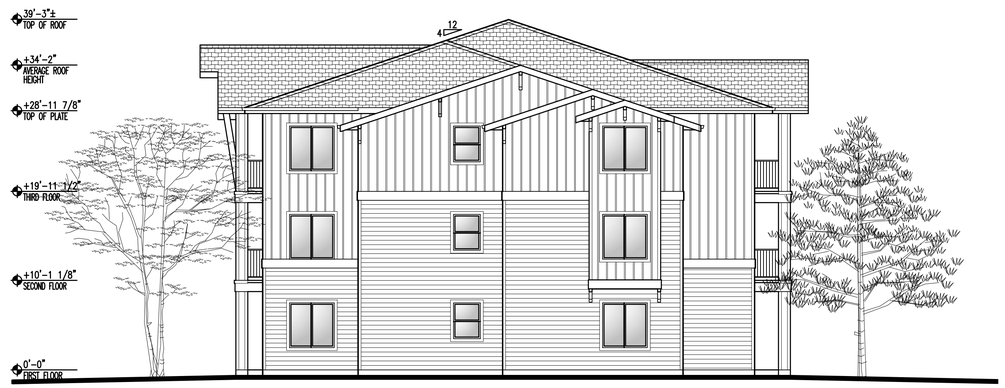
FRONT ELEVATION

SCALE: 1/8" = 1'-0"



LEFT ELEVATION

SCALE: 1/8" = 1'-0"



RIGHT ELEVATION

SCALE: 1/8" = 1'-0"

REAR ELEVATION

SCALE: 1/8" = 1'-0"

THE ARCHITECTS OFFICE PLLC
PRICE SANDERS COOPER RHEES RUBY
499 MAIN STREET (208) 343-2931
BOISE, IDAHO 83702 TAOIDAHO.COM

PROJECT

MONTANA DEVELOPMENT GROUP

DEER TRACK RESIDENCES

6348 U.S. HIGHWAY NO. 93
WHITEFISH, MONTANA

SEAL

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FILE

DATE
JULY 31, 2014

FILE NO.
14-535 SD2.0

DRAWN
MATT RHEES

REVISIONS

1. 9-3-14

SHEET

SD2.2

SCHEMATIC DESIGN

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

JOB NO: 418601 (418601-BLA.dwg)
DATE: July 15, 2014
FOR: JEFF BADELT (MONTANA DEVELOPMENT GROUP)
OWNERS: HDH HOLDINGS, LLC (TRACT 1)
DEAR TRACS, LLC (LOT 2A)

Amended Plat Of
LOT 2, DEAR TRACS SUBDIVISION
NW1/4SE1/4 SEC. 1, T.30N., R.22W., P.M.,M., FLATHEAD COUNTY, MONTANA

Sec. 1

SCALE : 1" = 40'
40' 20' 0 40' 80'

PURPOSE: BOUNDARY LINE ADJUSTMENT

N

SANDS SURVEYING INC.

DESCRIPTION:

TWO TRACTS OF LAND, SITUATED, LYING AND BEING IN THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 30 NORTH, RANGE 22 WEST, P.M.,M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:

LOT 2A:

BEGINNING at the southeast corner of Lot 2, Dear Tracs Subdivision (records of Flathead County, Montana), which is a found iron pin on the westerly R\W of U.S. Highway No. 93; Thence leaving said R\W N87°38'54"W 778.66 feet to a found iron pin; Thence N28°36'58"E 229.37 feet to a found iron pin on the north boundary of said Dear Tracs Subdivision; Thence along said north boundary S87°41'06"E 82.74 feet to a set iron pin; Thence leaving said north boundary N00°01'06"E 125.60 feet to a found iron pin; Thence S89°33'55"E 351.38 feet to a found iron pin; Thence S02°35'28"W 137.03 feet to a set iron pin on the north boundary of said Dear Tracs Subdivision; Thence along said north boundary S87°41'06"E 249.86 feet a found iron pin on the westerly R\W of U.S. Highway No. 93; Thence leaving said north boundary and along said R\W S02°36'42"W 206.13 feet to the point of beginning and containing 4.493 ACRES; Subject to and together with a 30' utility easement as shown hereon; Subject to and together with all appurtenant easements of record.

The above described tract of land shall hereafter be known as:

AMENDED PLAT OF LOT 2, DEAR TRACS SUBDIVISION

PARCEL 'A': (Being removed from Tract 1 of COS 10669, and added to and being made a part of this subdivision, not to be sold as a separate tract of land.)

Commencing at the southeast corner of Lot 2, Dear Tracs Subdivision (records of Flathead County, Montana), which is a found iron pin on the westerly R\W of U.S. Highway No. 93; Thence leaving said R\W N87°38'54"W 778.66 feet to a found iron pin; Thence N28°36'58"E 229.37 feet to a found iron pin on the north boundary of said Dear Tracs Subdivision; Thence along said north boundary S87°41'06"E 82.74 feet to a set iron pin and the **TRUE POINT OF BEGINNING of the tract of land herein described**; Thence leaving said north boundary N00°01'06"E 125.60 feet to a found iron pin; Thence S89°33'55"E 351.38 feet to a found iron pin; Thence S02°35'28"W 137.03 feet to a set iron pin on the north boundary of Dear Tracts Subdivision; Thence along said north boundary N87°41'06"W 345.50 feet to the point of beginning and containing 1.050 ACRES; Subject to and together with all appurtenant easements of record.

OWNERS' CERTIFICATION:

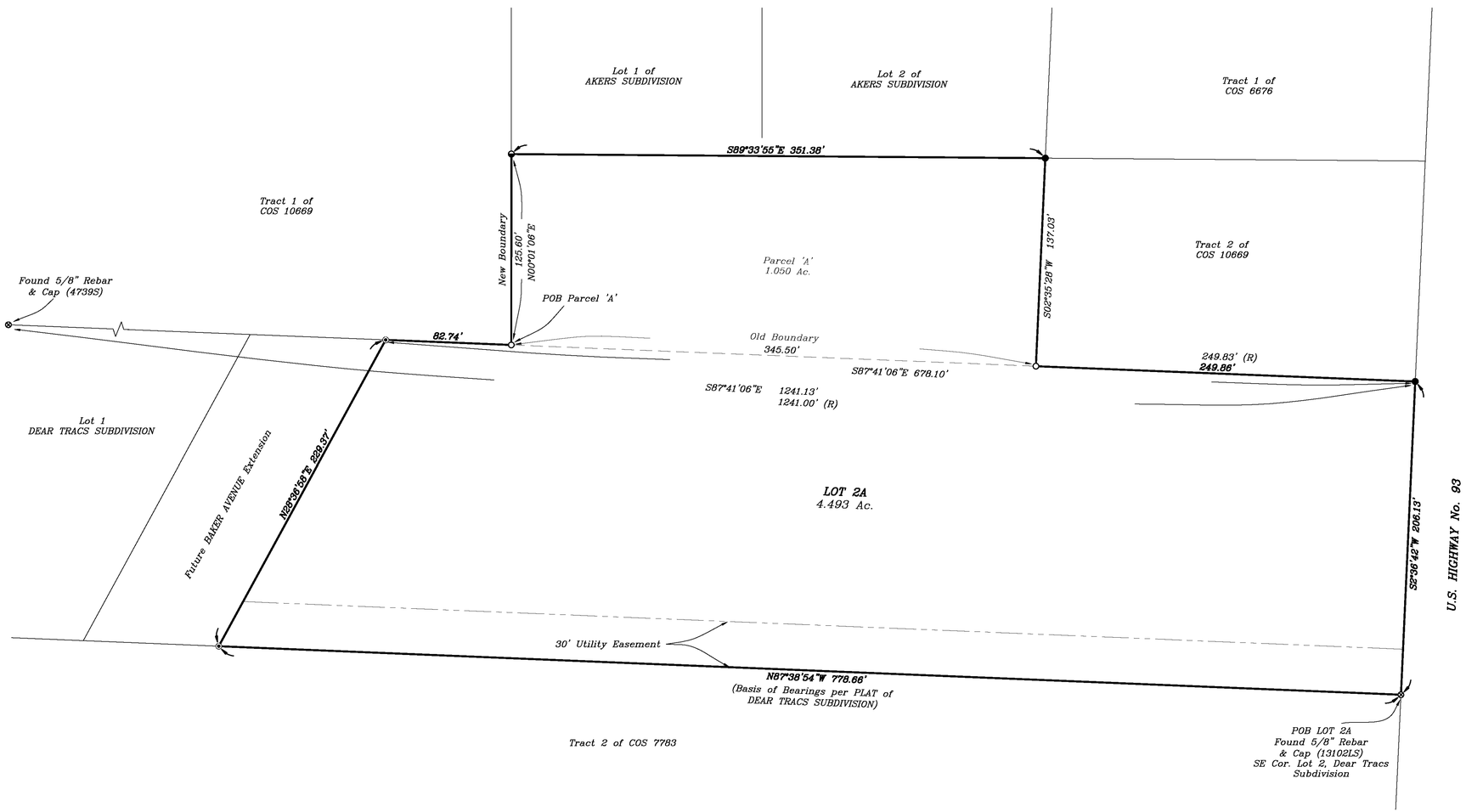
We hereby certify that the purpose of this division of land is to relocate common boundary lines between 5 or fewer lots within a platted subdivision; therefore, this relocation of boundaries is exempt from review as a subdivision pursuant to Section 76-3-207 (1)(d), M.C.A.

ALSO:

We certify that Lot 2A is excluded from sanitation review by the Department of Environmental Quality pursuant to ARM 17.36.605 (2) (b) as a parcel that has a previous approval issued under Title 76, chapter 4, part 1, M.C.A. (See E.Q. #02-1021) if: (i) no facilities other than those previously approved exist, or will be constructed on the parcel; and (ii) the division of land will not cause approved facilities to deviate from the conditions of approval, in violation of 76-4-130, MCA."

_____ **HDH HOLDINGS, LLC**

_____ **DEAR TRACS, LLC**



STATE OF _____)
SS
County of _____)

On this _____ day of _____, 2014, before me, a Notary Public in and for the State of _____, personally appeared _____ _____, of HDH HOLDINGS, LLC, and known to me to be the person(s) whose name(s) is(are) subscribed to the foregoing instrument and who duly acknowledged to me that he(she)(they) executed the same.

_____
Notary Public for the State of _____

_____
Printed Name of Notary
Residing at _____
My commission expires _____

STATE OF _____)
SS
County of _____)

On this _____ day of _____, 2014, before me, a Notary Public in and for the State of _____, personally appeared _____ _____, of DEAR TRACS, LLC, and known to me to be the person(s) whose name(s) is(are) subscribed to the foregoing instrument and who duly acknowledged to me that he(she)(they) executed the same.

_____
Notary Public for the State of _____

_____
Printed Name of Notary
Residing at _____
My commission expires _____

LEGEND:

- C1/4 Corner (as noted)
- Set 1/2"x24" Rebar & Cap (7975S)
- Found 1/2" Rebar & Cap (7975S)
- Found 5/8" Rebar & Cap (2516S)
- Found 5/8" Rebar & Cap (15627LS)
- Found (as noted)
- (R) Record Information per COS 10669

CERTIFICATE OF SURVEYOR

_____
THOMAS E. SANDS 7975-S

APPROVED: _____, 201__

_____
EXAMINING LAND SURVEYOR
REG. No. 5428S

STATE OF MONTANA)
COUNTY OF FLATHEAD) SS
FILED ON THE ___ DAY OF _____, 201__
AT _____, PAID FEE _____

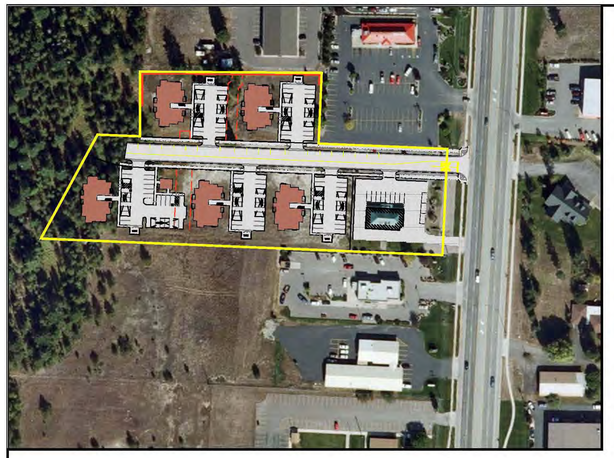
_____
CLERK & RECORDER

BY _____
DEPUTY

INSTRUMENT REC. No. _____

SHEET 1 OF 1

FILE No. _____



DEER TRACK RESIDENCES
CIVIL CONCEPT PLAN

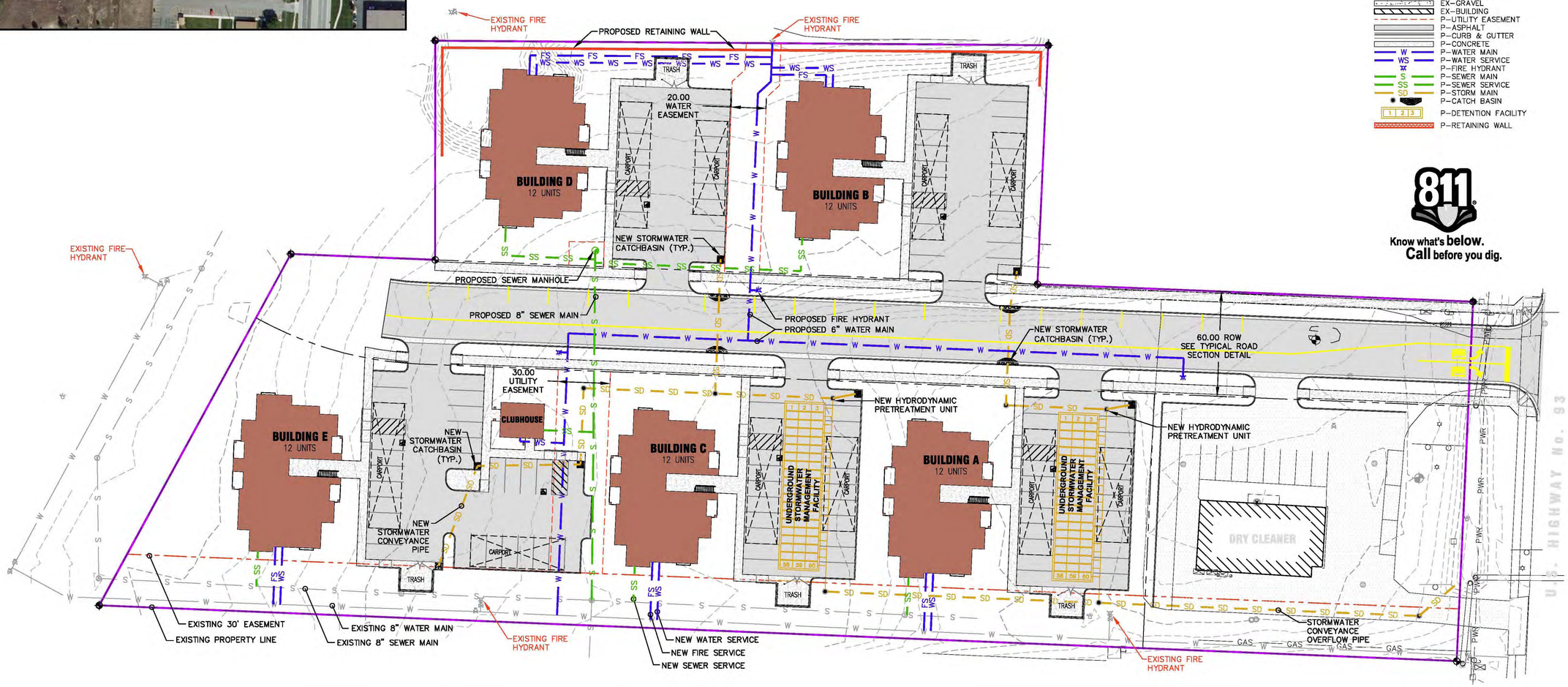
LEGAL DESCRIPTION
LOT TWO (2) OF DEAR TRACS SUBDIVISION & a PORTION OF TRACT 1 COS 10669
SEC 1, TOWNSHIP 30N, RANGE 22W

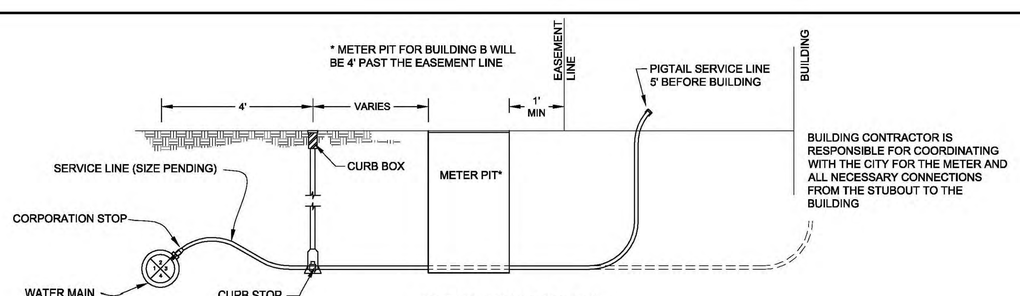
GRAPHIC SCALE
30 0 15 30
(IN FEET)
1 inch = 30 ft.

LEGEND

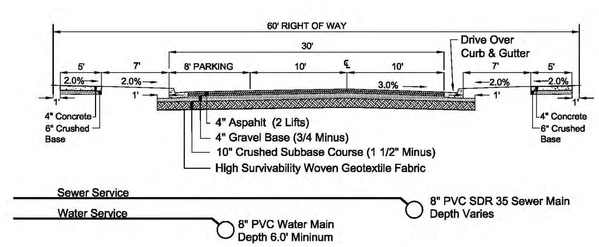
- EX-PROPERTY BNDRY
- EX-CONTOUR
- EX-OH POWER LINE
- EX-POWER POLE
- EX-GAS
- EX-SEWER
- EX-WATER
- EX-FIRE HYDRANT
- EX-PAVEMENT
- EX-GRAVEL
- EX-BUILDING
- P-UTILITY EASEMENT
- P-ASPHALT
- P-CURB & GUTTER
- P-CONCRETE
- P-WATER MAIN
- P-WATER SERVICE
- P-FIRE HYDRANT
- P-SEWER MAIN
- P-SEWER SERVICE
- P-STORM MAIN
- P-CATCH BASIN
- P-DETENTION FACILITY
- P-RETAINING WALL

Know what's below. Call before you dig.





WATER SERVICE DETAIL



30 FT. TYPICAL ROAD SECTION

ENGINEER:
48 NORTH P.C.
151 BUSINESS CENTER LOOP
SUITE A
KALISPELL, MT. 59901
406-756-4848

48 NORTH p.c.
Civil Engineering Services
151 BUSINESS CENTER LOOP, SUITE A,
KALISPELL, MT. 59901 - (P)406-756-4848 (F)406-756-4849

SEAL

SUBCONSULTANT

DEER TRACK RESIDENCES
CIVIL CONCEPT PLAN
WHITEFISH, MONTANA

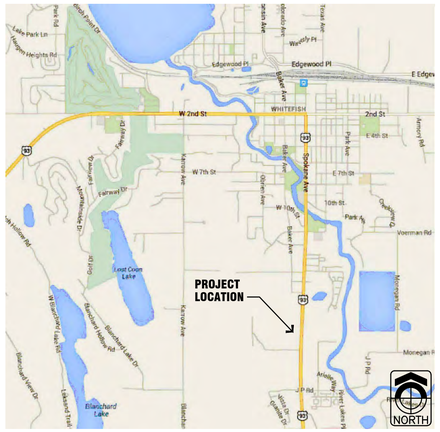
DRAWING SET DATE				
ISSUES\REVISIONS	1 = ISSUE △ = REVISION			
No.	Date	Purpose	By	Check
	7/29/2014 - CONCEPT			
	9/5/2014 - REV (WTR/STRP)			

PROJECT NUMBER	
SHEET TITLE	
BOOK	PAGE
DRAWN BY:	

SHEET No. 1 OF 1

VICINITY MAP

NO SCALE



PROJECT DIRECTORY

OWNER

MONTANA DEVELOPMENT GROUP
CONTACT: JEFF BADELT
V: (406) 890–8195
E: Jeff@MtDevGroup.com

ARCHITECT

THE ARCHITECTS OFFICE, PLLC
499 MAIN ST.
BOISE, IDAHO 83702
CONTACT: MATT RHEES
V (208) 343–2931 EXT. 5
F (208) 343–1306
C (208) 331–1499
E matt@taoidaho.com
CONTACT: JOHN PRICE
V (208) 343–2931 EXT. 2
F (208) 343–1306
E john@taoidaho.com

SURVEY

SANDS SURVEYING, INC.
2 VILLAGE LOOP
KALISPELL, MONTANA 59901
CONTACT: ERIC MULCAHY
V (406) 755–6481
F (406) 755–6488
E eric@sandssurveying.com

CIVIL

48 NORTH CIVIL ENGINEERING SERVICES
151 BUSINESS CENTER LOOP, SUITE A
KALISPELL, MONTANA 59901
CONTACT: BRETT WALCHECK
V (406) 756–4848
F (406) 456–4849
C (406) 249–4736

LANDSCAPE

WHITE CLOUD DESIGN, INC.
150 RAILWAY ST.
BOX 67
WHITEFISH, MONTANA 59937
CONTACT: JOHNNY McDONALD
V (406) 863–2828
C (406) 261–2827

PROJECT DATA

LEGAL DESCRIPTION:
LOT 2 OF DEAR TRACS SUBDIVISION AND A PORTION OF TRACT 1 OF COS 10669 IN SECTION 1, T30N, R22W, P.M.M., FLATHEAD COUNTY.

CURRENT ZONING:.....WB-2 / WLR

PROPOSED ZONING:.....WB-2 / WLR WITH A PUD

PARCEL AREA:.....195,705 S.F. / 4.493 ACRES

RETAIL USE:.....18,077 S.F. / 0.415 ACRE
NORTH APARTMENT USE:....45,738 S.F. / 1.050 ACRE
SOUTH APARTMENT USE:....91,151 S.F. / 2.093 ACRES
PROPOSED R.O.W.:.....40,739 S.F. / 0.935 ACRE

DEVELOPMENT STANDARDS

MINIMUM LOT SIZE: 6,000 S.F. + 1,000 PER UNIT

LOT REQUIREMENTS	WLR REQUIRED	WB-2 REQUIRED	PROPOSED
NORTH LOT SIZE:	15,000 S.F.	N/A	45,738 S.F.
SOUTH LOT SIZE:	15,000 S.F.	N/A	91,151 S.F.
MIN. NORTH LOT WIDTH	80 FT.	N/A	330 FT.
MIN. SOUTH LOT WIDTH	80 FT.	N/A	730 FT.
FRONT YARD SETBACK*:	25 FT.	20 FT.	20 FT.**
STREET SIDE SETBACK*:	15 FT.	20 FT.	20 FT.
SIDE YARD SETBACK*:	15 FT.	20 FT. / NA	20 FT.+
REAR YARD SETBACK*:	20 FT.	20 FT. / NA	15-20 FT.
MAXIMUM HEIGHT	35 FT.	35 FT.	40 FT.
LOT COVERAGE	30%	N/A	18 %

* FRONT YARD IS INTERPRETED AS THE SPACE BETWEEN THE PROPOSED 60 FT. R.O.W. AND THE SIDE OF THE PROPOSED BUILDINGS.

** PROPOSED STREET SETBACK FOR CLUBHOUSE IS 10 FT.

LOT COVERAGE:
APARTMENT BUILDING LOTS AREA:.....136,889 S.F.
3.143 ACRES

TOTAL BUILDING FOOTPRINTS:.....23,900 S.F. / 18%
PAVEMENT COVERAGE:.....45,100 S.F. / 33%
LANDSCAPING:.....67,889 S.F. / 49%

BUILDING DATA

PROPOSED APARTMENT OFFICE / CLUBHOUSE:.....1

PROPOSED APARTMENT BUILDINGS:.....5

PROPOSED UNITS PER BUILDING:.....12

PROPOSED TOTAL UNITS:.....60

UNIT TYPE	PER BLD.	NO. OF BLD.	TOTAL
1-BED/1-BATH	3	5	15
2-BED/1-BATH	3	5	15
2-BED/2-BATH	3	5	15
3-BED /2-BATH	3	5	15
TOTALS	12		60

PARKING DATA

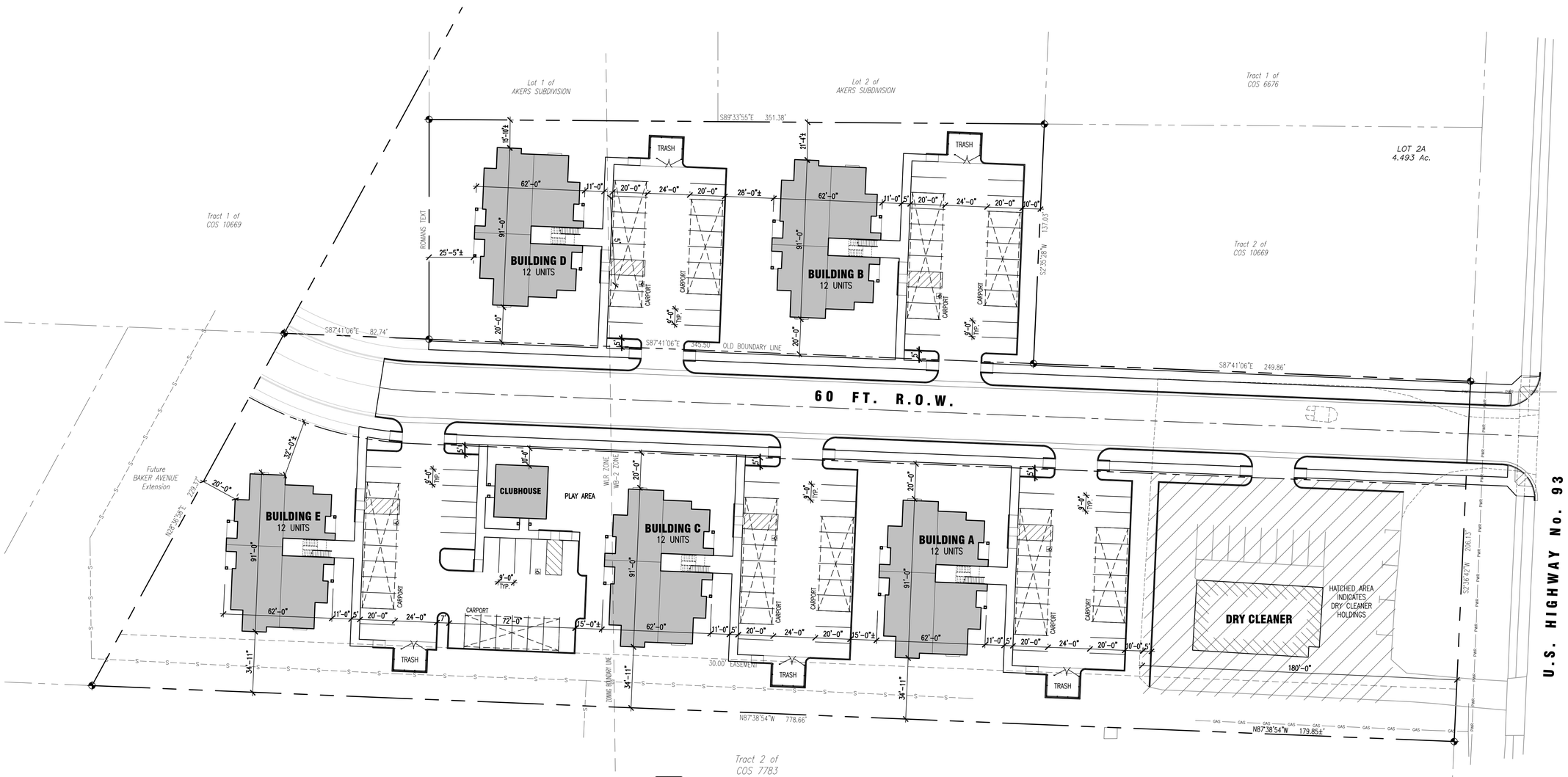
PARKING REQUIRED:.....2 STALLS PER UNIT
PLUS 1 GUEST STALL PER EVERY 3 UNITS

60 UNITS X 2 STALLS PER UNIT = 120 STALLS
60 UNITS X .33 STALL PER UNIT = 20 STALLS

TOTAL STALLS REQUIRED:.....140 STALLS
(2.33 STALLS PER UNIT)

RECOMMENDED PARKING:
CLUBHOUSE: 1.0 STALL PER 200 S.F. = 2
ONE BEDROOM UNITS: 1.0 STALLS X 15 UNITS = 15
TWO BEDROOM UNITS: 1.5 STALLS x 30 UNITS = 60
THREE BEDROOM UNITS: 2.0 STALLS x 15 UNITS = 30
GUEST PARKING: 1.0 STALLS PER 5 UNITS = 12
TOTAL RECOMMENDED STALLS: 119

TOTAL STALLS PROPOSED:.....120 STALLS
(2.0 STALLS PER UNIT)
(20 STALL REDUCTION)



1 SITE PLAN
SCALE: 1" = 30'-0"

NORTH

THE ARCHITECTS OFFICE PLLC
PRICE SANDERS COOPER RHEES RUBY
499 MAIN STREET (208) 343-2931
BOISE, IDAHO 83702 TAOIDAHO.COM

PROJECT

MONTANA DEVELOPMENT GROUP

DEER TRACK RESIDENCES

6348 U.S. HIGHWAY NO. 93
WHITEFISH, MONTANA

SEAL

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FILE
DATE
JULY 31, 2014
FILE NO.
14-535 SD2.0
DRAWN
MATT RHEES

REVISIONS

SHEET

SD2.0

SCHEMATIC DESIGN

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

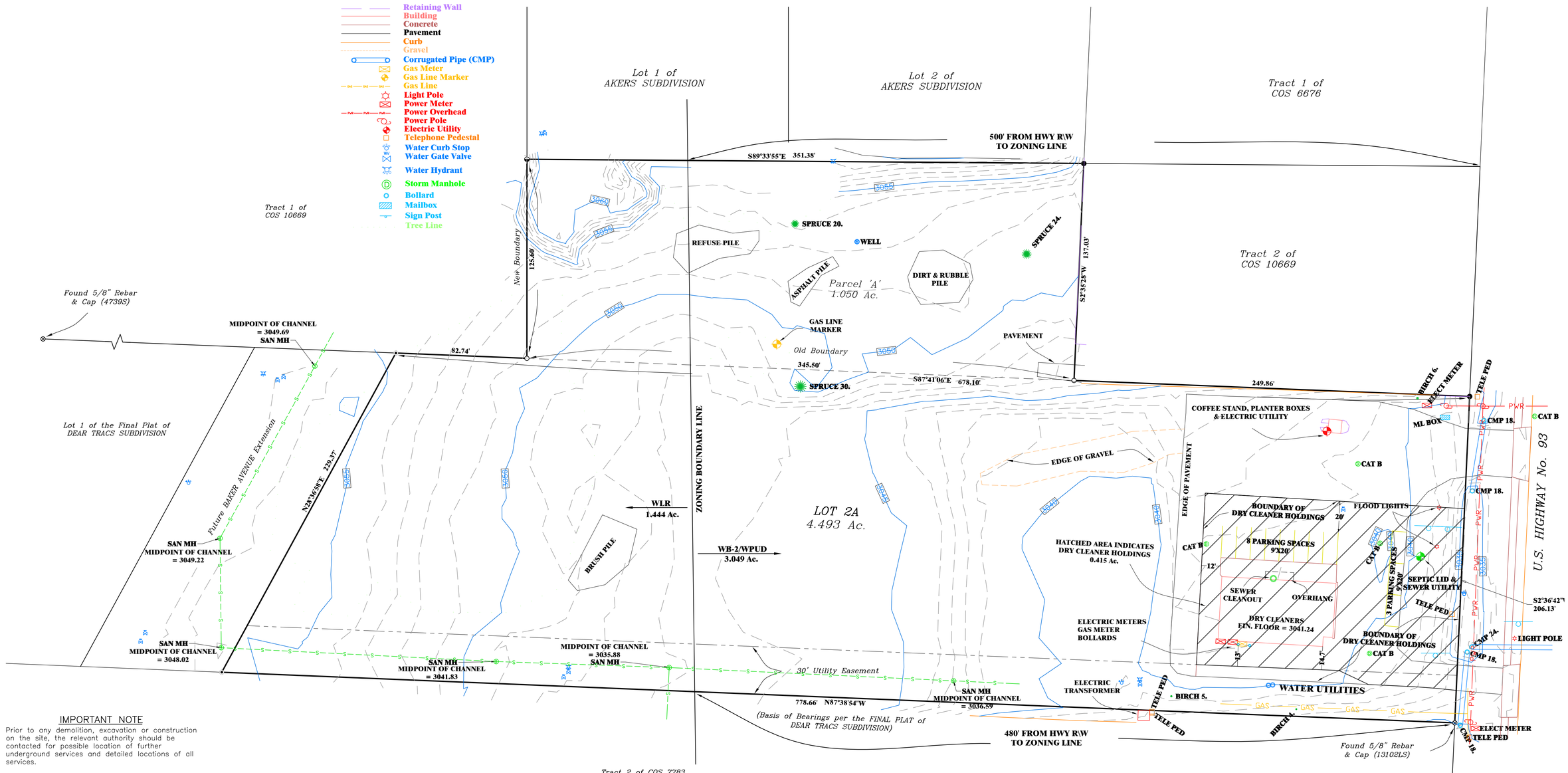
JOB NO: 418601
DATE: July 25, 2014
FOR: JEFF BADELT
OWNER: HDH HOLDINGS, LLC. (PARCEL 'A')
DEAR TRACS, LLC. (LOT 2)

Notes:
Vertical Datum: NGVD 88

Topography of:
LOT 2 of DEAR TRACS SUBDIVISION & a PORTION of TRACT 1 of COS 10669
IN SEC.1, T.30N., R.22W., P.M.,M., FLATHEAD COUNTY

SCALE : 1" = 30'
30' 15' 0 30' 60'

LEGEND:
- Set 1/2" x 24" Rebar & Cap (7975S)
- Found 1/2" Rebar & Cap (7975S)
- Found 5/8" Rebar & Cap (2516S)
- Found 5/8" Rebar & Cap (15627LS)
- Found (as noted)
- Retaining Wall
- Building
- Concrete
- Pavement
- Curb
- Gravel
- Corrugated Pipe (CMP)
- Gas Meter
- Gas Line Marker
- Gas Line
- Light Pole
- Power Meter
- Power Overhead
- Power Pole
- Electric Utility
- Telephone Pedestal
- Water Curb Stop
- Water Gate Valve
- Water Hydrant
- Storm Manhole
- Bollard
- Mailbox
- Sign Post
- Tree Line



IMPORTANT NOTE
Prior to any demolition, excavation or construction on the site, the relevant authority should be contacted for possible location of further underground services and detailed locations of all services.

SHEET 1 OF 1

Deer Track Residences Preliminary Plan

Scale: 1"=20'

July 31, 2014

N

LEGEND

MATERIALS

EVERGREEN TREE

DECIDUOUS TREE

SHRUBS

LAWN

CEDAR BARK MULCH PLANTER BED

Whitefish Montana

October 13, 2014

Mark Voelker

128 Park Knoll Lane

Whitefish Montana 59937

Whitefish Planning Department / staff

Box 158

Whitefish Montana 59937

Re: Proposed zoning change and WPUD 14-04.

Dear Planning Board and Staff,

I am a resident of the Park Knoll Subdivision near the proposed development and have some concerns with the project. I have read some letters from those who also have concerns as well as the staff report. I have to say that I agree with what troubles this project and the concerns of those in opposition to this zone change and subsequent project with my own added concerns and emphasis as follows:

Time frame – I request first that the whole process be postponed since this project seems to be on a fast track without adequate review and research. This will give time for neighbors and businesses to properly look into the plan.

Zone change – I researched and purchased my property based on the current single family zoning on near and adjacent properties. The fact that the proposed zone change is exclusively for this project worries me. I oppose the zone change.

Density – along with others the density is probably the greatest concern. Nowhere near this project is there like density.

Traffic – only one access on Highway 93 for 60 units at probably and realistically 400 to 500 auto trips per day, most in the waking hours (about one trip every 2 minutes on average) added to the already problematic south 93 corridor and its hotel growth is unacceptable.

But my greatest concern is the fact that this project simply does not fit the area. The project is closely sandwiched into an area of hotels, restaurants, and retail businesses and services where no like or compatible projects exist or are planned, much the same as if an auto body shop were allowed in a residential neighborhood or an agricultural application, let's say a chicken farm, next to restaurant row. The project is proposed to be monthly rental units rather than single family homes, condominiums or townhouses, so the tenants would have no ownership and financial and neighborly responsibility that comes along with that ownership. If the tenants are disrespectful to others they simply move on with ease leaving others to clean up their mess. I see the project as leaving little room for recreational areas for those tenants and since the children of all ages won't be able to play or have easy access to public recreation areas via

highway 93 to the east, hotels to the north and south, this only leaves the undeveloped property to the west where the children or adults, will at best, migrate to “play in the woods”, exercise their pets, take a quiet walk away from the noise and bustle of the commercial areas and 93 south, or trespass, vandalize, burgle and rob at worst. The threat of forest fire in the adjacent heavily treed properties to the west such as mine holds great worry for me since there have been times in the past where trespassers have started fires that were seen immediately and extinguished before getting out of hand. With the amount of tenants likely to be in the area should this project be approved, the dangers to my property would only be exacerbated. The approval for zone change and a project such as this will lower the value of my property as sure as a devastating fire or other damage would.

Simply put, if this project were allowed by the city, it would change the character of the area and Whitefish in general, as well as create a hazard for neighboring owners and the project’s tenants alike. A few years ago I was at a high school football game where students referred to Whitefish as “Condoville.” I thought at the time this was extreme, but as more and more unfitting high density projects such as the one proposed here are allowed it certainly will change the character of the community for the worse.

Please share my comments listed here with all on the staff, board and council.

Sincerely,

Mark Voelker

128 Park Knoll Lane

Whitefish Montana 59937

406-253-7559

Whitefish Montana

October 13, 2014

Dear Ms. Compton-Ring,

Please share my concerns listed here regarding the development WPUD 14-04 with those on the planning board, city council, and planning staff.

I own property on Park Knoll Lane and am concerned with the amount of units that are proposed for the development. There are entirely too many, too much density for the area. My concerns are to the people from that development who will wander through the woods to the west from this project and trespass or vandalize my property, or other crimes or mischief that is common with this type of development.

When I purchased my property I looked into surrounding zoning and the other possible projects and felt comfortable enough with the established zoning that I purchased with confidence that the value of my property would not go down due to projects such as the one proposed. I feel that if the project were allowed it would devalue my property. And an apartment complex at this location does not seem compatible with the nearby businesses and other neighbors. I have seen the proposals maps and the whole place looks inaccessible to me. I wonder about snow removal and emergency vehicles access to the area. It also does not look like there is enough parking for the amount of units. I see that a variance was requested for this and ask that the variance be denied. Also please deny the height variance request.

I don't like that fact that the zone change was not proposed for the betterment or safety of the community, but for an individual in order to allow a project to go through that will ultimately harm the community. I am opposed to any zone changes in this regard.

Overall I am strongly opposed to this proposal and have read many of my neighbors concerns and fully support those viewpoints and concerns as I do my own opposition to the PUD.

Please call if there are questions and place me on any mailing list having to do with this PUD so that I may further oppose it.

Kathy Grant

128 Park Knoll Lane, Whitefish Montana 59937 862-6382

Wendy Compton-Ring

From: Ryan Swagar <ryan@venture51.com>
Sent: Tuesday, October 14, 2014 5:35 PM
To: wcompton-ring@cityofwhitefish.org
Subject: Whitefish Apartment Complex

Hi Wendy -

I am writing in support of the proposed apartment complex in Whitefish behind the Naturally Clean dry cleaners on Highway 93.

For years, Whitefish has needed apartments to allow the local professionals the ability to work and live in the community. Currently these local professionals are renting in Columbia Falls and Kalispell. This hurts local businesses as those professionals are living outside Whitefish and spending money with those local businesses instead.

From personal experience with struggling to find rental properties in Whitefish, it is my belief that this project will have more demand than units available and an amazing opportunity to have 100 or more individuals living in the town of Whitefish.

Please let me know if you would like to have a phone call to discuss.

Thanks,
Ryan

Ryan Swagar
Managing Partner
Venture51

Wendy Compton-Ring

From: Pam Shaw <shaw@actrix.co.nz>
Sent: Tuesday, October 14, 2014 7:19 PM
To: wcompton-ring@cityofwhitefish.org
Subject: Support for housing development on 93

Hi Wendy

I would like to take this opportunity to support the housing development proposed for Whitefish near the Naturally Clean dry cleaners. Having been in the position of trying to find good quality rental housing in Whitefish 2 years ago, I fully appreciate the terrible shortage. Also being a landlady I also appreciate the return on investment, renting out good quality property for the short term and high yield. That is holiday rental. This is a common problem in resort towns where rentals are low compared with property costs. This is a situation where several investors are willing to alleviate this problem with the proposed development. I feel this proposal is a wonderful win/win and I would hope will be applauded and actioned for the positive.

If you require any further endorsement from me please feel free to contact me.

Yours faithfully

Pamela Shaw RN
406 407 6496

Wendy Compton-Ring

From: Sara Mytty <smytty3@gmail.com>
Sent: Tuesday, October 14, 2014 2:54 PM
To: wcompton-ring@cityofwhitefish.org
Subject: Apartment complex

I have only been in whitefish for a little over a year and I love it. I know when I first moved here I struggled in finding a place. I think adding in apartments is great and the location of them is also a great idea. I just know from experience how hard it is to find a place in the area unless you want more then one roommate which is fine and affordable. Just not what everyone wants to do.

Wendy Compton-Ring

From: Rebecca Kyle <rebecca@cmpmontana.com>
Sent: Tuesday, October 14, 2014 10:54 AM
To: wcompton-ring@cityofwhitefish.org
Subject: Proposed Apartment Complex

Hi Wendy,

I am writing to you regarding the proposed apartment complex behind Naturally Clean Dry Cleaners on Highway 93. This letter comes from me as both a real estate agent and as a member of the current Whitefish rental market. As a renter, it is almost impossible to find ANYTHING to rent in Whitefish, let alone something with reasonable enough rent that a person can be a member of the minimum wage work force and afford to live here. I have lived here for 2 years in a 100 year old rental house with mold in the basement. I have kept my eye on the market for something else, but nothing comes up in my price range. I go back and forth about re-upping my lease – if I lose this lease, I have nowhere to go, but who wants to keep living in a moldy house? As a real estate agent, I deal with people every day that are looking for a place to rent. It is very frustrating for them to not be able to come here without making a purchase.

The City of Whitefish has a responsibility to the community to provide affordable housing. How are businesses supposed to operate if they can't find any employees because the employees can't afford to live here? Look around at local businesses – Safeway, Taco Johns, Dairy Queen – all of these businesses have help wanted signs posted all the time. As community members, we should want these businesses to have all the employees they need – how can we provide good customer service to the multitude of tourists that come to visit us if we don't have enough workers? Tourism is a large part of the economy in Whitefish, if businesses close their doors, people will stop coming.

Please place my email as part of the public record for the Deer Tract Residences.

Respectfullly,

Rebecca

REBECCA KYLE
REALTOR, GRI, RRS
(406) 863-1090 OFFICE
(406) 260-5339 CELL
(866) 552-8901 FAX
rebecca@cmpmontana.com
www.cmpmontana.com

CLEARWATER MONTANA PROPERTIES, INC
903 SPOKANE AVENUE, SUITE 4
WHITEFISH, MT 59937 USA
LICENSED IN MONTANA
If you no longer wish to receive emails from me, please reply with "Unsubscribe" in the subject line

Wendy Compton-Ring

From: Nikkee Day <nikkee@montanabuild.com>
Sent: Tuesday, October 14, 2014 2:18 PM
To: wcompton-ring@cityofwhitefish.org
Subject: Deer Tract Residences

Dear Wendy,

I started my relocation plans to Whitefish in January 2013. I mainly relied on Craigslist, Daily Interlake, and Mountain Traders online services for jobs and rentals. However, I was unsuccessful in finding a decent, affordable, unfurnished, and long term rental in Whitefish. A couple of friends living in Whitefish confirmed it was a very difficult market for rentals. Upon arrival we drove around, and that's when I found my current place. It shouldn't have to be like this. There should be more housing for people like me!

Whitefish has everything to offer from great outdoor adventures, culture, awesome social scene, and a wonderful place to raise a family. However, what it doesn't have is affordable home rentals, and this really needs to change!

Sincerely,

Whitefish Resident

Nikkee Day

Wendy Compton-Ring

From: Phyllis Quatman <quatmanp@gmail.com>
Sent: Wednesday, October 15, 2014 1:42 PM
To: wcompton-ring@cityofwhitefish.org
Cc: sean@twre.com
Subject: Sean Averill's Planned Apartment Comples

Hi, Wendy,

Jack and I want to add our support to Sean's latest project, the apartment complex proposed near Pizza Hut. Our main objection to his former project on East Second Street was the location - a single family residential area not consistent with his then-proposed apartments.

However, this new location seems perfect. No traffic issues, no major rezoning required, and located within walking distance to the schools, food stores, and downtown. The idea that these will be affordable, with an actual affordable housing credit, adds an even greater benefit to this project.

Please add our names to the list of supporters.

Thanks,

Phyllis and Jack Quatman

Robert Horne, Jr., AICP
151 Wedgewood Lane
Whitefish, MT 59937
(406) 250-6632
rhorne@appcom.net

Whitefish City Planning Board
c/o Whitefish Planning Department
via e-mail

October 16, 2014

Re: WPUD14-04

Dear Planning Board:
I am writing in support of the above referenced PUD by Montana Development Group for a 60-unit multi-family residential complex located just off Hwy. 93 south in Whitefish.

Back around 2002-03, it was my privilege to work on a project with Dave Leland, who still heads Leland Consulting Group-----a world-wide consulting practice specializing in real estate economics. Dave is often brought into communities to revitalize a stagnant downtown or commercial corridor. One of his standard approaches that he takes in many cases is to immediately recommend that the community reduce its zoned commercial land by half. In Dave's experience, most communities are 50% over-zoned for commercial. This "over-supply" results in an undervalued land market which in turn leads to development of marginal quality that under performs economically both in terms of bringing dollars into the community and generating tax revenue. It doesn't take a rocket scientist, or an urban economist, to see that Whitefish has a surplus (meaning more than the market can absorb in the foreseeable future) of commercially zoned land that, oh by the way, happens to be rather poorly located. (But the latter consideration is a topic for another time.)

I was a member of a large group of east side residents who opposed the Second Street Residences, a proposed multi-family development on the Kauffman property just east of Cow Creek, as it moved through the development review process during the spring and summer of 2013. At that time, I testified that there were far more suitable sites for multi-family development in Whitefish, including some properties in the Hwy. 93 south corridor that are zoned WB-2. Therefore, I am happy to see that some of the commercial surplus is being proposed for a needed residential product type in the community----multi-family rental housing.

From a community planning standpoint, the Hwy. 93 corridor offers a number of advantages for multi-family housing. First, this type of development is less likely to impact the scale, character, and qualities of existing neighborhoods. Most of the surrounding property is commercial, and access is afforded directly from Hwy. 93 via a future public street. There will be no infiltration of project traffic into any residential neighborhood. Second, this corridor provides shopping,

services, and some employment opportunities within walking/biking distance, thus reducing the need for automobile trips. Finally, the Hwy. 93 corridor provides ready access to all parts of the community as well as transit service in the winter.

While I would have liked to have seen some of the more progressive and innovative development concepts that were featured in the Second Street Residences incorporated into this project, the need for a public street running east-west through the middle of the site seems to take those options off the table. The public street leaves two relatively shallow parcels for the design team to deal with. Still, I trust that landscaping, thoughtfully designed building facades, and exterior finishes and materials that reflect well on the Whitefish community will be employed. Thank you for the opportunity to comment on this proposed development and to participate in the local decision making process that we all value.
Respectfully submitted,

Robert Horne, Jr., AICP

Thomas T. Tornow, P.C.

Memo

To: Whitefish Planning Board

From: Thomas T. Tornow

CC: Clients

Date: October 16, 2014

Re: Maximum Density for a PUD on WLR

THE PROPOSED DENSITY EXCEEDS WHAT IS PERMITTED BY THE CITY ZONING CODE ON WLR ZONED PROPERTY.

The density standards for a PUD are found in Title 11, Chapter 2, Article S, Section 3(B) [Section 11-2S-3(B)] of the City's Zoning Code.

Section 11-2S-5 identifies which development standards can be varied in a PUD and which cannot. Section 11-2S-5(B)(1) expressly prohibits a deviation from the density standards set forth in the PUD Chapter (see attached).

Per Section 11-2S-3(B) of the City's Zoning Code (attached), the maximum PUD density in a WLR zone without the 10% affordable housing bonus is 3 units per acre. The maximum PUD density in a WLR zone with the 10% bonus is 5 units per acre.

Page 3 of the PUD Application recites that the subject property includes 1.44 acres. As such, the maximum density permitted on the property zoned (or to be re-zoned) WLR is 7 units.

The proposed Dear Trac PUD far exceeds this density on the WLR property. As such, the Board can either:

(1) recommend denial of the Application; or

(2) recommend a condition that the density on the property zoned (including that to be re-zoned) WLR not exceed 5 units per acre. In addition to bringing the Application into compliance with the density limits mandated by the City's PUD Code, the condition would provide an appropriate density buffer between the high density apartments on the WB-2 zoned property and the adjacent single family residences.

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ONE AFFORDABLE HOUSING UNIT SHOULD BE REQUIRED IN THE WLR ZONE.

The Application does not identify where the Applicant proposes to locate the affordable units creating the 10% density bonus. It makes sense, and is good public policy, that if the Applicant is receiving the density bonus allowed in a particular zone that the affordable units supporting the bonus be situated in that zone. Otherwise, an applicant could reap the benefits of the density bonus in one zone; and create an affordable housing ghetto in another zone unrelated to the zone category giving rise to the bonus. This is inconsistent with the City's public policy of including affordable housing units within market rate housing.

If approved, the Board should recommend a condition that one affordable unit in the WLR zoned property (10% of the maximum 7 units permitted), be situated in the property zoned WLR.

TTT

14. No terrain disturbance for development purposes may be undertaken until such time as a site plan pursuant to a building permit is approved by the planning and building department or, in the unincorporated area of the city's zoning jurisdiction, the property owner has received either preliminary plat approval, PUD approval, or a conditional use permit, if required. For purposes of this section, "terrain disturbance for development" shall mean any grading, excavation, stockpiling of fill material, or clearing of vegetation in preparation to construct and/or provide access to a principal or accessory structure. Nothing in this subsection shall prohibit or preclude routine property maintenance, forest management, or any lawful grading or excavation of property not associated with development. (Ord. 07-22, 7-16-2007; amd. Ord. 07-33, 10-15-2007)

15. Uncovered, open air access ramps and stairs no wider than four feet (4'), or as required by building code, may encroach up to the property line or public right of way when providing primary access to an exterior door. (Ord. 10-04, 2-1-2010)

11-2S-5: DEVIATIONS FROM STANDARDS:

In order to provide flexibility in the design approach, the planned unit development overlay allows deviations from many standards of the underlying zoning district as well as from certain standards in the "Standards For Design And Construction" (public works design manual). Any proposed deviations from adopted standards must be justified as a clear public benefit, and shall directly relate to the purpose and intent of the PUD as set forth in section 11-2S-1 of this article.

A. The following standards may be deviated from through approval of a PUD site plan and PUD overlay:

1. Setbacks;

2. Building height;

3. Lot coverage;

4. Minimum lot size;

5. Lot width and/or frontage;

6. Any other lot standards set forth in the subdivision regulations;

7. Street design;

8. Storm water management;

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

10. Landscape standards, except for required buffers; and

11. Parking and loading standards.

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

1. Density standards as set forth in this chapter;

2. General categories of use as set forth in the underlying zoning district (nonresidential use in a residential zoning district, etc.) except as set forth in this chapter;

3. Lakeshore protection standards;

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

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

6. Any and all fees and charges except as set forth in this chapter. (Ord. 06-01, 1-17-2006)

14. No terrain disturbance for development purposes may be undertaken until such time as a site plan pursuant to a building permit is approved by the planning and building department or, in the unincorporated area of the city's zoning jurisdiction, the property owner has received either preliminary plat approval, PUD approval, or a conditional use permit, if required. For purposes of this section, "terrain disturbance for development" shall mean any grading, excavation, stockpiling of fill material, or clearing of vegetation in preparation to construct and/or provide access to a principal or accessory structure. Nothing in this subsection shall prohibit or preclude routine property maintenance, forest management, or any lawful grading or excavation of property not associated with development. (Ord. 07-22, 7-16-2007; amd. Ord. 07-33, 10-15-2007)

15. Uncovered, open air access ramps and stairs no wider than four feet (4'), or as required by building code, may encroach up to the property line or public right of way when providing primary access to an exterior door. (Ord. 10-04, 2-1-2010)

11-2S-3: STANDARDS OF DEVELOPMENT:

A. The minimum site area designated for a planned unit development shall be two (2) acres except in the WR-2, WR-3, WR-4, and WB-3 zoning districts where the minimum site area shall be one acre. The minimum site area may be reduced from the standards set forth above should the city council determine that a parcel, by virtue of its unique character, is best developed as a PUD, or, the project meets the provisions for the density bonus described in subsection B of this section.

B. Developments shall be allowed density bonuses when a minimum ten percent (10%) of the total number of units within the development is set aside for affordable housing meeting the needs for "moderate income" families as defined in this title. The residential density bonus for a planned unit development with affordable housing shall be as follows:

Underlying Zone	Maximum PUD Density Without The Ten Percent Affordable Housing	Maximum PUD Density With A Minimum Ten Percent Affordable Units Or In Lieu Payment
WA	1/15 dwelling unit/gross acre	1/15 dwelling unit/gross acre
WCR	0.4 dwelling unit/gross acre	0.5 dwelling unit/gross acre
WSR	1 dwelling unit/gross acre	1.5 dwelling units/gross acre
WER	2 dwelling units/gross acre	3 dwelling units/gross acre
WLR	3 dwelling units/gross acre	5 dwelling units/gross acre
WR-1	4 dwelling units/gross acre	7 dwelling units/gross acre

Park Knoll Estates Homeowners response to WPUD 14-04 & WZC 14-08

Introduction

As a subdivision, with the limited time we've had to review, discuss and develop a more informed and reasoned response, we must conclude that we are strongly opposed to this application as submitted. Some of the more critical reasons follow.

Zoning

This entire proposal seems to address what is stated as a compelling need for more apartment rentals and affordable housing in Whitefish. 60 rental units (including 6 affordable housing units) are proposed to address that stated (not supported by documented evidence) need. It should be noted, as stated in the staff report, that the 6 affordable units were required for this PUD overlay. Whether these needs are genuine, or not, we do not believe this proposal is the right location to address those needs.

All our subdivision residents share a view of what Zoning means as a planning tool and what it means the each of us as homeowners. We do understand that it represents a mechanism for a community to manage development in support of the Whitefish long term growth objectives for their community. For us, as homeowners, it represents a level of assurance that their investment in their property and home is reasonably protected over time and should not be changed without the most rigorous and thorough review and investigative process. We do not believe this application meets that standard. We also recognize that the WLR, or now County R2, zoning over the lands between our subdivision is subject to development. However, our expectation has been, and remains, that this property as currently zoned, is likely to be developed as low density residential properties more consistent with WLR or County R2 zoning, whichever exists.

Instead, we are being presented with a very high density apartment development with a density of 12 or more units per acre instead of the current 1 to 2.5 units per acre available today in the WLR zone. Although Tom Tornow's memo on the Zoning code violation does not directly relate to the zone chage request it pervades the whole proposed development. We are disturbed about the proposed zone change and think it should be denied

It also appears to us that the annexation on Sept 15th and the subsequent zone change request before you tonight, as stated in the staff report, were explicitly done to enable this proposal to proceed. In classical planning terms we think that might be construed as "Spot Zoning", something generally unacceptable and always to be avoided. For all the reasons discussed we oppose this zone change.

Density Implications

There are many concerns here about 60 rental apartment units in a confined space with very limited open space, bounded on both the north and south by commercial development and on the east by a busy US 93 highway corridor. The only truly open space available is to the undeveloped land to the west.

Renters do not share the same ownership responsibilities as home owners at any level. They come and go as they wish and certainly deal with their "home" differently than homeowners. The actual number of residents is unknown, but probably somewhere between 120 and 200 of varying interests and ages from young children to senior citizens.

Realistically, the open space provided is limited and the 30% requirement is only met by adding together all the spaces scattered throughout the development including a small club house, picnic and playground area. Residents with pets who want to exercise them are not going to head to US 93 even though there is a sidewalk, but rather will head for the forested area to the west, Young people who want to explore or seek privacy for any reason will also head west into the forested area. Even today, without this density increase, we have experienced problems with people living temporarily in that area with some fires, as well as limited vandalism. We are convinced that this density change with its characteristics will intensify those problems. Fire and vandalism, in particular, are very scary probabilities to our homeowners. There is also concern about probable devaluation of our property values, but we have not had time to explore that adequately.

Parking is also a problem and this proposal also includes a request to reduce the normal parking requirement for 140 spaces to 120. With our Montana life style and our propensity for vehicles; toys like boats, ATVs and the like, even 140 spaces probably in not enough. Additionally, visitors will also require parking space. The requirement for an acceptable snow removal plan further aggravates the parking challenges. As a practical matter, they will not be able to plow the parking spaces because of the vehicles there. Snow will build up over the winter further reducing the parking space available. We believe that all parking including space for visitors should be within the development—that's where they will park anyway. Thus, we believe the parking variance should not be approved.

As to the height variance request--we would much prefer that we stay within the existing 35 foot height limitation thus would recommend that the height variance not be granted..

The city's desire to preserve trees was addressed. The reality is that when the proposed units are overlaid on the actual property, combined with the requirement to provide a cul de sac turn around for emergency vehicles, most of the forested area at the western edge of the development will be removed. We don't think that is consistent with the community's goal of preserving trees. As a subdivision, if this PUD application goes forward in any form, we strongly believe the density must be significantly reduced.

Traffic implications

When looked at by itself, as was done, no traffic study was required. Our concerns center on the traffic implications of not only this proposed development but also the broader impacts of increased traffic in this area with our 5 lane US 93 corridor. The suggested 366 trips per day estimated for this development coupled with the impacts of the recently approved Hampton Inn (70+ rooms with associated staff), together, probably represent an additional 600 trips per day at a minimum.

When one considers the aggregate volume of trips from just south of the Hampton Inn to 19th street, there are 4 hotel/motels, this proposed housing development, one RV park and several restaurants and businesses on just the west side of US 93. There are also business on the east side of US93. Collectively they represent a very large US 93 entry/exit volume and certainly deserve a traffic study. It should also be noted that the speed limit on US93 in this area is 45 MPH—another safety hazard

The problems center primarily on traffic exiting these and other developments entering this highway north bound from the west side, requiring crossing two lanes of traffic and the turn lane to move toward the center of Whitefish (the same problem exists for drivers on the east side wanting to head south toward Kalispell).

According to the Montana Highway Patrol and the Montana Department of Transportation the center turning lane is not to be used as a merging lane for safety reasons. That means a person exiting, headed north from any west side entry point, is supposed to wait until the way is clear for the driver to cross all the way into the desired northbound lane before starting. Merging into the turning lane and waiting for an opportunity to enter the desired northbound lane is illegal. However, that's what we all have to do short of waiting a very long time to do it legally. Obviously that rule is not enforced. Those of us doing this on a regular basis call the turning lane the "suicide lane", exposing anyone taking this action to a potential accident and without question represents a traffic safety hazard. All of us who do this have experienced a serious problem at onetime or another. We also believe the 366 trip estimate is low. The staff report states that this subdivision provides reasonable proximity to the schools, However, the schools are all on the other side of US93 and there is no school bus service to this area. Consequently, children have to get there on their own or more realistically someone will take them to and from school adding to the traffic volume and to the associated traffic safety exposures.

We do not understand why a traffic study is not a requirement for this area focused on finding a safe solution. Instead we will have to wait until someone is badly injured or killed and then the city will be asked why they let this problem persist. Obviously, as subdivision residents who experience this danger daily, we all think a "safety focused" traffic study of the entire area must be a requirement.

Conclusions

With the limited time we've had to review the available information and for the reasons stated above, we must conclude that this proposal is incomplete and does not adequately address the issues discussed above. This proposed very high density residential development is sandwiched in the middle of commercial development and is the only residential development along US93 south of 6th St. It doesn't fit belong there and changes the character of that area and conflicts with some Growth Policy visions, like maintaining the small town character of Whitefish and providing safe roads for all. We also think it is the wrong location for addressing any rental and affordable housing needs. With the information in Tom Tornow's memo to you it also appears that a portion of the proposed density is in violation of the city zoning regulations.

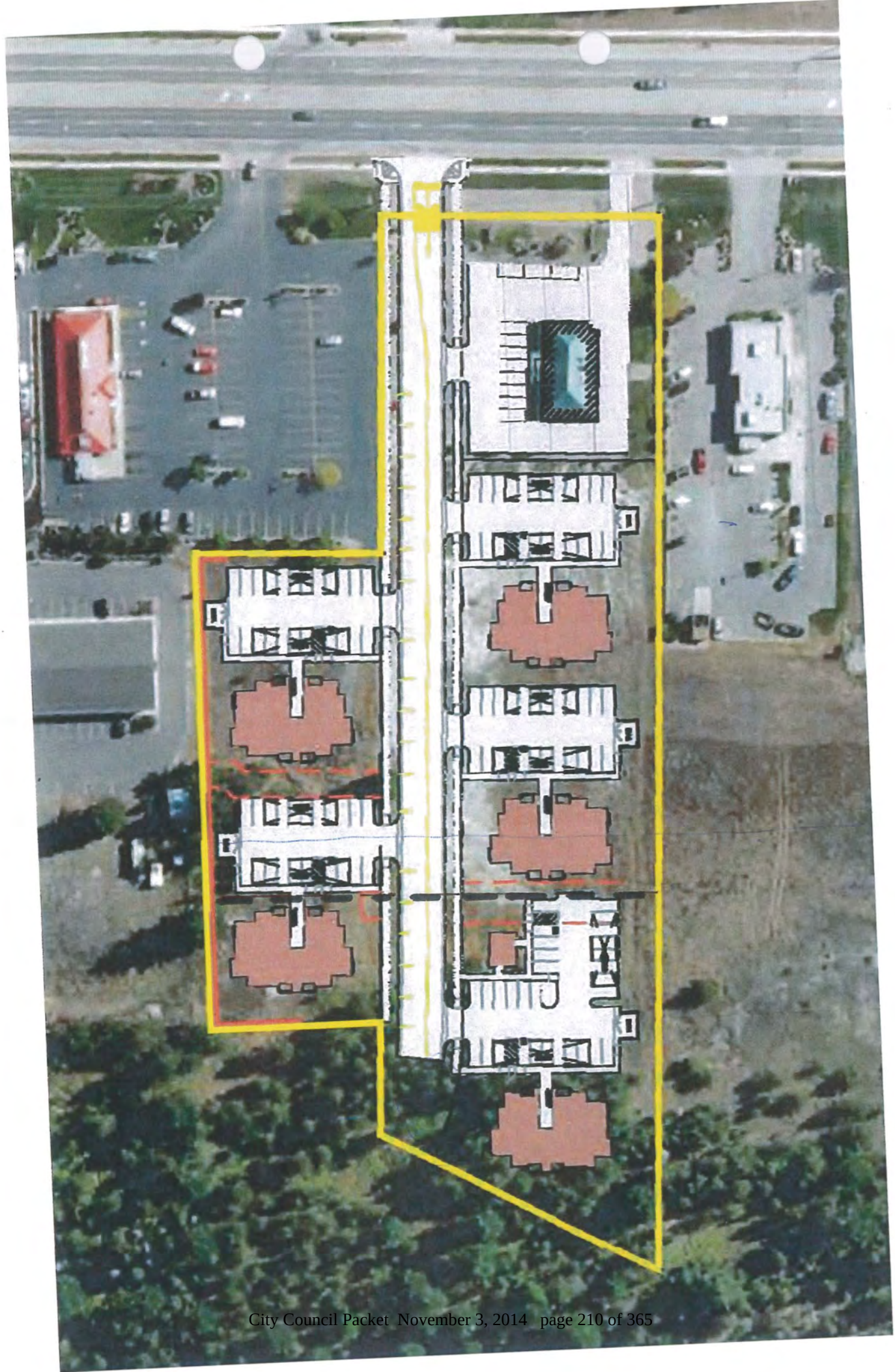
However, if you choose to move ahead with this PUD in any form, here are a few ways to address some of the concerns:

1. Change the density of all the WLR portions back to the existing WLR density limits, or to the zoning code requirements of 5 units per acre for a PUD overlay of WLR with an affordable housing bonus..
2. Fence the western and most of the northern and southern boundaries of the entire project. discouraging use of the forested areas to the west with the very real associated dangers.
3. Require a " safety oriented" traffic study of that entire area.

In summary we cannot support this proposal as submitted. It is the wrong solution in the wrong place and we ask that you deny or seriously modify this PUD application.

Respectfully,

Don Spivey, representing
Park Knoll Homeowners Association
117 Park Knoll Lane



Wendy Compton-Ring

From: Paula Johnson-Gilchrist <paula.johnsongilchrist@gmail.com>
Sent: Thursday, October 16, 2014 5:07 PM
To: wcompton-ring@cityofwhitefish.org.
Subject: Proposed land use re WPUD for 60 unit apt.

WPBD:

Please be advised that Randy Schwickert and myself as property owners at 6336 U.S. Hwy. 93 South, Whitefish, do object to the land use change.

We object based on safety, traffic impact, non-conforming use, and density.

The traffic for us to get into and out of our office is already horrendous. To add 60 apt. units with an estimated 240 car trips per day (2 cars per unit, 2 times per day) is frightening. Add that to The Hampton Inn next door to be built next spring.

These are our concerns. 60 units of apartments would bring added security concerns as well.

Perhaps less density at a minimum (maybe 24 units) should be allowed, if the change is considered.

I hope a traffic light is in our future for safety reasons irregardless of this project.

Thanks

Paula

Paula M. Johnson-Gilchrist
Johnson-Gilchrist Law Firm, P.C.
6336 U.S. Hwy. 93 South
Whitefish, MT. 59937
Phone 406-862-3920
Fax 862-1447
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Chuck Stearns

From: Wendy Compton-Ring <wcompton-ring@cityofwhitefish.org>
Sent: Monday, October 27, 2014 9:20 AM
To: Chuck Stearns
Subject: FW: Affordable Housing Whitefish

From: ABC Seamless [mailto:abcseamless@blackfoot.net]
Sent: Friday, October 24, 2014 3:15 PM
To: wcompton-ring@cityofwhitefish.org
Subject: Affordable Housing Whitefish

To Whom It May Concern:

Khoury Incorporated provides construction services. We have a strong desire to have a permanent presence in Whitefish; however we are are forced to bring labor in from Kalispell or Missoula because our employees are unable to find affordable housing in Whitefish.

Providing affordable housing for local employees benefits all members of the community. Local employees living within their community are going to be more committed and involved rather than someone who is commuting from an outlying area.

I was born and raised in Montana. Most, if not all, of my employees were too. It's a sad deal that they can't afford to live in the place they work.

Damian R. Khoury
ABC Seamless
257-9329

This email is free from viruses and malware because avast! Antivirus protection is active.

Thomas T. Tornow, P.C., *Attorneys-at-Law*

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October 27, 2014

Mary VanBuskirk
Whitefish City Attorney
Via email: mvanbuskirk@cityofwhitefish.org

RE: Whether the Zoning Code permits density transfer between zones

Dear Mary:

I represent the Park Knoll Homeowner's Association, comprised of homeowners within the Park Knoll Subdivision.

I am writing you concerning a legally erroneous position being taken by the Whitefish Planning Office that adversely impacts my client.

The Park Knoll Subdivision is adjacent to Dear Trac (a/k/a Dear Track a/k/a Whitefish Crossing) property that is the subject of a Re-zoning Application and a Planned Unit Development (PUD a/k/a WPUD) Application. The applicant wants to construct 60 apartments on 4.07 acres.

There are numerous planning issues with both Applications. Those are being addressed through the public hearing process. This letter is to address a legal issue with the PUD Application.

The property that is the subject of the PUD Application has two zones. Part of the property (2.634 acres) is zoned WB-2 and part of the property (1.44 acres) is zoned WLR. The zoning code establishes a maximum density for each zone. With a PUD overlay, the maximum density in each zone increases. With the inclusion of affordable housing units, the maximum density in each zone increases again. With both increases, the maximum density in the WB-2 zone is 20 units per acre; and 5 units per acre in the WLR zone.

The applicant, and apparently the Planning Office, has taken the position that, under the guise of "blending," density permitted in the WB-2 zone can be transferred to the WLR zone. Nowhere is such transfer permitted by the WF Zoning Code. To the contrary, as detailed below, the Code expressly prohibits such transfers.

PUD zoning is addressed in Title 11, Chapter 2, Article S of the City Code.

Section 11-2S-1, Purpose and Intent, states in pertinent part that:

> The purpose of the WPUD overlay is to provide…flexibility…. In return for increased flexibility and the opportunity to vary standards of the underlying zone, it is the intent of the WPUD that the proposed development provides the following benefits as applicable…D. Preserve and protect the character and qualities of existing neighborhoods… [and] F. Provide effective buffers or transitions between potentially incompatible uses of land.

Section 11-2S-3, Standards of Development, establishes various development standards required in a PUD, including the density bonuses and maximum densities discussed above.

Section 11-2S-5, Deviations from Standards, identifies which of the development standards can be varied and which cannot. That Section states in pertinent part that: "In order to provide flexibility in the design approach, the planned unit development overlay allows deviation from many standards of the underlying zoning district…" Subsection A lists 11 development "standards that may be deviated from through approval of a PUD site plan and PUD overlay." Subsection B lists 6 "Standards that <u>may not</u> be deviated from through the PUD overlay." (Emphasis added). Number 1 of those 6 is "Density standards as set forth in this chapter [2]."

The only possible way to read Section 11-2S-5(B)(1) is that the density standards set forth in Section 11-2S-3 for the WLR zone may not be exceeded through the PUD overlay.

This prohibition against density transfers is supported by the Code's definition of a PUD: "A tract of land developed or proposed to be developed as an integrated unit.…<u>This option is limited to the allowable density of the underlying use district</u> and the predominant uses within the PUD must be that of the underlying zone." (Emphasis added). The prohibition against density transfers is also found in Subsection 11-2-2(C), which states in pertinent part that: "If…a property is divided into two (2) use districts, the property may be utilized in conformance with one zoning district or the other as long as the use is confined to that portion of the property for which it is zoned."

By contrast, I cannot find anything in the Zoning Code allowing a transfer of density between zones, or any reference to the more benign term "blending."

My clients do not want to litigate this issue with the City. Please advise the Planning Office that the City's Zoning Code does not allow a "blending" or transfer of density between zones and that

the density in a WLR zone, with a PUD overlay and the affordability housing bonus cannot exceed 5 units per acre.

If you have any questions, desire additional information, or wish to discuss this further, please contact me at your convenience.

Sincerely,

THOMAS T. TORNOW, P.C.

Thomas T. Tornow

By: Thomas T. Tornow

cc: Wendy Compton-Ring
Dave Taylor
City Council
Client

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

October 28, 2014

Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

RE: PUD's and Blended Zoning

Mayor Muhlfeld and councilors,

Enclosed in your packet is a letter from Attorney Tom Tornow discussing the Planned Unit Development (PUD) chapter of the zoning code and whether it is allowable to blend allowed residential densities when a PUD overlay extends over multiple zoning districts.

While the PUD chapter in the code, 11-2S, does not specifically mention blending densities, blending allowed uses and densities is a common practice for a number of PUD's with multiple zoning districts approved by the City Council over the years. The Tri-City Planning Office also supported blended density and uses for multi-zoned PUD's. PUD's are an overlay zone that encompasses an entire site with one set of applicable development requirements, making the underlying zoning and its standards, including density, irrelevant. They give the governing body maximum flexibility to accommodate good development that responds appropriately to environmental and other characteristics of the site. Many approved projects have moved higher density development away from critical areas through blended densities. Although not used as such in this case, it can also help better provide a variety of residential products types across a development site, which PUD's call for. Staff believes it is fully within the power of a City Council to approved a zoning map amendment that applies a new zoning with blended densities and uses over multiple lots of different zoning types through the PUD process.

Section 11-2S-5-B states that density standards established in 11-2S-3-B may not be deviated from with a PUD. However, blending the uses and densities from two zoning districts is not considered a deviation. A deviation would occur if a developer asked for greater density than the most permissive zoning district within the confines of the new PUD overlay zone allowed. In most of the PUD's approved where density was blended, the final density was somewhat less than the maximum allowed, truly a blend of the two densities.

Here is a sampling of 'blended' PUDs approved by the Council in the past nine years:

Lookout Ridge: a 139 unit project on 267.7 acres of which 186 acres is WA (12 units maximum) and 82 acres is WRR-1 (820 units maximum). The units are distributed across the project, avoiding steep topography and environmentally sensitive areas.

93 LLC: a 69 unit project on 23.16 acres of which 0.268 acres is WSR (1 unit maximum) and 17.892 acres is WLR (89 units maximum). The WSR was a pretty small sliver of land but the entire project has multi-family and single-family units.

Railtown Gardens: a mixed-use project on 3.66 acres of which 1.85 acres was WB-1 and 1.81 acres WR-3. The project placed some residential units within the WB-1 zoning designation and some commercial space and parking within the WR-3 zoning designation.

Second Street Residences: A 62 unit project on 23.789 acres of which 6.875 is WR-1 (28 units maximum) and 16.914 is WER (33 units maximum). The vast majority of units are located within the WER zoned area.

Hampton Inn: is on one parcel that has both residential and commercial zoning (front ½ WB-2 back ½ WLR). The PUD expanded commercial uses to residentially zoned portion of the lot.

As you can see, allowing blended density and uses across a site is consistent with past practice by the city. In this case, the Council could, at your discretion, require the applicant to cram all the multi-family units in the commercially zoned lot at the front of the site and put the parking lots in the rear residential lot, but I'm not sure that would enable the best project design. The flexibility for the Council to approve blended uses and densities is one of the main reasons PUD's are an attractive development tool.

Staff will gladly answer any other questions you may have on this issue at the meeting.

David Taylor, AICP

received
10-28-14

October 25, 2014

To: Whitefish City Council

Subject: Whitefish Crossing, WPUD 14-04

Council members and staff—

In our most recent Homeowners Association meeting the quorum of members present voted unanimously to oppose this development. The Park Knoll Homeowners have carefully re-considered this proposal, the October 9, 2014 staff report and the various presentations at the Planning Board Hearing on October 16, 2014. Although we understand and support the community's need for more rental and affordable housing, we have concluded that we cannot support this high-density apartment PUD. It is absolutely the wrong place for such a development and we believe it should be denied. Our reasons will be discussed in the following categories for your consideration.

Impacts to the Park Knoll homeowners

Park Knoll Estates is a subdivision of 16 lots and 13 homeowners just west of Whitefish Crossing. The impacts discussed here are a consolidation of their concerns.

We all understand the role of zoning to help a community manage growth in an orderly manner. Even more important is the assurance it provides to property owners that their investment and the character of the area are protected. We all carefully considered the zoning in this area before purchasing our homes or property. We also understand that the land between Park Knoll and the commercial developments along US 93 will be developed over time and would anticipate that the WLR (or County R-2) lands would be developed as suburban residential properties (as zoned) to some logical boundary between those lands and the commercial developments along the highway. Instead, we are faced with a high-density rental development (14.7 units per acre) which crosses both the commercial and a portion of the WLR zoned properties in that area. There will likely be between 120 and 200 people of all ages living there. It will change the character of the area forever. We believe this is the wrong place for such a development.

Realistically, the open space provided is limited and scattered throughout the development. The children and adults seeking quiet and privacy have two choices: the highway corridor or the woods to the west. Adults walking their pets, young children playing while parents are working and young adults seeking privacy for whatever reason will migrate toward the woods to the west. We believe that this will intensify problems we have already experienced, without this additional pressure. There have been people living temporarily in the woods, fires, and even vandalism. In particular, increased exposure to fire and vandalism are very real probabilities to the community, homeowners and businesses in this area.

The required paved and plowed turn around at the west end of the new road (which we support) will effectively remove most of the remaining trees in the subdivision—at odds with the City's objective of preserving trees.

Finally there is genuine concern that Whitefish Crossing will negatively impact our property values—something we all cherish and want to protect.

Traffic and safety issues

We listened to the extensive discussion about the lack of MDT and City staff support for a "Traffic Study" in the Planning Board Hearing. However, as a group of homeowners who access US 93 on a daily basis, we strongly believe there is a genuine traffic and safety issue in this area. Here are those reasons.

1. US 93 is a busy 5 lane traffic corridor. At certain times of the day and for the entire tourism season ingress/egress is a serious challenge. Both the tourism season growth and general growth of Whitefish will add more challenges. It is also important to remember that the speed limit in this area is 45 MPH.

2. The projected additional trips per day for this development are 366. The recently approved 70+ room Hampton Inn, next door, with staff, will probably add another 200+ trips per day. When one adds in the trips necessary to transport children to school these two developments alone will add in excess of 600 trips per day onto this already busy corridor. In that small area, with the Hampton Inn, there will be 4 hotel/motels, 1 RV Park, several restaurants and small business just on the west side of US 93. adding to the traffic congestion. We also believe that the majority of the traffic exiting Whitefish Crossing will be making a left turn toward the center of Whitefish, accessing work sites, schools, restaurants and all the other City of Whitefish amenities. There are a growing number of businesses on the east side of US 93 as well .

3. The need to make a left turn across this busy highway is of particular concern. According to MDT and the State Police, the center turning lane (often referred to by users as the "suicide lane") is only to be used for turning and not as a merge lane. That means that a driver wanting to make a left hand turn is supposed to wait until a clear access is available from his/her starting point all the way into the lane they wish to occupy. However, common practice, because of congestion delays, is to wait until a driver can safely enter the turning lane and wait until they can merge into the desired lane with traffic moving at 45 MPH. Dangerous, but common practice and not enforced by State or local police. Presumably, they also recognize the challenge.

4. The City of Whitefish has, for years, promoted and supported alternative forms of transportation—biking, walking, hiking, etc., and that is commendable. The Whitefish Crossing proposal does provide sidewalk access to the sidewalk along US 93. With the existing 3 motels and RV park there is already an unusually large volume of pedestrian traffic walking and accessing the restaurants and businesses in that area.

With the addition of Whitefish Crossing and the Hampton Inn, that pedestrian traffic will increase dramatically. Today there is quite bit of bicycle traffic on the sidewalk (individual riders, adults, children and families) as well as a growing number of riders in the shoulder lane along the highway. These volumes of pedestrian and bicycle traffic will grow over time. There are already dangerous interactions between cars entering and exiting US 93 with all these pedestrians and cyclists. Whitefish has experienced some unfortunate bike/vehicles accidents. As more visitors and residents take advantage of the City's strong support for alternative transportation, this situation will only get worse.

5. This proposal suggests good access to schools for the children in the development. We have a problem with that. All the schools are on the east side of busy US 93 more than a mile away. There is no school bus service to this area. The children must get to schools and activities on their own; by car, bike, on foot, or more likely, parents will transport them. This will certainly expose the children to traffic safety risks and add to the growing traffic volumes.

6, The staff report suggests that the State required separate left and right hand turning lanes outbound from the development somehow help with these problems These lanes will probably alleviate some backup congestion within the subdivision, but do not address any of the traffic concerns expressed here.

Collectively, these challenges cry out for a traffic and safety solution. With the Whitefish Growth Policy vision focus on managing traffic and making the community safe for pedestrians and cyclists, it is incumbent on the city to not only focus on traffic from this development but on the entire area. It is also imperative to consider how these traffic concerns and growing traffic volumes will impact the future of Whitefish. We believe that City should initiate a traffic/safety study, with or without State support, before moving ahead with any consideration of approving this development.

Variance requests

The requested parking variance should be denied. Given our Montana propensity for vehicles and toys (boats, ATV's, etc.), even 140 spaces may not be sufficient. There is no separate provision for parking such toys. Visitor parking should also be provided within the subdivision. That is where visitors will try to park. With 60 units there will be lots of visitors.

With respect for the building height variance request, we understand the desire for attractive buildings. However, continually granting height variances, as has been happening, makes the 35 ft. height regulation ineffective (too many precedents). This variance should be denied. We are confident there are other means of making these buildings attractive.

Wrong location for this development

Although we support the need for rental and affordable housing we believe strongly that this is the wrong location for a high density rental housing project. Here are some of the reasons:

1. Whitefish Crossing (hereafter referred to as WC) significantly changes the character of the area and is in conflict with the vision statement which addresses the scale, character and small town feel of Whitefish. It is a high-density residential development squeezed into a commercially zoned and already developed area.
2. WC is in conflict with the vision statement that says we will manage our traffic and make our community safe for pedestrians and bicyclists. This proposal does not support that Growth Policy vision (see traffic concerns addressed above)
3. WC is in conflict with the adjacent residential neighborhood (see home owner impacts addressed above).
4. WC does provide rental apartments and 6 units of affordable housing. That seems to be the singular virtue. There are several zoning districts in our community that support high-density affordable housing, e.g., WR-4 supports 57 rental units per acre, WR-3 allows 21 dwelling units per acre—and there are more. These districts are more appropriate for high-density rental developments, providing improved safety for motorists, pedestrians and cyclists.
5. WC does not conform to the zoned and well established commercial use in this area. In fact, it is in direct conflict with commercial use and is the only such development south of 6th street in place or planned. It sets a dangerous and undesirable precedent.
6. We believe this proposed PUD is in violation of one aspect of your Zoning Regulations.
7. There are some Growth Policy statements in the WPUD staff report dated October 9, with which we disagree, to wit:
    a. Page 9: we do not believe it supports Land Use Goals 5 and 7 or Transportation Goal 1.
    b. Page 10 (considerations for adopting zoning regulations): we believe the **only** consideration it might support is "Reasonable provision of adequate light and air".

For all the reasons expressed , we strongly believe this is the wrong location for such a development.

Conflict with the Whitefish Zoning Regulations

We believe the practice of transferring ("blending"--aggregating allowed densities and redistributing across multiple zoning districts in a PUD) is not supported by the Whitefish WPUD regulations as currently written. Our attorney, Tom Tornow, will address this issue in a separate letter and presentation.

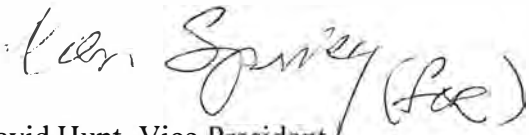
Summary

In summary, we believe this PUD application and the staff report are too narrowly focused on this single development and the need for rental and affordable housing. Whitefish Crossing does not adequately address the implications to the entire area and to all the City's relevant current and future needs (as addressed in this communication). Thus, for the reasons expressed, coupled with our Attorney's assessment of the Zoning Regulations, we do not believe this PUD should be approved as submitted. Therefore, we respectfully request that you **deny** this application.

Although we strongly feel you should **deny** this application, if you choose to support this PUD in any form we respectfully request that you do the following:

1. Ask that the proposal be re-configured with strict adherence to the Whitefish PUD Regulations which do not currently support transferring ("blending") across multiple zones. That is, the density in the WLR portion not exceed 5 units per acre with the affordable housing bonus, and none of the WB-2 allowance will be transferred to it..
2. Before any approval, require a traffic and safety study of the entire area as we discussed.

Respectfully submitted,



David Hunt, Vice President
Park Knoll Estates Homeowners Association

received
10-28-14

To: Whitefish City Council
From: Judith E. Spivey
117 Park Knoll Lane
Whitefish

In each of our lives there are times when we are called to TAKE A STAND.

The city of Whitefish currently has established building and development zones to assure dependable, reasonable areas for now and future growth of the city. Present and future owners place their trust in this planned zoning. Multi-family zones are available for development where density, traffic, safety, pedestrian use, access and egress are suitable and appropriate.

An apartment complex of this size and density, in this location does NOT CONFORM to the present and future use of commercial zoning and does NOT represent continuity nor familiarity with the surrounding businesses and structures. Approval of this non-conforming project will set a dangerous precedent. I urge Council to TAKE A FIRM STAND against this proposal in this location.

In 1960…53 years go, in Pasadena, California, developers were seeking a zone change in order to build apartments in a single family zoned neighborhood. We moms, infuriated by the prospect of piece by piece destruction of a genuine family neighborhood, marched on city hall, babies in strollers, and TOOK A STAND. Today that 110 year old neighborhood is a treasure in that community.

This little city of Whitefish is a treasure, not only in our state but in this country. Businesses, services, living are centered within the community. What a concept! COMMUNITY is the operative word. Do not allow hodge-podge development. Combine community with continuity and familiarity. I am NOT against growth and development…without this communities tend to stagnate and wither. Consider the future. I know from experience that GOOD PLANNING makes GREAT towns and cities. Stick with what is best for now and the future of Whitefish. TAKE A STAND.

Thank you for the opportunity to speak to you.

Judith E. Spivey

Judith E. Spivey (23 year Whitefish resident)

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ORDINANCE NO. 14-___

An Ordinance of the City Council of the City of Whitefish, Montana, transferring the Mountain Trails Ice Rink Advisory Committee, Whitefish Tree Advisory Committee, Pedestrian and Bicycle Path Advisory Committee, and Weed Control Advisory Committee from advisory committees to the City Council to advisory committees to the Board of Park Commissioners, establishing the W.A.G. Board as an advisory committee to the Board of Park Commissioners, and amending Whitefish City Code, Title 2, Chapters 1, 6, 7, 8 and 11.

WHEREAS, in 1901 the state of Montana authorized cities to create by ordinance a board of park commissioners in 1901; and

WHEREAS, in 1916, the City Council established the City Board of Park Commissioners by Ordinance No. 117, and declared that the City's parks and public places now in existence or hereafter established within the City are under the direction and control of the Board of Park Commissioners in accordance with the Ordinances of the City and the laws of the State; and

WHEREAS, Article II, Section 2.02, Paragraph 12 of the City Charter directs the City Council to create and establish a Board of Park Commissioners pursuant to and subject to state law; and

WHEREAS, the Board of Park Commissioners may acquire property and expend park funds for the operation of public recreation programs, athletic fields and civic stadiums and may levy taxes and incur debt for cultural, social and recreational facilities and programs by MCA §§7-16-4103 through 7-16-4114; and

WHEREAS, municipalities are empowered under state law to establish, alter and maintain parks and to provide for planting and protection of trees pursuant to MCA §§7-16-4101 and 7-16-4102; and

WHEREAS, the Board of Park Commissioners has broad powers and duties to manage and control all parks belonging to the City, including trees and plants located in City parks, streets, avenues, boulevards and public places in the City, to purchase, acquire, sell or transfer real property when authorized by the City Council, to recommend to the City Council the purchase, acquisition, sale or transfer of real property for a City park, to employ workers and make personnel decisions, and to make contracts for carrying out their park board powers and duties by WCC §§2-2-4(c) and 2-2-5; and

WHEREAS, the Weed Control Advisory Committee was created in 2006 by Ordinance No. 06-15 as a seven-member advisory committee to the City Council with the purpose "to assist in identifying and reporting noxious weed infestations to the city's code enforcement officer, to develop recommendations to the city council for a permanent weed control strategy, to educate the public to create an increased awareness and knowledge of methods of controlling noxious weeds, and to advise city staff regarding the need for weed control on city owned properties" by WCC §2-11-2; and

WHEREAS, the Mountain Trail Ice Rink Advisory Committee was created in 2002 by Ordinance No. 02-09, as a nine-member advisory committee to the City Council, Park Board of Commissioners and City staff related to operations, maintenance and facility alternations related to ice skating activities by WCC §2-6-2; and

WHEREAS, the Pedestrian and Bicycle Path Advisory Committee was established in 2005 by Ordinance No. 05-30 as an advisory committee primarily to the Park Board of Commissioners and easement negotiators related to the development of pedestrian and bicycle trails pursuant to the Whitefish Pedestrian and Bicycle Path Master Plan by WCC §2-8-2; and

WHEREAS, the Whitefish Tree Advisory Committee was established in 2002 by Ordinance No. 02-19 as an advisory committee to the City Council, Park Board of Commissioners and City staff related to the City's urban forest by WCC §2-72; and

WHEREAS, the Whitefish Animal Group (W.A.G., Inc.) was established as an independent nonprofit entity in 2006 with the purpose to work with the Park Board of Commissioners in the establishment, development and maintenance of the Hugh Rogers Wag Park. The W.A.G. Board requests it be made an advisory board to the Park Board of Commissioners; and

WHEREAS, the Board of Park Commissioners has appointed one of its members to the Mountain Trails Ice Rink Advisory Committee, Whitefish Tree Advisory Committee, Pedestrian and Bicycle Path Advisory Committee, Weed Control Advisory Committee, and W.A.G. Board and has explored with the four committees and board the possible transfer of the four committees from advisory committees to the City Council to advisory committees to the Board of Park Commissioners and establishment of the W.A.G. Board as an advisory board, if approved by the City Council; and

WHEREAS, at the request of the various committees, W.A.G. Board, and the Board of Park Commissioners, the Director of Parks, Recreation and Community Services explored with the City Council the possibility of transferring the four advisory committees and W.A.G. Board advisory committees and board to the Board of Park Commissioners; and

WHEREAS, the City Council is empowered to establish committees and appoint members to the committees with the shared power of appointment with the Mayor and City Council pursuant to WCC §2-1-3; and

WHEREAS, at the public hearing held by the City Council on November 3, 2014, the City Council reviewed and considered oral and written staff reports and public input, and approved the Ordinance to amend Whitefish City Code, Title 2, Chapters 1, 6, 7, 8 and 11, to transfer the advisory function and the power of appointment of members to the Mountain Trails Ice Rink Advisory Committee, Whitefish Tree Advisory Committee, Pedestrian and Bicycle Path Advisory Committee, and Weed Control Advisory Committee from the City Council and the Mayor to the Board of Park Commissioners and establish the W.A.G. Board to be an advisory board to the Board of Park Commissioners with the power of appointment to the W.A.G. Board; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to adopt the proposed amendments to the Whitefish City Code to transfer the Mountain Trails Ice Rink Advisory Committee, Whitefish Tree Advisory Committee, Pedestrian and Bicycle Path Advisory Committee, Weed Control Advisory Committee and establish the W.A.G. Board to be an advisory committee to the Board of Park Commissioners.

NOW, THEREFORE, be it ordained by the City Council of the City of Whitefish, Montana, as follows:

Section 1: Title 2, Chapter 1, of the Whitefish City Code is hereby amended to allow advisory committees to the Board of Park Commissioners with the authority of the Board of Park Commissioners to approve membership as follows:

> 2-1-3: **AUTHORITY TO CREATE COMMITTEES:** In accordance with Montana statutes and the city charter, the city council may establish by ordinance standing and ad hoc committees as needed to facilitate city business and to advise the city council and the board of park commissioners on matters of interest to the city. Ad hoc committees may

also be established by resolution of the city council. Subcommittees of committees may be created only by ordinance or resolution of the city council. The power of appointment and ratification of appointments of individuals to committees is reserved to the mayor and city council and the board of park commissioners, as provided by ordinance or resolution.

2-1-5: **MEMBERSHIP:**

A. Appointments; Compensation: Appointments to committees established under this chapter shall be made by a simple majority vote of the city council or the board of park commissioners in attendance at a special or regular session. Committee members shall receive no compensation. Committees shall consist of a definite number of members, but in no case shall the number be fewer than three (3) nor greater than nine (9). Members of standing committees shall have regular terms of not less than two (2) years and not more than five (5) years, which terms shall also be staggered. One year terms may be used initially to establish staggered terms. An enacting ordinance or resolution may provide:

1. Specific and permanent city council or mayoral positions on committees;
2. Committee positions specified for members representing various occupations, businesses, trades and professions; and
3. Committee positions specified for members residing outside the corporate boundaries of the city.

The resolution or ordinance creating a committee shall specify the number of members, the position number of each position, and the length and termination date of each term. The city clerk shall keep an official and accurate record of committee positions according to position number, names of appointees serving in each position, appointment dates, dates of resignations, the length and termination date of each term and specific positions provided for city councilors or the mayor; occupations, businesses, trades and professions; and for members residing outside the corporate limits of the city. City councilors or the mayor may, from time to time, be appointed to regular membership on standing or ad hoc committees, provided that the total of city council and mayoral memberships do not constitute a majority of such committees. Committee members may serve successive terms provided they are reappointed by the city council or the board of park commissioners.

B. Removal Of Member: A member of a committee created under this chapter serves at the pleasure of the city council or the board of park commissioners and may be removed by majority vote of the city council or the board of park commissioners, except where state statutes or city ordinance or resolution may otherwise provide. Absences from three (3) consecutive meetings, including regular and special work sessions, or absences from more than fifty percent (50%) of such meetings held during the calendar year shall constitute grounds for removal. Circumstances of the absences shall be considered by the city council or the board of park commissioners prior to removal. Any person who knows in advance of his inability to attend a specific meeting shall notify the chair or secretary of the committee at least twenty four (24) hours prior to any scheduled meeting.

C. Vacancy: Any vacancy on a committee created under this chapter shall be filled by the city council or the board of park commissioners acting in a regular or special session for the unexpired term of the position wherein the vacancy exists.

2-1-6: **MEETINGS, RULES AND REGULATIONS:** The majority of a committee created under this chapter shall constitute a quorum. Not less than a quorum of the committee may transact any business or conduct any proceedings before the committee. If the enacting resolution or ordinance does not so provide, a committee shall adopt rules of procedure for the conduct of meetings. All actions of a committee shall be within statutory authority, the city charter, ordinances, resolutions or the enacting resolution or ordinance. If the enacting resolution or ordinance does not so provide, the committee shall decide the frequency of meetings and the times at which meetings shall be held. All meetings are open to the public. If the city council or board of park commissioners deems it necessary, the city council or board of park commissioners may also set the frequency of committee meetings. If an ad hoc committee is being created, the resolution or ordinance shall state the length of time the committee is to exist, including a specific termination date.

Section 2: Title 2, Chapters 6, 7, 8 and 11, of the Whitefish City Code are hereby amended to provide for the transfer of the Mountain Trails Ice Rink Advisory Committee, Whitefish Tree Advisory Committee, Pedestrian and Bicycle Path Advisory Committee, and Weed Control Advisory Committee from the City Council to the Board of Park Commissioners as follows:

2-6-3: **MEMBERSHIP:**

A. Appointment; Compensation: The committee shall have nine (9) members. Members shall be appointed by the ~~city council~~board of park commissioners. Not less than six (6) members shall reside within the corporate limits of the city. Three (3) members may reside within the Whitefish planning jurisdictional boundary. Members shall have maintained residency within specified boundary requirements for one year prior to appointment to the committee. The ~~city council~~board of park commissioners shall appoint members according to the following representation categories: one member who is also the mayor or a city councilor; one member who is also a member of the park board of commissioners; one member representative of the patrons who use the ice rink during open skating periods and not affiliated with any of the other skating, hockey or curling groups with a designated committee member; one member recommended by the adult hockey group; one member recommended by the Whitefish Figure Skating Association; one member recommended by the Glacier Hockey Association; one member recommended by the Curling Club; and two (2) members who shall be public members at large and not affiliated with any of the other skating, hockey or curling groups with a designated committee member. The city clerk shall make appropriate notation of a member's representation category on the official committee roster. Committee members shall receive no compensation. Contracted consultants and city staff shall not serve as members, but may assist and participate in the facilitation of committee business.

2-7-3: **MEMBERSHIP:**

A. Appointment; Compensation: The committee shall have seven (7) members. Members shall be appointed by the ~~city council~~board of park commissioners.

Not less than four (4) members shall reside within the corporate limits of the city. Two (2) members may reside within the Whitefish planning jurisdictional boundary. Two (2) members who are practicing professional arborists, landscapers and landscape architects, who also maintain a business within the Whitefish planning jurisdictional boundary, may serve without regard to residential standing. Members shall have maintained residency within specified boundary requirements for one year prior to appointment to the committee. The ~~city council~~board of park commissioners shall appoint members according to the following representation categories: one member who is also the mayor or a city councilor; one member who is also a member of the park board of commissioners; and five (5) members who are citizen members at large. The ~~city council~~board of park commissioners shall attempt to appoint up to two (2) members of the aforementioned five (5) members at large who are practicing professional arborists, landscapers or landscape architects. The city clerk shall make appropriate notation of a member's representation category on the official committee roster. Committee members shall receive no compensation. Contracted consultants and city staff shall not serve as members, but may assist and participate in the facilitation of committee business.

2-8-3: **MEMBERSHIP:**

A. Appointment; Compensation: The committee shall have seven (7) members. Members shall be appointed by the ~~city council~~board of park commissioners. Not less than four (4) members shall reside within the corporate limits of the city. Three (3) members may reside within the Whitefish planning jurisdictional boundary. Members shall have maintained residency within specified boundary requirements for one year prior to appointment to the committee. The ~~city council~~board of park commissioners shall appoint members according to the following representation categories: one member who is also the mayor or a city councilor; one member who is also a member of the park board of commissioners; one member who is also a member of the resort tax monitoring committee; and four (4) members who are citizen members at large. The city manager shall serve on the committee in an ex officio capacity. The city clerk shall make appropriate notation of a member's representation category on the official committee roster. Committee members shall receive no compensation. Contracted consultants and city staff, except as otherwise provided for by the city manager, shall not serve as members, but may assist and participate in the facilitation of committee business.

2-11-2: **PURPOSE:** The mission of the committee shall be to assist in identifying and reporting noxious weed infestations to the city's code enforcement officer, to develop recommendations to the ~~city council~~board of park commissioners for a permanent weed control strategy, to educate the public to create an increased awareness and knowledge of methods of controlling noxious weeds, and to advise city staff regarding the need for weed control on city owned properties. The committee shall have no independent authority to commit or spend city funds, or to direct city staff.

2-11-3: **MEMBERSHIP:**

A. Appointment; Compensation: The committee shall consist of seven (7) members, who shall be appointed by the ~~city council~~board of park

commissioners, and who shall serve at the pleasure of the ~~city council~~board of park commissioners. One member shall be a city councilor. One member shall be a member of the city park board. One member shall be the city's code enforcement officer. Four (4) members shall be from the public and shall reside within the Whitefish zoning jurisdiction. The city clerk shall make appropriate notation of a member's category on the official committee roster. Committee members shall receive no compensation. Contracted consultants and city staff shall not serve as members, but may assist and participate in the facilitation of committee business.

Section 3: The W.A.G. Board is established as an advisory committee to the Board of Park Commissioners.

Section 4: All other provisions of Title 2, Chapters 1, 6, 7, 8 and 11, of the Whitefish City Code shall remain unmodified.

Section 5: In the event any word, phrase, clause, sentence, paragraph, section or other part of the Ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid, and the remaining provisions thereof shall continue in full force and effect.

Section 6: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.

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

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Vanice Woodbeck, Assistant City Clerk

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

October 27, 2014

Mayor Muhlfeld and Whitefish City Council
City of Whitefish
Whitefish, Montana

Mayor Muhlfeld and Members of Whitefish City Council,

Proposal to Transfer the Mountain Trails Ice Rink Advisory, Whitefish Tree Advisory, Pedestrian and Bicycle Path Advisory, and Weed Control Advisory committees to the Board of Park Commissioners and amending the Whitefish City Code, Title 2, Chapters 1, 2, 6, 7, 8 and 11

Introduction/History

The Whitefish Parks and Recreation Department hosts multiple committees. These committees include the Mountain Trails Ice Rink Advisory, Whitefish Tree Advisory, Pedestrian and Bicycle Path Advisory, and Weed Control Advisory committees. The Whitefish Animal Group Board (W.A.G. Board) is a Parks and Recreation Department committee that has not been adopted into the Whitefish City Code at this time. Historically members of these committees have been appointed by the City Council. W.A.G. Board members have been appointed by the W.A.G. Board. Each committee, other than the W.A.G. Board, is appointed a City Council representative and a Park Board representative.

Current Report

The Parks and Recreation Director and/or Chair of each committee discussed with all committees the proposal to transfer committees to the Board of Park Commissioners. All committees were in favor of the proposal, requesting that the structure of the committees remain the same. On October 14, 2014 the Board of Park Commissioners unanimously moved to request of City Council to allow the transfer of these committees to the Board of Park Commissioners.

Financial Requirement

There is no financial requirement.

Recommendation

Staff respectfully requests that the Whitefish City Council amend the Whitefish City Code, Title 2, Chapters 1, 2, 6, 7, 8, and 11, thereby transferring the Mountain Trails Ice Rink Advisory, Whitefish Tree Advisory, Pedestrian and Bicycle Path Advisory, and Weed Control Advisory committees and Whitefish Animal Group Board to the Board of Park Commissioners.

Sincerely,

Maria Butts, Parks and Recreation Director

Park Board Meeting Minutes
October 14, 2014

Park Board Members Present: Ron Brunk (presiding), Jim DeHerrera, Frank Sweeney, Terri Dunn, Susan Schnee and Ray Boksich
Park Board Members Absent: Doug Wise
In Attendance:
City Staff Present: Maria Butts, Jason Loveless and Mary Blubaugh

A. Call to Order: 7:05 pm
B. Approval of the October 14, 2014 Agenda – Agenda was approved as stands.
C. Approval of September 9, 2014 Minutes – A correction was made to show Susan Schnee was present for the September Park Board meeting. Member Sweeney made a motion to approve as corrected. Member DeHerrera seconded. All ayes.
D. Public Comments – Kathy Cozad showed the Park Board the pickleball equipment and passed out photos of a tennis court striped for pickleball. She gave a brief presentation of the sport and talked about the USA Pickleball Association. The target age for participants is 40+. Kallispell has a large following with homeschooled children. One photograph shows the tennis/junior tennis courts at Flathead Valley Community College. There is thick striping for the regulation tennis and thin striping for junior tennis. The second photo shows a tennis/pickleball court. For recreational play, the tennis nets can be used. Mike Robinson approached and said 30 people will show to play on the 2 private courts in Whitefish. The private courts are listed on the USAPA site. Both tourists and residents are coming to those courts to play. The need is huge in Whitefish. Missoula holds tournaments which draw participants from many states. Mr. Ronald Ross informed the Park Board people are being turned away because they can't accommodate them.

   Vice President Brunk asked if there would be any problems with high school tennis tournaments playing on courts with pickleball stripes. Ms Cozad said she does not believe so, but can not say for sure. Ron asked how Kalispell was responding. Kathy said they use the courts in the fairgrounds during the winter. In the summer they have tennis courts striped for Pickleball. Member Sweeney asked if there are any problems with one court being tennis and another Pickleball. Kathy was not sure. She said there could be some push back because the sounds on the court would be different or a different ball is rolling onto their courts. Vice President Brunk said there would be more discussion under New Business.

   Public Comments were closed.

DRAFT

E. Committee Reports

a. Bicycle/Pedestrian Committee – Vice President Brunk said Doug Peppmeier presented a preliminary design for the Skye Park Bridge. They hope to go to bid in the spring with construction late spring or early summer. The stairway monies were approved by City Council. Karin found out a survey was needed. The price of that is minimal. The stairs at the Stumptown Inn will be around $20,000 and those at 2nd Street/Kay Bellar will be around $17,000.

Member Boksich asked if the stairs would have anything to allow you to roll up your bike. Vice President Brunk said yes.

The path extension from Char Rigg's property to Pines Lodge will be going on. Char gave permission for a gravel trail.

b. Tree Advisory Committee – Jason Loveless told the Board they did not have a quorum.

c. Ice Rink Advisory – Everything is starting to run smoothly. The Adult Hockey has organized themselves into a 501(c)3. Board members are in place and the first payment for ice rental has been paid. The Ice Rink Advisory Committee voted to become a subcommittee of the Park Board. Students from Muldown Elementary are coming to skate 3 days a week as part of the PE curriculum. Each user group is developing a priorities list or what they would like to see happen at the Ice Den. Ron suggested this be added for discussion under New Business. The Whitefish Wolverines' vendor was competing with the city's concession stand by selling pizza. Director Butts talked with her and she was ok with not selling pizzas. She is selling calzones instead. The policy of non-compete will be discussed under New Business.

d. WAG – Director Butts stated the pond has been filled. On October 25th from 2pm – 4pm there will be a "Pond Open House" The grand opening will be in the spring. The next project will be to build a dog wash. The discussion now is whether this will be inside the park or outside. There is no policy right not on banning dogs/owners from the dog park. They will be forming a committee to put together a policy for complaints. Dog on dog fights are not a police matter. Right now civil court is the only solution.

e. Weed Committee – This was the last meeting of the year. The only item was the revision of the Weed Management Plan. Soroptomist Park is still the main issue. Member Sweeney asked if there was any discussion on dealing with the noxious weeds there now. Member DeHerrera said no, not specifically. Frank said now would be a great time to spray and get ahead of it. Director Butts said we still need to go through the Park Board and City Council before we can spray in Soroptomist.

DRAFT

F. Public Hearings –Memorial Park Tennis Courts – Karl Cozad had sent a recap of the conditions of the tennis courts within the Parks and Recreation facilities. He also detailed the discussions that took place regarding the proposed tennis courts and the phases decided upon. Vice President Brunk opened discussion on the proposed Memorial Park tennis courts to the public. There were no comments.

Member Sweeney said his preference would be to continue to put in 4 courts. He would also like to re-offer to the tennis coaches the chance to raise monies for this project. Member Schnee asked if Riverside would be ripped out.

Susan also asked if we would still need courts there. Director Butts said we would need to open to those residents whether they want to keep the courts. Vice President Brunk said they would make a good Pickleball site. Member Sweeney asked if there is a system to reserve courts. Maria said yes. Ray suggested Maria pull up the agreement between the city and the Glacier Twins and the school district to model after. He said there might be drainage issues which should be investigated. Director Butts said Bruce Boody had suggested a survey be done to see about the drainage.

Member Sweeney said the school district needs to come to the party on this as well. Ron suggested we communicate with the School Board that a partnership is needed as we move forward on this. Member Schnee said we should contact representatives from the school and tennis coaches and ask them to attend again. Member Boksich said the public notice was small and a larger notice should be placed in the paper. Member Dunn said it would be good to have the tennis coaches come back and report if any fund raising has been done. Have any private monies been found. Director Butts asked if she should advertise somewhere other than the legal notices. Member Boksich suggested the community section. Member Sweeney made a motion to table the discussion until the next meeting and leave the public hearing open. Member Dunn seconded. All ayes.

G. Old Business

a. Depot Park Representative for Interview Committee – Director Butts told the Board the RFQ is out for Phase 2 of the Depot Park Master Plan. We need a representative from the park board for the interview committee. Ray Boksich volunteers. Member Sweeney moves to appoint Ray Boksich as the Park Board representative for the Interview Committee. Member DeHerrera seconds and the vote is all ayes.

DRAFT

H. New Business

a. Pickleball/Tennis Court Striping – The Park Board received handouts describing the various ways to dual stripe for tennis and Pickleball. The cost for lines to be added is between $500 and $700. Member Schnee asked when the decision on whether Riverside will be changed over to Pickleball be made. Director Butts said there is no schedule. Park Board discussions in the past were focusing on Memorial Park. Member Schnee suggested decommissioning the Riverside courts to avoid any more injuries. Member Sweeney asked if it is a different level of construction to make Pickleball courts or could you use the same surface as tennis courts. Director Butts was not sure. You still need the posted concrete. Kathy Cozad said there are numerous surfaces being used on pickleball courts. Member Boksich said we should not set up nets on the east court as it is unplayable. Member Sweeney would like a recommendation from legal as to what should be done to avoid more injury suits. Member Dunn is still confused over the issues with Grouse tennis courts and the tennis teams. Member Sweeney would like a report on the condition and claims on the courts as a health and safety issue.

A motion was made by Member Sweeney to get a report from the Parks and Recreation Department on the conditions of the courts and claims against them as well as a recommendation from Mary Van Buskirk and what we should do with regard to the health and safety of our kids and the city. Member Dunn seconds and the vote is all ayes.

Member Sweeney would also like Maria to contact the school and tell them this is a problem and if they want new courts, they need to give us a report on what they can contribute.

A motion was made by Member Sweeney to have Director Butts send a letter to the school district to invite them to come to a Park Board meeting to discuss their contribution to new tennis courts. Member DeHerrera seconds and the vote is all ayes.

Member DeHerrera asked if the Pickleball club could assist monetarily in striping the Grouse courts. Kathy Cozad said they could help fund it and also help paint the lines.

Member DeHerrera made a motion to get the cost to paint and stripe the Grouse Mountain tennis courts with the Pickleball club contributing 50% of the cost.

Member Sweeney seconds. A vote was taken with all ayes.

And amendment was added to the motion which states the double striping must not be in violation of high school tennis tournament rules.

DRAFT

b. BNSF Landing Improvements – After the river cleanup, this landing was given to the city by BNSF. However because it is loose gravel, it is very difficult to travel down on a bike. One option would be for BNSF and Rob Hagler to look at it and repair it. The city was given $25,000 by BNSF to improve this area. However "improvements" must adhere to state guidelines and the monies must be spend this fiscal year. TAPE 1:58

Member Schnee asked if log steps would help. Director Butts said that would be considered an improvement and would then need to be ADA compliant. Rob was not sure BNSF would agree to replace the gravel. Vice President Brunk asked who would determine if replacing the gravel with a different grade is an "improvement". Maria said BNSF would determine if it falls under the lease agreement. We would have to submit a proposal. Vice President Brunk recommends Maria explore this with Rob Hagler.

c. Subcommittees – Director Butts reported all committees have been informed of the proposal to transfer committees from the City Council to the Board of Park Commissioners. All committees were in favor of the change. The Tree Committee discussed this but was unable to vote as they did not have a quorum. Everyone was agreeable though.

A motion was made by Member Boksich to request of City Council to change the resolution allowing for these committees to become subcommittees of the Park Board versus City Council.
Member Sweeney seconded. A vote was taken with all ayes.

d. Land Gift Acceptance – Land has been deeded to the city from the estate of James Bakke. On this land there is a trailer as well as a structure. The caretaker lives on this property now. Mr. Bakke's wishes were for the property to remain in its natural state. Director Butts said these details need to be worked out. Friends of Mr. Bakke's would like a formal celebration if the city chooses to accept the property. Member Dunn asked if Mr. Bakke's artwork is included with the gift or just the property. Maria was unsure although friends and relatives would like his artwork to be displayed there, possibly in some form of a museum. Member DeHerrera asked if the city would be inheriting any hazardous materials. Member Schnee wanted to know what happens if we decline. Member Sweeney said most likely it would go by the way of the residual of the will.

e. Ice Rink Priorities – Vice President Brunk wanted to know if the Park Board wanted to draft something for the Ice Rink Advisory Committee. Member Sweeney wondered if these priorities are for the season. Ron said yes they are. After some discussion, it was decided the user groups should develop their priorities and present them to the Park Board. The Board will then put their stamp of approval and/or make changes or additions.

f. Pizza Vending – Director Butts asked the Board what type of vending do we want in our parks. Right now the Wolverines have contracted with Two Dog Wood Fired Pizza to vend during their games. The city's policy should be consistent across the board. For this season, Maria is allowing them to vend, but they are not allowed to sell the same products. The city sells pizza, but she is selling calzones. Maria is looking to the Park Board for guidance. Member Schnee asked if this vendor is health inspected. Director Butts said yes she is. Sue does not believe there should be any vending other than our own. Member Dunn said if the Ice Rink Advisory Committee disagrees with the city policy and wants to open this up for discussion, they need to come to the Park Board. The Park Board agrees with the way Maria has handled the situation.

I. Items from Park and Recreation Department

a. Administrative Report – Maria is meeting regularly with DNRC and Whitefish Legacy representatives to revise the Whitefish Trail Operating Plan and the Recreation Plan. She hopes to have these completed by the end of October. It has come to her attention that a letter (which was distributed to the Board) to the seasonal staff at City Beach and the Ice Den was not distributed by the Facilities Manager. In addition some staff were told they would not be rehired if they did apply again. Director Butts has written another letter informing staff of the miscommunication. She has also been in contact with several past staff and has offered employment opportunities at the rink for this season. Maria will be putting together a draft of suggestions from the Weed Committee regarding the Weed Management Plan. The final proposal will come to the Park Board and once approved will move to City Council

There is no Facility Manager's Report, but Maria told the Park Board 4 out of 6 user groups have signed their ice rental agreements for this season. Director Butts met with the City Finance Director to develop a revenue vs. expenditure budget for this season. They both believe the ice rink is capable of breaking even this year. This budget will be analyzed monthly and adjustments will be made accordingly.

b. Recreation Coordinator – Flag Football is running smoothly. There are around 40 participants this year. Volleyball camp will be starting the first week of November. Jake is in contact with the high school volleyball coach and hopes to have some of her players help with the camp.

c. Park Maintenance Report – Jason told the Board 3 of 4 staff members needed at the Ice Rink are in place. Jason also explained the circumstances which caused the ice to be too thin and the rink to be closed to skating while the ice was rebuilt. The Urban Forestry Management Plan will be included in the next month's Park Board packet. Member Sweeney asked

DRAFT

about the roof repair. Jason said it was finished and the low e ceiling would be the next project.

J. Correspondence –

K. Items from the board:

a. Jim DeHerrera - thought Director Butts is doing a great job, especially with the pizza situation
b. Frank Sweeney – agrees with Jim.
c. Susan Schnee
d. Ray Boksich
e. Terri Dunn – also agrees with Jim regarding Maria's handling of the vending situation.
f. Ron Brunk – hopes a field trip to the Flint Street property will be possible in the spring.

The Park Board meeting was adjourned at 10:02 pm.

DRAFT

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

October 28, 2014

Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

Mayor Muhlfeld and Councilors

Consideration of Traffic Related Requests from Murray Avenue Residents

Introduction/History
A neighborhood group living on Murray Avenue submitted the attached letter and presented their case to the City Council on October 20th. Their goal is to maintain a safe, quiet street with limited traffic. This memo is in response to the City Council's direction for staff to review those requests to:

- Establish a permanent barrier at the north end of Murray Avenue,
- Set a speed limit of 15 miles per hour,
- Post load limits to restrict heavy truck traffic, and
- Post signs for "Local Traffic Only" and "Children at Play".

Current Report
The residents on Murray Avenue were substantially impacted by heavy construction traffic during Phase I of the Highway 93 Reconstruction project in 2013. They communicated their concerns to City staff throughout the summer and have maintained communication, although less frequently, in 2014. We understand their immediate concerns about heavy construction traffic were largely mitigated during 2014, due to agreements between MDT's contractor, the Veteran's Peace Park, and Idaho Timber which allowed the contractor to access the Peace Park from Karrow Avenue.

Regarding the request for a permanent barricade at the north end of Murray Avenue, there are a number of reasons to not take action at this time. In addition to the Fire Department's needs and BNSF's right of access through the Peace Park, there is also an undeveloped private access easement between Murray Avenue and tract 4DAB, as shown on the attached map. We understand this is the only practical access to this property. Considering these points, as well as the pending development of the Idaho Timber property and the on-going development of the Veteran's Peace Park, the Fire Department and Planning Department have expressed the concern that Council action to block this road would be premature at best. Perhaps other options to manage traffic in and out of the Peace Park can develop as those projects move forward. We can expect City staff and the concerned neighbors to be watching for those opportunities.

The typical speed limit on residential streets is 25 miles per hour throughout the community and staff believes this is appropriate for Murray Avenue. Responsible drivers can be expected to travel this short, narrow street at well below the speed limit, while irresponsible drivers unfortunately pay little attention to speed limits anyway. The typical means to manage such irresponsible behavior is to catch the perpetrator and write a speeding ticket, but it just isn't practical to devote those sorts of law enforcement resources to a remote street on a day to day basis.

A plan to restrict heavy truck traffic with posted load limits does not seem necessary, as highway construction will be winding down in the near future. Short term measures to divert construction traffic away from Murray Avenue have succeeded and should continue to be effective through Phase II of the highway reconstruction project which comes to an end next July. After that, the potential for heavy construction traffic should subside.

And finally, prudent standards for traffic signage and control do not support signs such as "Local Traffic Only" and "Children at Play". Restrictions for local traffic only are frequently used to discourage traffic in construction zones, but otherwise public roads are funded by public dollars and it is reasonable to keep those roads open to the general population. And it is widely held in the law enforcement and traffic engineering professions that signs such as "Children at Play" lead to a false sense of security and, much like speed limit signs, are often not respected by irresponsible drivers and are not enforceable in a practical sense.

Staff recognizes the concerns expressed by the Murray Avenue neighborhood. We suggest the best solution would be a more convenient, permanent route for public access to the Veteran's Peace Park from Highway 93 via Karrow Avenue. City staff will watch for those opportunities as development in the area moves forward.

<u>Financial Requirement</u>
None

<u>Recommendation</u>
The Fire Department, Planning Department and Public Works respectfully recommend the City Council not take action to block the north end of Murray Avenue at this time. The City should revisit the issue in conjunction with development of the Veteran's Peace Park and Idaho Timber properties.

Staff also recommends the Council not take action on related proposals for a 15 mph speed limit, load limits, and inappropriate signage for the reasons stated above.

Sincerely,

John C. Wilson
Public Works Director

9/29/2014

received
10/6/14 CS

Mr. Chuck Stearns
City Manager
City of Whitefish
P.O. Box 158
Whitefish, Montana 59937

Dear Mr. Stearns and Whitefish City Council,

As a neighborhood group owning property and living on Murray Avenue, we propose that Murray Avenue be designated as a dead-end road by creating a barrier at the entrance point to the Great Northern Veteran's Peace Park (GNVPP) for the following reasons:

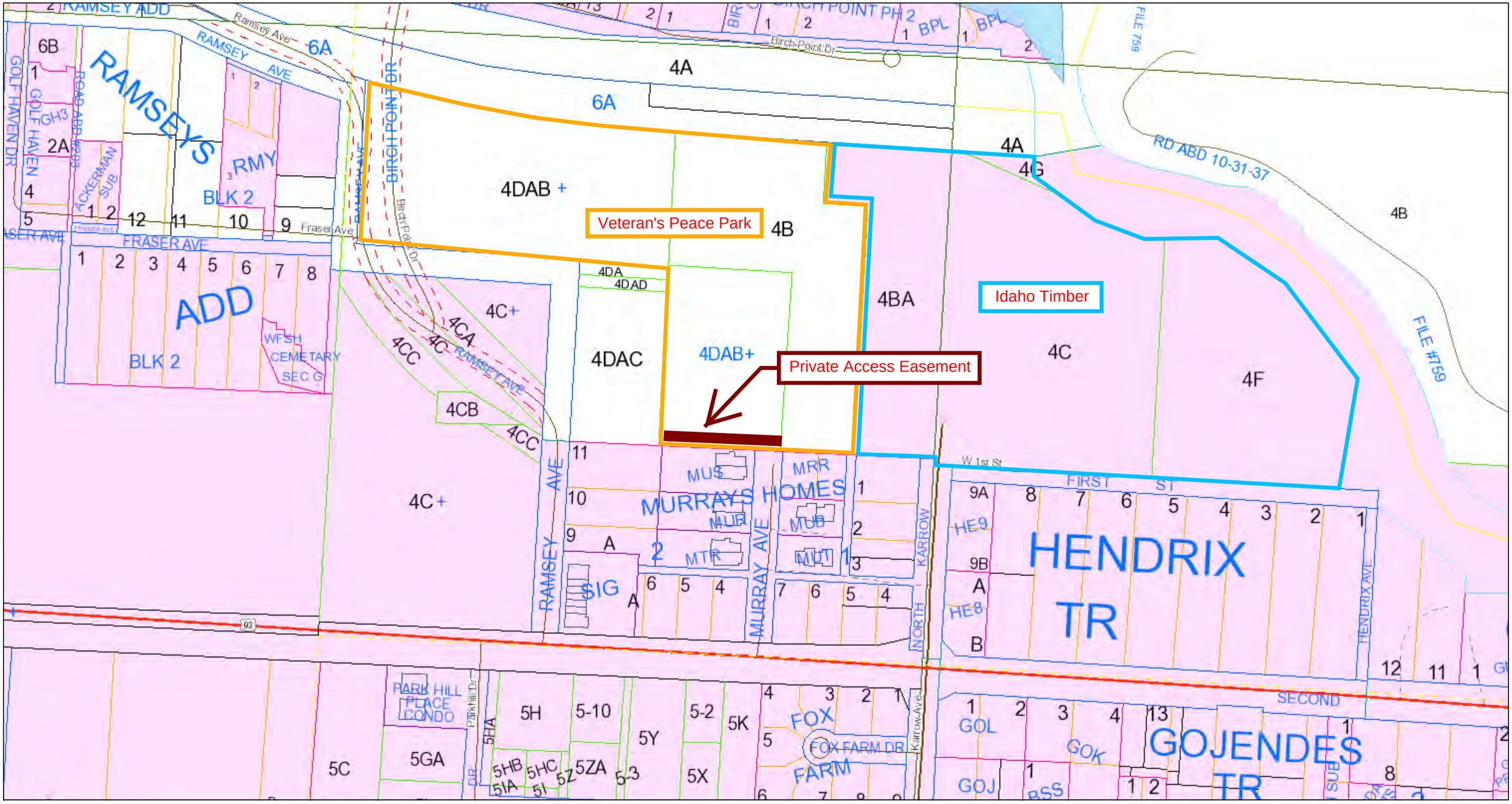
- The street is narrow, and any street parking would impede emergency vehicles from entering and leaving the area.
- The street's sub-grade will support only local traffic and is designated as such by the City of Whitefish signage.
- The street has already been damaged by truck use on Murray Avenue during phase one of Highway 93 West's re-construction.
- An alternative entrance to the Great Northern Veteran's Peace Park is available off Karrow Avenue, and a second entrance could be developed off Ramsey, both full-size city streets.
- The entrance to and from Highway 93 West and is not safe for heavy traffic that will be entering/exiting the GNVPP during special events.

With the Highway 93 construction, there are two concrete pipes lying at the end of Murray Avenue which block traffic from entering and exiting the Peace Park. We propose that this barrier remains over the winter. We also propose that signage be posted on Murray Avenue indicating fifteen miles per hour speed limit, no trucks over 7 T, local traffic only, and children at play.

Since Burlington Northern Railway has legal access to the Peace Park from Murray Avenue, we recommend that a locked, swinging gate be installed for their use and emergency city use only.

Sincerely,

JoAnn and Kirk Jurgens, Garth Van Gaalen, Ken and Karen Thompson,	104 Murray Avenue
Rik Smistad and Val Kinnear,	105 Murray Avenue
Mitch and Gail Linne,	106 Murray Avenue
Dave and Sue Wollner,	107 Murray Avenue
Dave and Pam Supina,	108 Murray Avenue
John and Sandy Kuffel,	109 Murray Avenue
Braeden Schenk,	111 Murray Avenue



October 28, 2014

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No warranty is made by Flathead County for the use of GIS data for purposes not intended by Flathead County.

Flathead County GIS
800 South Main Street
Kalispell, MT 59901
(406) 758-5540

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MANAGER REPORT

October 15, 2014

AWWA ARTICLE – PROTECTING FORESTED WATERSHED IS SMART ECONOMICS FOR WATER UTILITIES

Mayor Muhlfeld came across this article which is attached to this report in the packet in a recent American Water Works Association (AWWA) publication. This article provides very compelling evidence that the proposed Stoltze Conservation Easement is exactly what we need to be doing. It is a very interesting and timely article.

NEW DONATED FIRE DEPARTMENT BRUSH TRUCKS

The Whitefish Firefighters Association (WFA), made up of the active career and volunteer firefighters, raised money to replace the 1979 Dodge brush truck that the Fire Department was using. That 35-year old truck was showing its age especially when pulling the trailer with the 6X UTV (pictured in the middle).

The WFA raised just over $70,000 which wasn't enough to obtain a new vehicle so the Brush Truck Committee started looking at options. What they ended up doing was purchasing (2) used vehicles, a pump, tank, flatbed then swapped a few things around and built two brush trucks (vehicles on left and right in picture above).

The first truck is a 1998 Chevy 2-door 4wd with 225-gallons of water and a 80-gpm pump. This truck is a NWCG Type-6 engine. The second truck is a 2000 Ford 4-door 4wd with 400-gallons of water and a 150-gpm CAFS pump. This truck can be either a NWCG Type 5 or 6 engine.

The City paid $4,564.75 for some final modifications and to retrofit some existing equipment on the two, used brush trucks. If you see some of the Firefighters, please thank them for these donations. I will also send them a letter of thanks.

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.

Hwy 93 South Corridor Plan – At the September 15th City Council meeting, the City Council determined that the Wisconsin Avenue Corridor Plan would be the next corridor plan once the Hwy 93 West Corridor Plan is completed. The City Council wants to determine the status of beginning the Wisconsin Avenue Corridor Plan in January, 2015 and also will decide if staff or a hired contract consultant will take the lead and do most of the work on the Wisconsin Avenue Corridor Plan.

Downtown Parking – With the budget completed, staff was able to return and work on the SID for the parking structure. We had a good discussion with Bond Counsel on the project, got some good ideas, and got confirmation of our general plan for the SID. Staff has completed filling in most of the spreadsheet for floor area square footages for properties to be assessed and we did our first on-site inspection and counting of existing parking places provided by each business on Friday, October 24th. I plan to have another meeting with the SID working group and may have to come back to the City Council for some final guidance before we can complete the spreadsheet and progress to the Resolution of Intention phase.

The design for the parking structure is discussed below.

City Hall Planning – Mosaic Architecture has completed the Programming and Conceptual Phase of the future City Hall and Parking Structure design. Approval of a revised Conceptual Scheme 1.5 is on the City Council agenda for November 3rd along with approval of proceeding to the next phase of design.

Depot Park Phase II – The restroom addition to the O'Shaughnessy Center opened the week of September 15th. Maria Butts, Parks and Recreation Director, is currently advertising for engineering contractors to design plans for the rest of the Phase II improvements.

Whitefish Lake – Retail uses licensing and/or zoning – The City Council held a work session on June 16th on this issue and decided to wait until after the 2014 summer season to consider regulatory options. This item is scheduled for the November 3rd work session.

New Cemetery Development – The groundwater testing this summer at the possible site south of the wastewater treatment plant showed that an area of approximately five acres is possible for a cemetery. Also, some French drains could be used to "de-water" some of the areas where groundwater was within 9 feet of the surface. The Cemetery Ad-hoc Committee is still debating whether they want to go forward with a recommendation for a cemetery at that site.

Begin review of zoning code – district by district – This project has not begun yet. Planning staff has discussed how to proceed on this project, but that is all. It might be desirable to have a joint work session with the City Council and Planning Board along with Planning staff to get guidance on how to proceed on this project.

Stoltze Conservation Easement – Completion and Funding – The City Council held a work session on September 15th on this topic. The Trust For Public Land may do some polling in early January to determine if there is public support for any of three funding options and which option might have the most public support.

Wisconsin Avenue Corridor Study - At the September 15th City Council meeting, the City Council determined that the Wisconsin Avenue Corridor Plan would be the next corridor plan once the Hwy 93 West Corridor Plan is completed. The City Council wants to determine the status of beginning the Wisconsin Avenue Corridor Plan in January, 2015 and also will decide if staff or a hired contract consultant will take the lead and do most of the work on the Wisconsin Avenue Corridor Plan.

Birch Point Quiet Zone - In June, 2014, we received updated cost information from BNSF regarding their costs to improve the crossing. Their costs would equal $576,825 and there would be other costs such as paving etc. These costs of BNSF are quite a bit higher than the figures we were given 7-8 years ago. John Wilson will try to find some time to update the cost estimates for all the costs and funding sources for this project.

Riverside Park protection and improvement for erosion - Maria will work on plans to address Whitefish River erosion, but no funds were approved in the Parks and Recreation Department budget for any restoration.

Whitefish River Waterway Development and Improvement – The Montana Fish and Game Commission approved limiting the stretch of the Whitefish River from the railroad trestle to JP Road to manual powered craft and electric motors at their meeting on October 16th.

Open Space Funding – The Stoltze Conservation Easement project is somewhat related, but not directly as our interest in the Stoltze Conservation Easement is primarily for protection of our water supply and secondly for recreation opportunities. The Conservation Easement would help

protect the "Whitefish Face" backdrop of the City, so it would have some open space type of benefits.

Climate Action Plan – Steve Thompson has addressed the City Council a couple of times on this topic. Staff has not had time to do any work on it and is not sure of the direction the City Council wants to take on this topic. There was talk of officials from Missoula coming up to Whitefish to discuss what the City of Missoula has done.

Economic Development – Public/Private Partnerships and Targeted Business Assistance – The developers planning the boutique hotel on Block 46 at 2nd Street and Spokane Avenue may pursue a design whereby the sewer line does not have to be relocated. They have not signed the development agreement yet and may pursue doing the project without Tax Increment assistance or come back to the City Council just for assistance for replacement of sidewalks. The Idaho Timber property was sold to a private investor in the last quarter, so we may hear soon of some development concepts for that parcel.

BNSF – CECRA site cleanup, Whitefish River, overall relationship – The weeds at the Whitefish Landing restoration site are being addressed by BNSF's contractor. The City worked with BNSF during the last six months on hazardous material spill prevention, awareness, and response. I have not heard any updates on the CECRA site cleanup since last spring.

Whitefish Trail & work with Whitefish Legacy Partners – Maria has finished up and resolved many of the document completion issues that she inherited and she is working on the final documents. Whitefish Legacy Partners needs to finish fundraising for the Beaver Lakes Conservation Easement project by December 31, 2014.

Water Quality Improvements (AIS, water rights, city beach, stormwater) – The City Council received an update on this past summer's AIS (Aquatic Invasive Species) efforts and findings at the October 20th work session. Public Works is still working with one of the stormwater engineering firms on options for the Riverside Park storm drainage pond. The City did acquire the six lots under the north end of the pond from BNSF earlier this year. The Golf Course water right is completed and we are in the final stages of approval for the water right application for additional pumping from Whitefish Lake. The City Beach bilge catchment area is part of the engineering project that was awarded to Robert Peccia and Associates – it is anticipated that City crews will install the trench drain system next spring. The stormwater projects were budgeted and Public Works and the engineering firms continue to work on construction design so that some projects can be put out to bid.

Code Enforcement Improvements – no new notable issues.

MDT – Hwy 93 West Project - The Karrow Avenue to Mountainside Drive Phase 2 project is underway. They will complete as much as possible from Karrow Avenue to Fairway Drive this fall before winter sets in.

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 began work on that report, but other priorities have interfered with progress on that project.

Long term financial planning and sustainability – Not much occurred in this area in the last quarter. The Montana Department of Revenue estimates that taxable values might decrease by 9.04% on a countywide basis for Flathead County next year with revaluation. Decreases might be larger for Whitefish because higher home values have not returned to 2008 levels yet and we have a lot of higher home values that influence our tax base.

Green Initiatives – The Future City Hall Steering Committee is going to hold a LEED (Leadership in Energy and Environmental Design) workshop to consider options and recommendations for LEED qualification for the future City Hall building.

Recycling Improvements - We lost one of the recycling drop-off sites during the first quarter of this fiscal year. Public Works staff discussed curbside recycling options with Roger Bridgeford of Montana Waste/North Valley Refuse and he will submit some options for consideration.

Maintenance Programs for City Facilities - Maria Butts, Parks and Recreation Director, has resumed some discussions of this topic with Department Directors. As we approach the construction of a new City Hall, this topic will have increasing importance.

Planning – in house priorities and text amendments – Current workload precludes a lot of activity in this area, but Planning has brought forward and is working on text amendments. Of importance are text amendments to deal with the loss of the extra-territorial jurisdiction.

EAST 2ND STREET CONSTRUCTION PROJECT UPDATE

Paving on the project was completed last week. The crews continue to work on finishing the sidewalks, street lights, landscaping, quiet zones, and other aspects. John Wilson has said he hopes the quiet zone can be restored within two weeks.

MEETINGS

Impact Fee Committee (10/20) – I attended the annual meeting of the Impact Fee Advisory Committee to introduce Dana Smith to the committee. Dana has the annual Impact Fee Report and information on the committee meeting on the agenda for the November 3rd meeting.

WAVE Board Meeting (10/29) – The WAVE Board will hold their bi-monthly meeting on Wednesday. The primary topic of discussion will be the completion of the building expansion project and scheduling the 2015 budget meetings.

Whitefish Face (10/30) - This group of diverse people with many interests in the Flathead National Forest area of the Whitefish Face (south face of the Whitefish Range north of Whitefish) will meet on Thursday to begin narrowing down possible projects to propose to the U.S. Forest Service for consideration of thinning projects, prescribed burns, and other fuel reduction projects. Recreation trail projects after the fuel reduction projects are done will also be proposed.

UPCOMING SPECIAL EVENTS

Extra Mile Day – November 1st – Mayor's Proclamation – Do some community service or go "the extra mile"

REMINDERS

Tuesday, November 4th – Election Day state holiday. City Hall will be closed.
Tuesday, November 11th – Veteran's Day state holiday. City Hall will be closed.

Respectfully submitted,

Chuck Stearns, City Manager

TODD GARTNER, G. TRACY MEHAN III, JAMES MULLIGAN, J. ALAN ROBERSON, PETER STANGEL, AND YIYUAN QIN

Protecting forested watersheds is smart economics for water utilities

PROTECTING AND SUSTAINABLY MANAGING FORESTED WATERSHEDS IS AN APPROACH THAT, WHEN USED AS A COMPLEMENT TO TRADITIONAL INFRASTRUCTURE, MAY NOT ONLY REDUCE COSTS BUT ALSO HELP SECURE NEW FUNDING STREAMS.

The breathtaking $1 trillion estimated price tag to repair and expand our nation's drinking water infrastructure is both sobering and compelling (LaFrance, 2013). To address this costly issue, some water utilities and the communities they serve are turning to a solution nearly as old as our nation itself—protecting forested watersheds. Increasing evidence suggests that healthy forests produce water that is less expensive to treat, transport, and store. These same forests also provide a plethora of other cultural, economic, and environmental benefits. And with real estate prices in many areas being lower as a result of the Great Recession, now is the time to protect and sustainably manage the lands and forests that supply our potable water.

The stakes are high. According to the 2008 report of the National Research Council, Hydrologic Effects of a Changing Forest Landscape (NRC, 2008), "the forests cycle water from precipitation through soil and ultimately deliver it as streamflow that is used to supply *nearly two-thirds of the clean water supply in the United States*." Changes in forested headwaters, including tributary streams

Attachment Packet, November 3, 2014 page 251 of 365

2014 © American Water Works Association

TABLE 1 Examples of natural infrastructure strategies and complementary built infrastructure

Watershed	Major Issues	Natural Infrastructure Strategy	Complementary Built Components
Crooked River watershed—Portland, Maine	Forest conversion for development and need to maintain filtration avoidance waiver	Conversation easements, land acquisition, and best management practices as a cost-avoidance strategy in a healthy watershed	Ozonation, chlorination
La Cache Poudre and Big Thompson River watersheds—Fort Collins and Greeley, Colo.	Costly sedimentation and flood risks associated with catastrophic wildfire in forested watershed	Wildfire risk management as a cost-avoidance strategy in the face of extreme and costly disruptive events	Off-river reservoir, presedimentation basin, ability to blend water from reservoir and Poudre, flocculation, sedimentation, filtration
McKenzie River watershed—Eugene, Ore.	Loss of forested riparian buffers to residential development, and associated water quality decline and incremental increases in treatment costs	Forested riparian buffers as a cost-reduction strategy in a nonregulatory setting in a healthy watershed	Chlorination, coagulation and flocculation, sedimentation, filtration
Upper Neuse River Basin—Raleigh & Durham, N.C.	Substantial degradation from development in heavily forested landscape leading to Clean Water Act requirements and high treatment costs; reservoir siltation against backdrop of flood and drought risk	Protection of forested riparian buffers, wetlands, and floodplains as a regulatory compliance, cost reduction, and risk mitigation strategy in a degraded watershed	Ozonation, coagulation, two-stage filtration (activated carbon and sand filters), UV, and chlorination; multiple reservoirs

feeding into rivers, "influence the quantity and quality of downstream water sources; in this way, forests and water are closely intertwined."

Recent advancements in our understanding of the benefits provided by healthy, well-managed forests provide water systems nationwide with a new approach to tackle America's imposing drinking water infrastructure needs. By harnessing forests as "natural infrastructure" to complement traditional "gray" (built infrastructure) approaches, utilities can help keep costs down, reduce future risks to water supply, enhance resilience to climate change, and provide a suite of ancillary benefits for their customers: the air we breathe; the places we play and enjoy; wood, paper, and hundreds of other forest-derived products; family-supporting jobs; and the wildlife with which we share our landscapes.

Recognizing that such an approach to securing drinking water and other watershed services is cost-effective, stakeholders and water utilities in a number of communities nationwide are looking to natural infrastructure as part of a solution to growing challenges. Table 1 illustrates the importance of forests and other ecosystems to potable water providers in a variety of ecological, financial, and regulatory settings. Although the context is unique for each of these watersheds, the utilities share opportunities to capture cost savings by investing in forest-based natural infrastructure, often as part of an integrated approach, alongside essential built infrastructure.

THE SCIENCE IS CLEAR

Forests have a number of characteristics that qualify them alongside retention ponds, filtration technology, and presedimentation basins as critical water infrastructure. With sturdy, long-lived roots, multilayered canopies, and varied soil composition, forests help to regulate water yield and peak flow, as well as mitigate sedimentation and nutrient loading.

Strong root systems of forests anchor soil against erosion (Geyer et al, 2000; Beeson & Doyle, 1995). Multilayered forest canopies provide rain and snow interception (Brooks et al, 2003; Briggs & Smithson, 1986), and the forest litter layer promotes infiltration of water into the soil, providing a barrier that slows downslope water movement (Dudley & Solton, 2003). These characteristics minimize stormflow peaks and associated erosion for all but the most intense storm events. Furthermore, forests help minimize sediment and pollutant delivery to streams and give ample opportunity for nutrient uptake by plants and microbes in the soil (de la Crétaz & Barten, 2007; Vitousek & Reiners, 1975).

Forests help produce water of the highest quality in the country (Jones et al, 2009; Freeman et al, 2008; Boyer et al, 2002; USDA, 2002). In the event of forest conversion and disturbance, the benefits from forests diminish, leaving communities at risk of flood, drought, increased treatment cost, and greater possibility of water contamination. Therefore, maintaining healthy, forested landscapes and implementing best practices in forestry management can be effective strategies for promoting source water quality and regulating flow.

Keep in mind that the sustainable management of forests is paramount to this approach. Preserved forests—those without active management—have their place. But in most cases, sustainable timber harvest is necessary and desirable to maintain forest health and protection from forest pests, diseases, catastrophic fires, and other threats. Sustainable timber harvest also helps support thriving rural economies. A well-managed forest that provides competitive economic returns is far more likely to remain a forest, as

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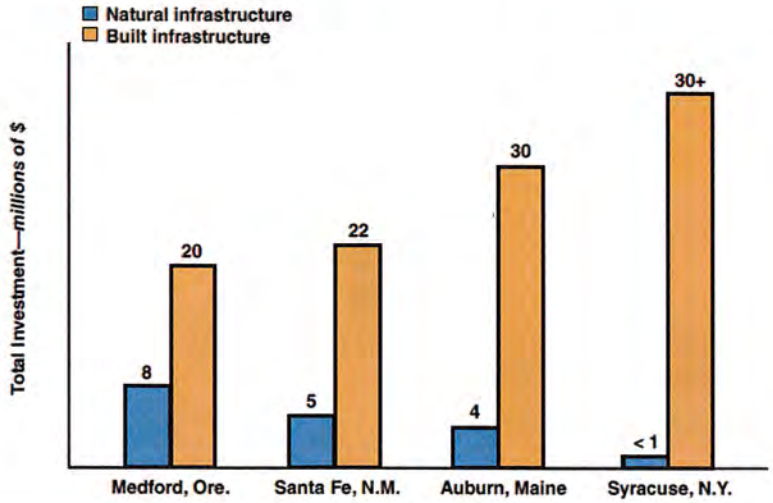
FIGURE 1 Comparison of financial merits of integrated natural and built infrastructure alternatives for desired ecological outcomes



opposed to some other land use that may have detrimental effects on water quality and quantity.

THE ECONOMICS ARE COMPELLING

Just as forests and water are closely intertwined, forests and water treatment, transport, and storage are increasingly linked from an economic perspective. A growing body of research suggests that high-quality source water and well-regulated flow can lead to cost savings (Freeman et al, 2008). By maintaining high source water quality through natural infrastructure investments, treatment plants may avoid capital costs for some of the processes in conventional treatment, such as coagulation, flocculation, sedimentation, and more advanced treatment processes like membrane filtration and activated carbon. Reduced sedimentation in source water also prevents sediment buildup in reservoirs and potential water intake clogging, leading to decreased maintenance costs such as dredging and repairing. Finally, treatment plants with high-quality raw water may also save on variable costs because more chemicals such as coagulants, disinfectants, and pH adjusters are needed when water quality degrades.

Jim Taft (2013), executive director of the Association of State Drinking Water Administrators, describes a recent study by the US Environmental Protection Agency of six communities that concluded that "on average, every $1 spent on source-water protection saved an average of $27 in water treatment costs" (Winiecki, 2012). Taft notes that several other studies have also confirmed "that improved source water quality relates to lower treatment and chemical costs" (Freeman et al, 2008; Postel & Worldwatch Institute, 2005; Forster and Murray, 2001; Dearmont et al, 1998; Holmes, 1988; Espey et al, 1997; Forster et al, 1987).

AWWA and the US Endowment for Forestry and Communities (USEFC) are collaborating on new research and applied experiments to further clarify the relationship among watershed health, water quality, and water treatment costs—part of a growing partnership to help water utilities become more involved with forested watershed protection. Protecting forested watersheds won't address the entire drinking water infrastructure need, but it is one strategy that can significantly help reduce long-term costs to consumers.

GREEN INFRASTRUCTURE COMPLEMENTS GRAY INFRASTRUCTURE

Because of aging water utility infrastructure, a growing population, growing affluence, and increasing threats to forested watersheds from climate change and other factors, water quality managers are paying closer attention to the benefits of forests as a least-cost option compared with, say, costly engineered solutions. This is not an either-or proposition. Society will always need well-financed, effective, and well-engineered gray infrastructure. But, as economists are always telling us, the action is at the margin, and great benefits—economic and environmental—are to be found in the complementarity of green and gray solutions.

The mother of all such efforts is the New York City source water–protection initiative to protect its upstate watersheds. Instead of spending $8–10 billion on a new filtration plant, it is spending less than $2 billion on land protection and a variety of forest and agricultural best management practices. Boston also manages tens of thousands of forested acres around its reservoir with a staff of 160 completely financed by ratepayers. The avoided costs for both communities are huge. These eminently sensible programs were enabled by a filtration avoidance waiver authorized under the Safe Drinking Water Act.

Other watershed-level economic studies show that the cost of natural infrastructure options to achieve water management objectives is competitive with the gray infrastructure alternatives (Figure 1). Some of these studies examine natural infrastructure investments that reduce or eliminate the need for an upfront capital cost. Others look at natural infrastructure as a mechanism to eliminate or reduce certain operating costs for a utility. In some cases, natural infrastructure is used not to reduce costs but to provide greater community benefits for a given

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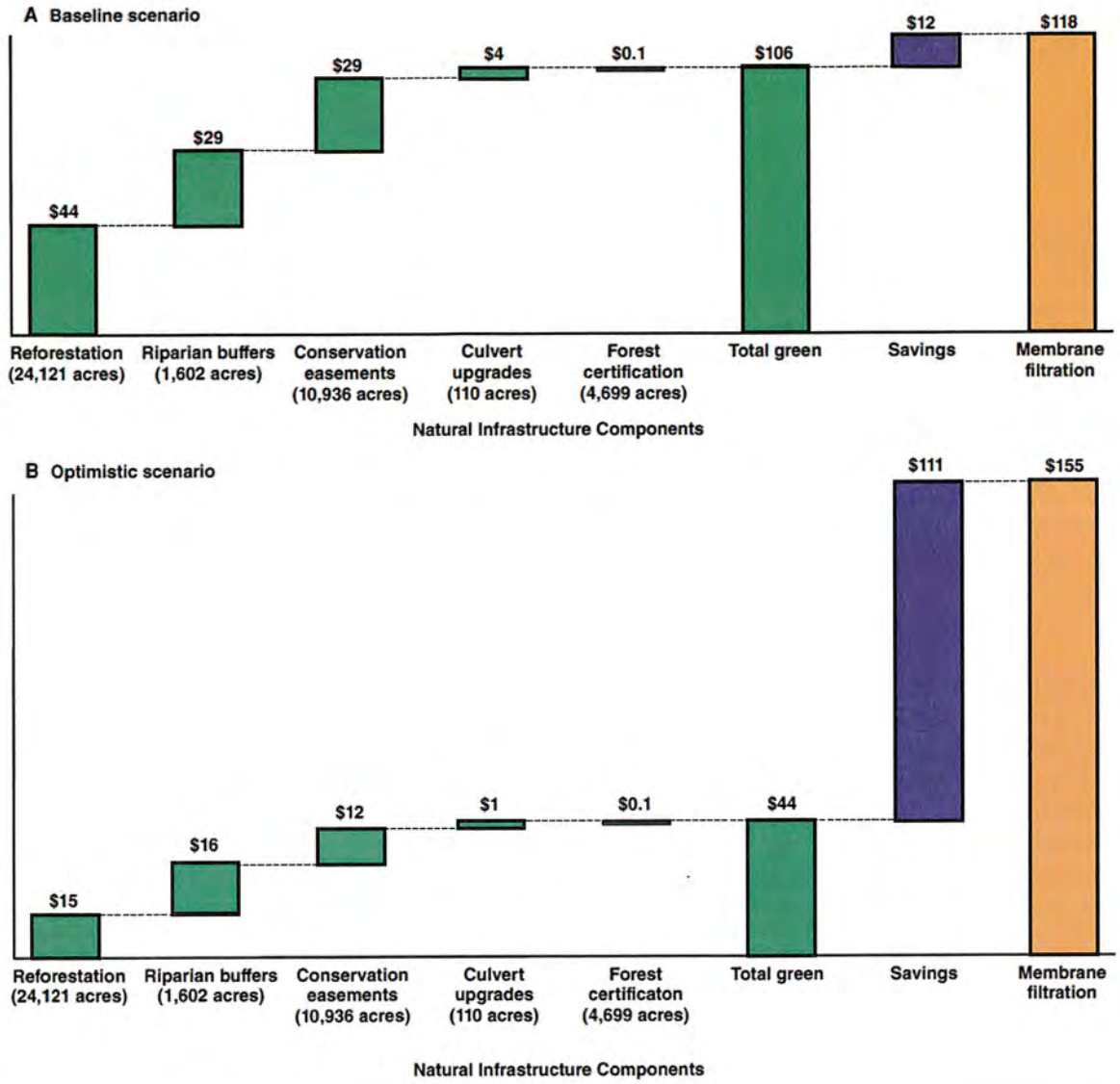
FIGURE 2 Preliminary green–gray analysis for Portland, Maine



investment because forests help sustain people's livelihoods, provide space for recreation, and boost resilience to natural hazards, to name a few (Schmidt & Mulligan (2013) in Gartner et al, 2013). These examples illustrate the potential economic benefits to communities of all sizes and geographies that merit consideration by utility managers throughout the country.

An increasingly used type of investment analysis (cost–benefit analysis or cost-effectiveness analysis, depending on the situation) that provides a basis for considering both natural infrastructure (green) and built infrastructure (gray) alternatives is the "green–gray analysis" (Talberth et al (2013) in Gartner et al, 2013). Although still in its infancy, green–gray analysis has demonstrated the potential to present natural infrastructure investments in a manner commensurate with conventional infrastructure investments so that the two can be compared by public investment analysts (Figure 2). This suggests that, once fully developed, a green–gray analysis methodology can be a standard part of infrastructure investment decisions for a wide variety of settings.

Despite the limitations and challenges in measuring marginal benefits, economic analyses to date have demonstrated the clear potential for cost-effectiveness of a wide range of natural infrastructure options relative to built infrastructure alternatives.

WATERSHED PROTECTION: IT'S DÉJÀ VU ALL OVER AGAIN

Protecting forested watersheds is not a new idea. The rediscovery of the water quality benefits of forests

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is a bit like going back to the future. As Yogi Berra famously said, "It's déjà vu all over again."

Back in the late 19th century, Philadelphia acquired 9,000 acres to protect its potable water, and the land remains protected as a city park to this day. In 1889, Seattle started acquiring land in the forested Cedar River Watershed to filter water for its utility, eventually owning and managing 90,000 acres. This eliminates the need for a new filtration system—maybe several systems, given the passage of time as well as associated operations and maintenance costs.

Utilities in New England have long protected and sustainably managed their forested watersheds. The South Central Connecticut Regional Water Authority in New Haven owns 27,000 acres of land to protect its ten active reservoirs and seven groundwater supply aquifers. Manchester (New Hampshire) Water Works owns 8,000 acres around Lake Massabesic, the source of its drinking water, and generates revenues from timber harvesting, which allows it to reimburse local communities for the loss of tax revenue.

Devastating wildfires in 1996 and 2002 helped the Denver Water Board realize just how important their forested watersheds are. Management of post-fire sedimentation for the utility in the aftermath of these blazes exceeded $26 million. Furthermore, insect infestations, lack of funding for management, and climate change will continue to make their watershed, and many others, highly vulnerable to fire and degradation. Denver took a bold step to get ahead of the curve and inked an agreement with the US Department of Agriculture Forest Service to reduce fuel loads and accelerate reforestation in critical parts of the watershed. The water utility and the Forest Service are splitting the $33 million price tag. Comparable investments are now under way in similarly plagued communities such as Salt Lake City, Utah; San Francisco, Calif.; and Flagstaff, Ariz.

The World Resources Institute (WRI), Earth Economics, and Manomet Center for Conservation Sciences synthesized the work of 56 experts with experience in source water protection across the American landscape in Natural Infrastructure: Investing in Forested Landscapes for Source Water Protection in the United States (2013). The report may be downloaded, gratis, from WRI's website (www.wri.org/publication/natural-infrastructure).

> A well-managed forest that provides competitive economic returns is far more likely to remain a forest.

The Natural Infrastructure report outlines the business case, scientific underpinnings, and means of identifying and seizing opportunities to work with utilities, stakeholders, political leaders, and conservation organizations to design, finance, and implement forest management measures, at scale, to defer or avoid expensive investments in gray infrastructure and reduce ongoing treatment costs. Whether through the use of fee-simple purchases, acquisition of conservation easements, or the subsidizing of sustainable forest practices by private landowners, water quality goals are achieved in tandem with habitat protection, a natural hydrologic flow regime, and sequestration of carbon. The value-added proposition extends far beyond cost-effectiveness to encompass a suite of environmental and conservation benefits. These examples and case studies, along with other resources, are available to help water utilities address their reluctance when it comes to venturing into new practices of investing in natural infrastructure.

Source water protection under the Safe Drinking Water Act is the analogue to watershed protection under the Clean Water Act but is more tightly focused on potable water. It is part of a multibarrier approach to protecting water supplies up to, and including, water treatment. It is preventive in nature, which is less expensive than treatment after the fact.

FUNDING WATERSHED PROTECTION AND MANAGEMENT

As the relationship between watershed health, water quality, and water treatment costs becomes increasingly compelling, the biggest challenge for water utilities may be accommodating watershed protection and management costs. Budgets are tight, and traditional infrastructure needs are enormous. At first blush, adding a new cost for watershed health may seem impractical. But when viewed as a complement to traditional treatment practices, and in light of the potential for considerable cost-savings to rate-payers, funding for watershed health is a smart and responsible move.

Sustainably managing forested watersheds and protecting them from conversion to other uses or directing others to do so may be foreign to water utilities that are more accustomed to traditional, built infrastructure to address water treatment. This challenge should not be underestimated, but it is not insurmountable by any means.

Fortunately, as dozens of utilities across the country engage in watershed protection and management, solutions for cost and expertise are rapidly developing. Although the outcome—sustainable management and protection from development of forested watersheds—is always the same, the path to achieving this goal

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TABLE 2 Summary of natural infrastructure financial mechanisms

Finance Mechanism	Typical Revenue Allocation			Typical User of Finance Mechanism	Potential Scale of Investment
	Land Acquisition	Easements	Land Management Activities		
Direct investment by governments and utilities					
Rates	X	X	X	Utility	Medium
Municipal bonds (revenue-backed)	X	X		Utility	High
Municipal bonds (general obligation)	X	X	X	Government	High
Rates surcharges	X	X	X	Utility	Medium
Earmarked proceeds	X	X	X	Government	Low to high
Development impact fees	X	X	X	Government	Low
Reverse auction	X	X	X	Government	Low
State revolving funds	X	X	X	Utility	Medium
Farm bill programs			X	Government	Medium
Water Infrastructure Finance and Innovation Authority	TBD	TBD	TBD	Utility	High
Private investment capital		X	X	Utility, government	Low
Indirect investment by governments and utilities					
Property tax incentives			X	Government	Medium
Voluntary donations by individual and the private sector					
Voluntary surcharge	X	X	X	Private sector, NGO, utility	Low
Online crowdsource platforms	X	X	X	NGO	Low
Auction	X	X	X	NGO	Low to medium
Corporate sponsorship	X	X	X	Utility	Low
Market-based mechanisms					
Nutrient trading		No additional revenue		Government, NGO	Medium
Mitigation banking		No additional revenue		Government	Low to medium
Tradable development rights		No additional revenue		Government	Medium
Forest banking		No additional revenue		Private sector	Low
Carbon market	X	X	X	Utility, government, NGO	Low to medium
Certification and labeling programs			X	Private sector, government	Low

NGO—nongovernmental organization, TBD—to be determined

is as varied as the communities in which the utilities are found.

In the Upper Neuse River Basin in North Carolina's Piedmont region, the City of Raleigh established a nutrient impact fee—a one-time charge collected on new water and sewer hookups. This was followed by a permanent watershed protection fee on public water bills of one penny per 100 gallons, which generates $1.3 million annually. The average household pays about 40 cents monthly. These measures have generated $7.5 million since 2005 to address water quality issues within the utility's watershed. Durham, N.C., increased its water rates to fund land protection in 2011 to protect areas upstream of its two water supply reservoirs. Growth and development, with resulting forest degradation that could lead to Clean Water Act requirements, higher treatment costs, reservoir siltation, and flood and drought risk are key drivers in this watershed. The USEFC and the USDA Natural Resources Conservation Service cofunded much of the work that led to Raleigh's achievement. This partnership was designed to seek and implement sustained funding programs that would link water consumers with water producers—in this case, the private forest-land owners who collectively own and manage most of Raleigh's watershed.

Central Arkansas Water (Little Rock) collects approximately $1 million per year by means of a dedicated fixed fee collected from its customers

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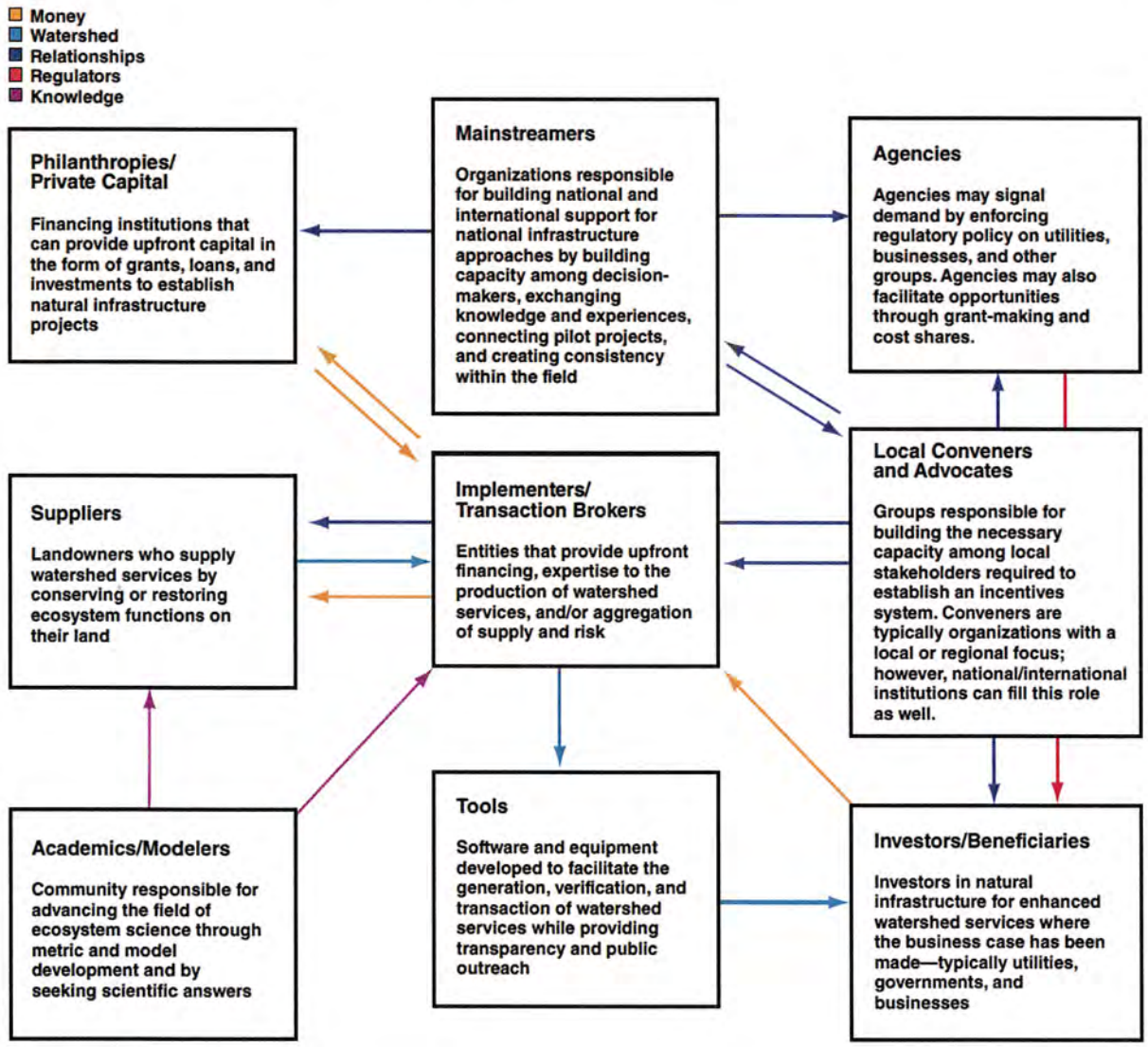
FIGURE 3 The "actor network" in successful natural infrastructure efforts



Source: Gartner et al, 2013

as does Salt Lake City, which generates $1.5 million annually. The average household pays about $0.45 and $1.50 per month, respectively. San Antonio finances its source water–protection program from a ⅛-cent sales tax, passed by its voters.

Flagstaff pursued a $10 million bond issue, approved at the ballot box, to finance its forest and watershed management program in the face of forest fires in Arizona. Denver's massive commitment, discussed earlier, is funded directly from its base budget as is San Francisco's funding in light of the forest fire problem in its watershed.

There is an emerging vanguard of water utilities and others who are making sustained financial commitments to source water protection in forested landscapes for a variety of reasons, be it forest fires, suburban sprawl, or demographic shifts (Table 2).

The choice of a sustainable, long-term funding source is important for reasons that are not hard to comprehend. The nation's population continues to expand, and American's lifestyles are, generally, affluent. Thus, more development, deforestation, spread of impervious surfaces (roads, sidewalks, parking lots, and roofs), and the resultant degradation of water quality. Land values are not getting any cheaper. It will take significant investments over time to keep treatment and capital costs in manageable territory in the out years.

The decision about how to fund source water protection at scale is, quintessentially, a local political decision on the part of utilities and the communities they serve. In some places the customers may support

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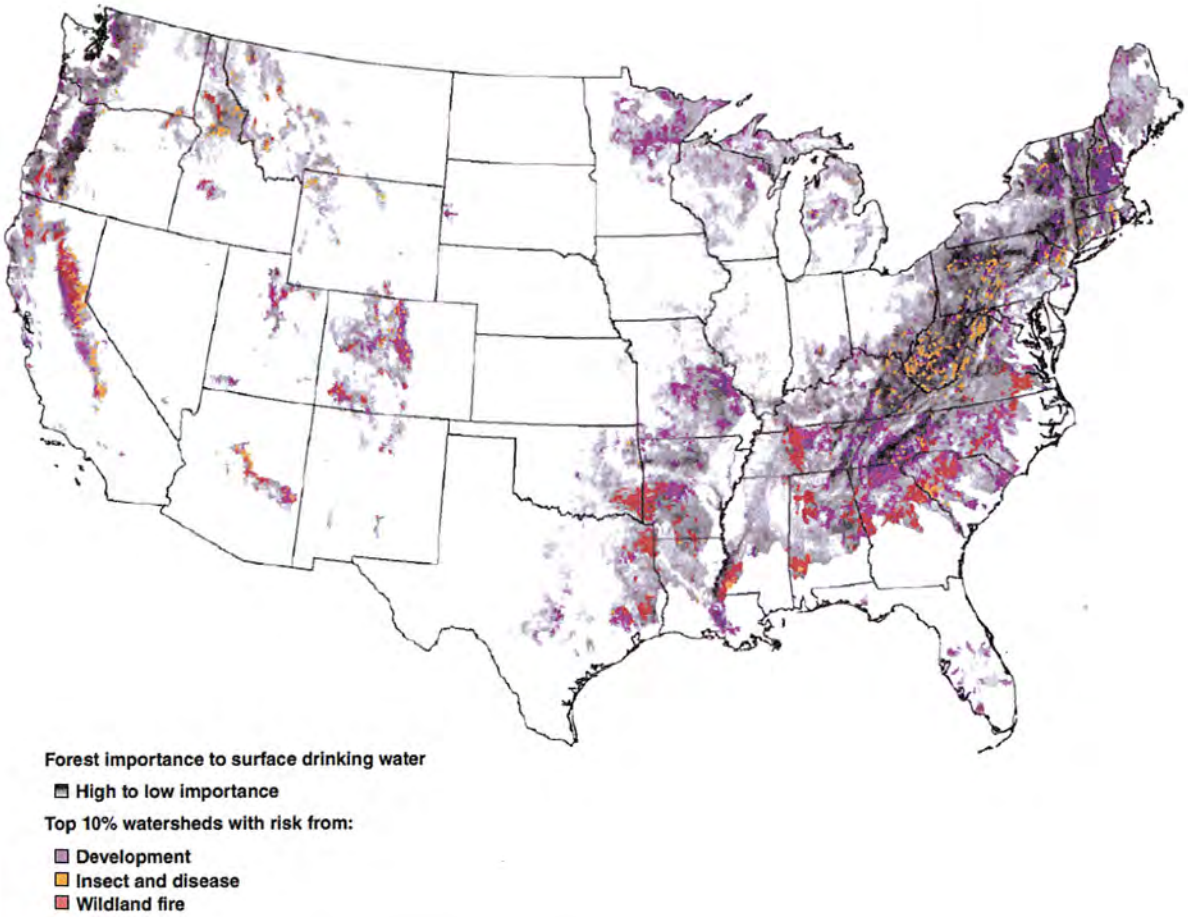
FIGURE 4 Forest importance to surface drinking water and watersheds with high risk—top 10%



Source: USDA, 2011

water rates robust enough to allow for necessary expenditures from the base capital budget. In other places, a watershed or user fee may make economic sense in providing funds upfront so that utilities are not faced with paying to remove pollutants after storms wash loose sediment into streams or contaminants that exceed legal limits.

MANAGING FORESTED WATERSHEDS: WHO YOU GONNA CALL?

For most engineers, forested watershed protection and management may be outside their comfort zones. Unfamiliarity with watershed protection strategies, much less the process for prioritizing lands with the biggest potential to affect water quality, can be a significant hurdle. As this practice becomes increasingly common, however, expertise is readily found. Ecologists and hydrologists, market-based conservation experts, policy experts, third-party verifiers, and model and tool developers all bring important expertise and capacity to a program. The Natural Infrastructure report illustrates the relationship among a variety of stakeholders and experts (Figure 3; Gartner et al, 2013). More and more utilities now employ watershed protection experts, and many land trusts and conservation groups routinely consider water quality issues as part of their business.

Taking advantage of peer-to-peer contacts within the water utility community is the simplest way to learn how others have been successful. The USEFC, WRI, and others stand ready to help connect interested water utilities with partners who can advise on watershed issues as well as funding solutions.

Although many water utilities choose to own and manage their forested watersheds, this is not the only path. Existing, well-managed forests may be kept in that state through payments to landowners that reward them for practices that benefit water quality. Incentive payments to private landowners to encourage good management practices has proved extremely effective for wildlife and game management, for example, and could certainly be extended to water

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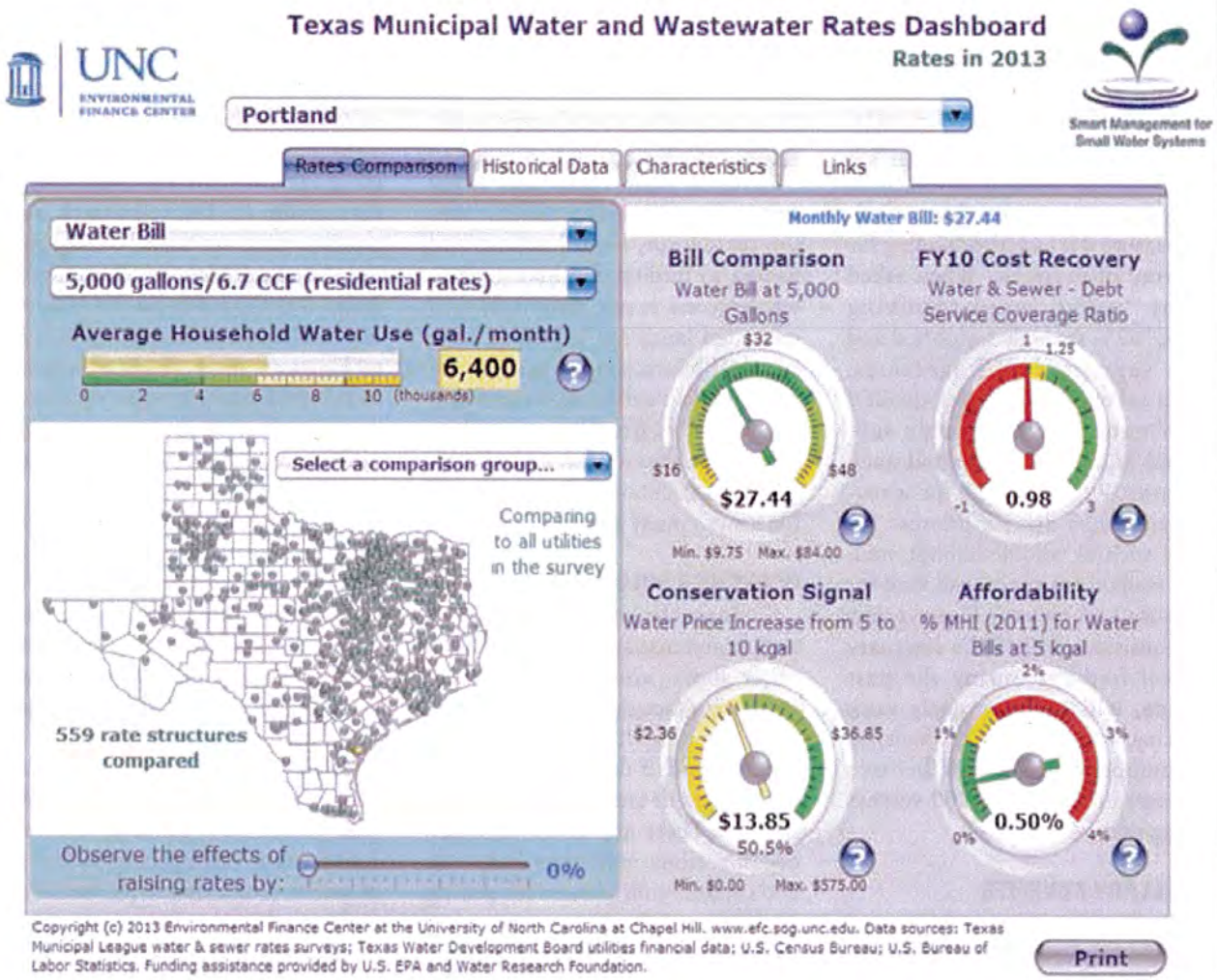

This screen shot shows a water bill rate comparison for Portland, Ore., using the Municipal Water and Wastewater Rates Dashboard from the University of North Carolina Environmental Finance Center.

quality issues. The well-proven conservation easement allows landowners to retain their land and generate revenue while protecting land from development at a much lower cost than outright acquisition.

More than 10 million families own 264 million acres—35%—of America's forests (USDA, 2008). Many of these families need some financial return from the forests to keep them intact and well managed, and to resist short-term financial gains from inappropriate harvest or development that could seriously affect water quality. Payment for watershed services is one approach that could help ensure the long-term health of drinking water supplies and save water consumers money.

PUBLIC OPINION ON DRINKING WATER

Not surprisingly, the public is very supportive of efforts to protect drinking water supplies even if it entails having to pay more to do so. Organizations such as The Nature Conservancy (TNC) and The Trust for Public Land (TPL) are leaders in advancing community-driven efforts to protect land for recreation, open space, wildlife, and watershed protection. One common approach is to help communities develop conservation ballot measures that allow voters to decide if they would like to devote funding to land and water protection for any number of benefits. According to the TPL website, this approach has been very successful. In the 2013 elections, for example, voters passed 53 of 68 ballot measures proposed (68%), approving more than $797 million for conservation purposes (www.landvote.org). Since 1988, this strategy has resulted in nearly $60 billion being approved for conservation purposes by voters. The approach works when the economy is good or bad, and in red states and blue states.

TPL has done extensive polling to better understand what motivates

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people to support conservation ballot issues. In 2012, TPL conducted 17 state and local public opinion surveys throughout the United States. In each survey, they posed a question asking likely voters whether they would be more or less likely to support a conservation finance ballot measure if it included funding for an array of purposes. When asked about "water supply/drinking water," 62% strongly supported and 90% supported such measures. When asked about "water quality/clean water," 36% strongly supported and 76% supported such measures. Public support for water-related issues dwarfs interest for issues such as wildlife habitat, multiuse trails, open space, and land for parks and recreation. These results are consistent with TPL's summary of poll findings during the past decade, which consistently rank drinking water and water quality as the number-one and number-two purposes in more than 200 surveys during that period.

ANCILLARY BENEFITS

Sustainably managed forested watersheds provide many other economic, cultural, and environmental benefits. A well-managed forest will provide income from timber harvest, putting money in the pocket of the forest owners, and also those associated with the industry: forestry consultants, loggers, truckers and other forms of transportation, and mill owners. Putting money in the pockets of those who own and benefit from sustainably managed forests is one market-driven approach to helping ensure that forested watersheds remain forested. According to the American Forest & Paper Association (www.afandpa.org), the forest industry generates about 4.5% of the total annual US manufacturing gross domestic product and is among the top 10 manufacturing-sector employers in 47 states. In rural areas in particular, forest-based jobs are essential to the local economy. A high demand for products from sustainably managed forests will help ensure that forested watersheds are not converted to other uses that may have detrimental impacts on water quality.

Forested watersheds that allow public access are often popular sites for recreation, from hunting and fishing to birding and hiking. Even where access is not permitted, such protected lands are valued as open space. The forests in watersheds are also excellent carbon sinks and help regulate climate. They provide a valuable habitat for fish and wildlife, and are a backbone of nature-based tourism in many places.

PROVIDING SOLUTIONS

Taking on forested watershed protection and management with all the other short- and long-term challenges that face on a daily basis may seem daunting. It does require new expertise and it does require adjusting budgets or creating new funding streams. There are, however, many organizations willing to help you and support your process for getting involved.

The USEFC, AWWA, the Weyerhaeuser Family Foundation, and the Sustainable Forestry Initiative are jointly supporting outreach efforts to water utilities around the country to help connect the dots with regard to forested watershed protection. The organizations mentioned in this article—TPL, TNC, and WRI, among many others—are producing ground-breaking partnerships and research that makes the case for forested watershed protection more appealing.

Additionally, as the science underpinning the water-related benefits of natural infrastructure and relevant data advances rapidly, software, online platforms, and other tools are becoming increasingly available, facilitating investments in natural infrastructure on a large scale (Gartner et al, 2013). WRI's world-leading mapping tool, Aqueduct, identifies global water risks (Reig et al, 2013); the Forest to Faucets Partnership of the USDA Forest Service looks to recognize opportunities for forest conservation and restoration actions related to water quality (USDA, 2011; Figure 4); the Ecosystem Crediting Platform of the Willamette Partnership (2014) helps track and monitor program transparency; and the Municipal Water and Wastewater Rates Dashboard from the University of North Carolina Environmental Finance Center (2014) is designed to communicate the value of source water–protection investments to the utility rate base (see the screen shot on page 62).

America's drinking water infrastructure needs are daunting—so daunting, in fact, that traditional funding strategies may not be adequate to meet the need. Protecting and sustainably managing forested watersheds is an approach that, when used as a complement to traditional "gray" infrastructure, may not only reduce costs but may also help secure new funding streams. And because keeping costs as low as possible while ensuring superior water quality for your customers is of paramount importance, watershed protection is a strategy worth considering.

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Watershed Management for Drinking Water Protection. C. Davis, editor, 2008. Catalog No. 20675.

For more information go to www.AWWA.org.

City Council Packet November 3, 2014 page 261 of 365
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CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Whitefish, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. 14-53 entitled: "RESOLUTION RELATING TO $300,000 SEWER SYSTEM REVENUE BOND (DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM), SERIES 2014A; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS THEREOF" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on November 3, 2014, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: _____ _____; voted against the same: _____; abstained from voting thereon: _____ _____; or were absent: _____.

WITNESS my hand officially this _____ day of November, 2014.

_____
Vanice Woodbeck, Assistant City Clerk

SUPPLEMENTAL RESOLUTION

Relating to

$300,000
SEWER SYSTEM REVENUE BOND
(DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM),
SERIES 2014A

CITY OF WHITEFISH, MONTANA

Adopted: November 3, 2014

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

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RESOLUTION NO. 14-53

RESOLUTION RELATING TO $300,000 SEWER SYSTEM REVENUE BOND (DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM), SERIES 2014A; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS THEREOF

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

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

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

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

WHEREAS, the DNRC will fund the Loan in part, directly or indirectly, with proceeds of the State's General Obligation Bonds (Drinking Water State Revolving Fund Program) (the "State Bonds") and in part, directly or indirectly, with funds provided by the United States Environmental Protection Agency.

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

ARTICLE I

DEFINITIONS, RULES OF CONSTRUCTION AND APPENDICES

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

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

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

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

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

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

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

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

"Borrower" means the City.

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

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

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

"Closing" means the date of delivery of the Series 2014A Bond to the DNRC.

"Code" means the Internal Revenue Code of 1986, as amended.

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

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

"Consultant" means a nationally recognized consultant or firm of consultants, or an independent engineer or firm of independent engineers, or an Accountant, which in any case is qualified and has skill and experience in the preparation of financial feasibility studies or projections for facilities similar to the System or the 2014A Project, selected by the Borrower and satisfactory to the DNRC.

"Council" means the City Council of the City of Whitefish, Montana.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Original Resolution" means Resolution No. 02-52, adopted by the City Council on October 7, 2002.

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

"Project" means an improvement, betterment, reconstruction or extension of the System, including the 2014A Project.

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

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

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

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

"Reserve Requirement" means, as of the date of calculation, an amount equal to one-half of the sum of the highest cumulative amount of principal of and interest payable on all outstanding Bonds in any one future fiscal year (giving effect to mandatory sinking fund redemption, if any).

"Resolution" means the Original Resolution, as amended and supplemented by Resolution Nos. 08-59, 10-01, 11-20, 12-37, and 14-04, adopted by the City Council on December 1, 2008, January 4, 2010, April 4, 2011, November 5, 2012, and February 18, 2014, respectively, and by this Supplemental Resolution.

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

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

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

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

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

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

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

"Series 2014 Bond" means the Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2014, issued by the Borrower, in the maximum authorized principal amount of $452,300 pursuant to the Resolution as then in effect.

"Series 2014A Bond" means the Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2014A, issued by the Borrower, in the maximum

authorized amount of up to $300,000 pursuant to the Resolution issued to the DNRC to evidence the 2014A Loan.

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

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

"State" means the State of Montana.

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

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

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

"Supplemental Resolution" means this Resolution No. 14-53 of the Borrower adopted on November 3, 2014.

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

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

"System" means the existing sewer system of the Borrower and all extensions, improvements and betterments thereof hereafter constructed and acquired, including, without limitation, the 2014A Project.

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

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

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

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

"Undisbursed Committed Amount" means any undisbursed Committed Amount which is not required to pay costs of the 2014A Project upon completion thereof as provided in Section 3.4 of this Supplemental Resolution.

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

(a) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted government accounting standards.

(b) Terms in the singular include the plural and vice versa.

(c) All references to time shall refer to Helena, Montana time, unless otherwise provided herein.

(d) All references to mail shall refer to first-class mail postage prepaid.

(e) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(f) "Or" is not exclusive, but is intended to permit or encompass one, more or all of the alternatives conjoined.

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

Appendix A: a description of and estimated budget for the 2014A Project;

Appendix B: the form of the Series 2014A Bond; and

Appendix C: additional agreements and representations of the Borrower.

ARTICLE II

AUTHORIZATION, FINDINGS, REPRESENTATIONS AND COVENANTS

Section 2.1 Authorization and Findings.

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

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

(c) The 2014A Project. After investigation of the facts and as authorized by the Act, this Council has determined it to be necessary and desirable and in the best interests of the Borrower to acquire and construct the 2014A Project.

(d) Outstanding Bonds. Pursuant to the Act and the Original Resolution, the Borrower has issued, and has outstanding, its Series 2002 Bond, Series 2008A Bond, Series 2008B Bond, Series 2010B Bond, Series 2011B Bond, Series 2011C Bond and Series 2014 Bond. The Series 2002 Bond, the Series 2008A Bond, the Series 2008B Bond, the Series 2010B Bond, the Series 2011B Bond, the Series 2011C Bond, and the Series 2014 Bond are payable from Net Revenues of the System. No other bonds or indebtedness are outstanding that are payable from or secured by revenues of the System.

(e) Additional Parity Bonds. The Borrower reserved the right under Section 10.3 of the Original Resolution, as amended hereby, to issue additional Bonds payable from the Revenue Bond Account of the Fund on a parity as to both principal and interest with the outstanding Bonds, if the Net Revenues of the System for the last complete fiscal year preceding the date of issuance of such additional Bonds have equaled at least 110% of the maximum amount of principal and interest payable from the Revenue Bond Account in any subsequent fiscal year during the term of the outstanding Bonds, on all Bonds then outstanding and on the additional Bonds proposed to be issued. For the purpose of the foregoing computation, the Net Revenues for the fiscal year preceding the issuance of the additional Bonds shall be those shown by the financial reports caused to be prepared by the Borrower pursuant to the Original Resolution, except that if the rates and charges for services provided by the System or finally authorized to go into effect within 60 days after the issuance of the additional Bonds have been changed since the beginning of such preceding fiscal year, then the rates and charges in effect at the time of issuance of the additional Bonds shall be applied to the quantities of service actually rendered and made available during such preceding fiscal year to ascertain the gross revenues, from which there shall be deducted to determine the Net Revenues, the actual operation and maintenance cost plus any additional annual costs of operation and maintenance the Consultant estimates will be incurred because of the improvement or extension of the System to be constructed from the proceeds of the additional Bonds proposed to be issued. In no event shall any additional Bonds be issued and made payable from the Revenue Bond Account if the Borrower is then in default in any payment of principal of or interest on any outstanding Bonds payable therefrom, or if there then exists any deficiency in the balances required by the Original Resolution to be maintained in any of the accounts of the Fund, which will not be cured or restored upon the issuance of the additional Bonds. Based on a certificate executed or to be executed by the Mayor, the Finance Director, and the Assistant City Clerk, or any of them, it is hereby determined that the Borrower is authorized to issue additional Bonds in the maximum principal amount of up to $300,000 pursuant to Section 10.3 of the Original Resolution payable from and secured by the Net Revenues on a parity with the outstanding Series 2002 Bond, Series 2008A Bond, Series 2008B Bond, Series 2010B Bond, Series 2011B Bond, Series 2011C Bond, and Series 2014 Bond.

Section 2.2 Representations. The Borrower represents as follows:

(a) Organization and Authority. The Borrower:

(1) is duly organized and validly existing as a municipal corporation of the State;

(2) has all requisite power and authority and all necessary licenses and permits required as of the date hereof to own and operate the System and to carry on its current activities with respect to the System, to adopt this Supplemental Resolution and to enter into the Collateral Documents and to issue the Series 2014A Bond and to carry out and consummate all transactions contemplated by the Supplemental Resolution, the Series 2014A Bond and the Collateral Documents;

(3) is a Governmental Unit and a Public Entity; and

(4) has taken all proper action to authorize the execution, delivery and performance of its obligations under this Supplemental Resolution, the Series 2014A Bond and the Collateral Documents and the incurrence of the Debt evidenced by the Series 2014A Bond in the maximum amount of the Committed Amount.

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

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

(1) are within the powers of the Borrower and have been duly authorized by all necessary action on the part of the Borrower; and

(2) do not and will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance

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

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

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

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

(g) The 2014A Project. The 2014A Project consists and will consist of the facilities, improvements and activities described in Appendix A, as such Appendix A may be amended from time to time in accordance with the provisions of Article III of this Supplemental Resolution.

(h) Full Disclosure. There is no fact that the Borrower has not specifically disclosed in writing to the DNRC that materially and adversely affects or (so far as the Borrower can now foresee), except for pending or proposed legislation or regulations that are a matter of general

public information, that will materially and adversely affect the properties, operations and finances of the System, the Borrower's status as a Public Entity and Governmental Unit, its ability to own and operate the System in the manner it is currently operated or the Borrower's ability to perform its obligations under the Resolution, the Series 2014A Bond and the Collateral Documents and to pledge any revenues or other property pledged to the payment of the Series 2014A Bond.

(i) Compliance With Law. The Borrower:

(1) is in compliance with all laws, ordinances, governmental rules and regulations and court or other governmental orders, judgments and decrees to which it is subject and which are material to the properties, operations and finances of the System or its status as a Public Entity and Governmental Unit; and

(2) has obtained all licenses, permits, franchises or other governmental authorizations necessary to the ownership of the System and the operation thereof and agrees to obtain all such licenses, permits, franchises or other governmental authorizations as may be required in the future for the System and the operation thereof, which failure to obtain might materially and adversely affect the ability of the Borrower to conduct the operation of the System as presently conducted or the condition (financial or otherwise) of the System or the Borrower's ability to perform its obligations under the Resolution, the Series 2014A Bond and the Collateral Documents.

Section 2.3 Covenants.

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

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

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

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

(1) The Borrower shall, at its expense, take all necessary action to maintain and preserve the lien and security interest of the Resolution and the Collateral Documents so long as any amount is owing under the Resolution or the Series 2014A Bond;

(2) The Borrower shall forthwith, after the execution and delivery of the Series 2014A Bond and thereafter from time to time, cause the Resolution and any Collateral Documents granting a security interest in revenues or real or personal property and any financing statements or other notices or documents relating thereto to be filed, registered and recorded in such manner and in such places as may be required by law in order to perfect and protect fully the lien and security interest hereof and thereof and the security interest in them granted by the Resolution and, from time to time, shall perform or cause to be performed any other act required by law, including executing or causing to be executed any and all required continuation statements and shall execute or cause to be executed any further instruments that may be requested by the DNRC for such perfection and protection; and

(3) Except to the extent it is exempt therefrom, the Borrower shall pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of the documents described in subparagraph (2), and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Series 2014A Bond and the Collateral Documents and the documents described in subparagraph (2).

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

(f) Financial Information. This Section 2.3(f) supplements, and is not intended to limit, the requirements in Section 2.2(f) of the Original Resolution, as amended by Section 11.3 hereof. The Borrower agrees that for each fiscal year it shall furnish to the DNRC and the DEQ, promptly when available, in addition to those matters specified in Section 2.2(f) of the Original Resolution:

(1) the preliminary budget for the System, with items for the 2014A Project shown separately; and

(2) when adopted, the final budget for the System, with items for the 2014A Project shown separately.

(g) 2014A Project Accounts. The Borrower shall maintain 2014A Project accounts in accordance with generally accepted government accounting standards, and as separate accounts, as required by Section 602(b)(9) of the Clean Water Act.

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

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

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

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

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

(b) The Borrower agrees that it will not enter into, or allow any "related person" (as defined in Section 147(a)(2) of the Code) to enter into, any arrangement, formal or informal, for the purchase of the State Bonds or any other obligations of the DNRC in an amount related to the amount of the Loan or the portion of the Loan derived directly or indirectly from proceeds of the

State Bonds or that would otherwise cause any State Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code.

(c) The Borrower shall not use or permit the use of the 2014A Project directly or indirectly in any trade or business carried on by any Person who is not a Governmental Unit. For the purpose of this subparagraph, use as a member of the general public (within the meaning of the Regulations) shall not be taken into account and any activity carried on by a Person other than a natural person shall be treated as a trade or business.

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

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

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

(g) The Borrower may not lease the 2014A Project or any portion thereof to any Person other than a Nonexempt Person which agrees in writing with the Borrower and the State not to

cause any default to occur under the Resolution; provided the Borrower may lease all or any portion of the 2014A Project to a Nonexempt Person pursuant to a lease which in the Opinion of Bond Counsel delivered to the DNRC will not cause the interest on the State Bonds to be included in gross income for purposes of federal income taxation.

(h) The Borrower shall not change the use or nature of the 2014A Project if (i) such change will violate the Clean Water Act, or (ii) so long as the State Bonds are outstanding unless, in the Opinion of Bond Counsel delivered to the DNRC, such change will not result in the inclusion in gross income of interest on the State Bonds for federal income tax purposes.

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

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

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

ARTICLE III

USE OF PROCEEDS; THE 2014A PROJECT

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

(a) The Borrower shall apply the proceeds of the 2014A Loan solely to the financing, refinancing or reimbursement of the costs of the 2014A Project and costs of issuance of the Series 2014A Bond as set forth in Appendix A hereto and this Section 3.1. The 2014A Loan will be disbursed in accordance with Article IV hereof and Article VII of the Indenture. If the 2014A Project has not been completed prior to Closing, the Borrower shall, as quickly as reasonably possible, complete the 2014A Project and expend proceeds of the 2014A Loan to pay the costs of completing the 2014A Project.

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

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

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

(a) A certificate of the Borrower setting forth the amendment to Appendix A and stating the reason therefor, including statements whether the amendment would cause an increase or decrease in the cost of the 2014A Project, an increase or decrease in the amount of Loan proceeds which will be required to complete the 2014A Project and whether the change will materially accelerate or delay the construction schedule for the 2014A Project;

(b) A written consent to such change in the 2014A Project by an Authorized DNRC Officer;

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

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

Section 3.3 2014A Project Representations and Covenants. The Borrower hereby represents to and covenants with the DNRC that:

(a) all construction of the 2014A Project has complied and will comply with all federal and state standards, including, without limitation, EPA regulations and standards;

(b) all future construction of the 2014A Project will be done only pursuant to fixed price construction contracts. The Borrower shall obtain or cause to be obtained a performance and payment bond from the contractor for each construction contract in the amount of 100% of the construction price and ensure that such bond is maintained until construction is completed to the Borrower's, the DNRC's and the DEQ's satisfaction;

(c) all future construction of the 2014A Project will be done in accordance with plans and specifications on file with the DNRC and the DEQ, provided that changes may be made in such plans and specifications with the written consent of an Authorized DNRC Officer and the DEQ;

(d) the 2014A Project is a project of the type permitted to be financed under the Act, the State Act and the Program and Title VI of the Clean Water Act;

(e) the iron and steel products used in the 2014A Project comply with the "American Iron and Steel" requirements of Section 436 of the Consolidated Appropriations Act of 2014 (P.L. 113-76), as those requirements are further interpreted by applicable EPA guidance;

(f) the Borrower will undertake the 2014A Project promptly after the Closing Date and will cause the 2014A Project to be completed as promptly as practicable with all reasonable dispatch, except only as completion may be delayed by a cause or event not reasonably within the control of the Borrower; it is estimated by the Borrower that the 2014A Project will be substantially completed by June 30, 2015; and

(g) all laborers and mechanics employed by contractors and subcontractors on the 2014A Project have been and will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Section 3.4 Completion or Cancellation or Reduction of Costs of the 2014A Project.

(a) Upon completion of the 2014A Project, the Borrower shall deliver to the DNRC a certificate stating that the 2014A Project is complete and stating the amount, if any, of the Undisbursed Committed Amount. If Appendix A describes two or more separate projects as making up the 2014A Project, a separate completion certificate shall be delivered for each.

(b) If all or any portion of the 2014A Project is cancelled or cut back or its costs are reduced or for any other reason the Borrower will not require the full Committed Amount, the Borrower shall promptly notify the DNRC in writing of such fact and the amount of the Undisbursed Committed Amount.

ARTICLE IV

THE 2014A LOAN

Section 4.1 The 2014A Loan; Disbursement of 2014A Loan.

(a) The DNRC has agreed to lend to the Borrower, from time to time as the requirements of this Section 4.1 are met, an amount up to $300,000 (the "2014A Committed Amount") for the purposes of financing, refinancing or reimbursing the Borrower for all or a portion of the costs of the 2014A Project, and paying costs of issuance of the Series 2014A Bond; provided the DNRC shall not be required to loan any proceeds of the State Bonds to the Borrower after September 30, 2015. The Committed Amount may be reduced as provided in Section 3.2 and Section 3.4 of this Supplemental Resolution.

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

(1) an Opinion of Bond Counsel as to the validity and enforceability of the Series 2014A Bond and the security therefor and stating in effect that interest on the Series 2014A Bond is not includable in gross income of the owner thereof for purposes of federal income taxation, in form and substance satisfactory to the DNRC;

(2) the Series 2014A Bond, fully executed and authenticated;

(3) a certified copy of the Original Resolution and this Supplemental Resolution;

(4) any other security instruments or documents required by the DNRC or DEQ as a condition to their approval of the 2014A Loan;

(5) if all or part of a 2014A Loan is being made to refinance a Project or reimburse the Borrower for the costs of a Project paid prior to the Closing, evidence, satisfactory to the DNRC and the Bond Counsel referred to in (1) above, (A) that the acquisition or construction of the Project was begun no earlier than March 7, 1985 or the debt was incurred no earlier than March 7, 1985, (B) of the Borrower's title to the Project, (C) of the costs of such Project and that such costs have been paid by the Borrower and (D) if such costs were paid before adoption of this Supplemental Resolution that the Borrower has complied with Section 1.150-2 of the Regulations;

(6) the items required by the Indenture for the portion of the 2014A Loan to be disbursed at Closing; and

(7) such other certificates, documents and other information as the DNRC, the DEQ or the Bond Counsel giving the opinion referred to in subparagraph (1) may require (including any necessary arbitrage rebate instructions).

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

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

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

(f) Notwithstanding anything else provided herein, the Trustee shall not be obligated to disburse the 2014A Loan any faster or to any greater extent than it has available EPA Capitalization Grants, Bond proceeds and other amounts available therefor in the Revolving

Fund. The DNRC shall not be required to do "overmatching" pursuant to Section 5.04(b) of the Indenture, but may do so in its discretion. The Borrower acknowledges that if 2014A Project costs are incurred faster than the Borrower projected at Closing, there may be delays in making disbursements of the 2014A Loan for such costs because of the schedule under which EPA makes EPA Capitalization Grant money available to the DNRC. The DNRC will use its reasonable best efforts to obtain an acceleration of such schedule if necessary.

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

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

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

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

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

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

ARTICLE V

REPAYMENT OF 2014A LOAN

Section 5.1 Repayment of 2014A Loan. The Borrower shall repay the amounts lent to it pursuant to Section 4.1 hereof in accordance with this Section 5.1. The 2014A Loan shall bear interest at the rate of two percent (2.00%) per annum and the Borrower shall pay the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge on the outstanding principal amount of the 2014A Loan, each at the rate of twenty-five hundredths of one percent (0.25%) per annum. For purposes of this Supplemental Resolution and the Program, with respect to the 2014A Loan, the term "interest on the 2014A Loan" when not used in conjunction with a reference to any surcharges, shall include the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge. The Borrower shall pay all Loan Repayments, the Administrative Expense Surcharge, and the Loan Loss Reserve Surcharge in lawful money of the United States of America to the DNRC. Interest, Administrative Expense Surcharge, and Loan Loss Reserve Surcharge shall be calculated on the basis of a year of 360 days comprising 12 months of 30 days each.

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

(a) Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal balance of the 2014A Loan shall be payable on each January 1 and July 1, beginning on July 1, 2015;

(b) the principal of the 2014A Loan shall be repayable on each Payment Date, beginning on July 1, 2015 and concluding on January 1, 2035, and the amount of each principal payment shall be calculated on the basis of substantially level debt service at an interest rate of 2.50% per annum.

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

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

Section 5.1 and the Trustee shall send a copy of such Schedule B to the Borrower within one month after delivery of the completion certificate.

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

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

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

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

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

(c) all taxes and other governmental charges in connection with the execution and delivery of the Collateral Documents or the Series 2014A Bond, whether or not the Series 2014A Bond are then outstanding, including all recording and filing fees relating to the Collateral Documents and the pledge of the State's right, title and interest in and to the Series 2014A Bond, the Collateral Documents and the Resolution (and with the exceptions noted therein) and all expenses, including attorneys' fees, relating to any amendments, waivers, consents or collection or enforcement proceedings pursuant to the provisions hereof or thereof.

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

Section 5.4 Obligations of Borrower Unconditional. The obligations of the Borrower to make the payments required by this Supplemental Resolution and the Series 2014A Bond and to perform its other agreements contained in the Resolution, the Series 2014A Bond and Collateral Documents shall be absolute and unconditional, except as otherwise provided herein or in such documents. The Borrower (a) shall not suspend or discontinue any payments provided

for in the Resolution and the Series 2014A Bond, (b) shall perform all its other agreements in the Resolution, the Series 2014A Bond and the Collateral Documents and (c) shall not terminate the Resolution, the Series 2014A Bond or the Collateral Documents for any cause, including any acts or circumstances that may constitute failure of consideration, destruction of or damage to the 2014A Project or the System, commercial frustration of purpose, any dispute with the DNRC or the EPA, any change in the laws of the United States or of the State or any political subdivision of either or any failure of the DNRC to perform any of its agreements, whether express or implied, or any duty, liability or obligation arising from or connected with the Resolution.

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

ARTICLE VI

INDEMNIFICATION OF DNRC AND DEQ

The Borrower shall, to the extent permitted by law, indemnify and save harmless the DNRC and the DEQ and their officers, employees and agents (each an "Indemnified Party" or, collectively, the “Indemnified Parties") against and from any and all claims, damages, demands, expenses, liabilities and losses of every kind asserted by or on behalf of any Person arising out of the acts or omissions of the Borrower or its employees, officers, agents, contractors, subcontractors, or consultants in connection with or with regard or in any way relating to the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation or financing of the 2014A Project. The Borrower shall also, to the extent permitted by law, indemnify and save harmless the Indemnified Parties against and from all costs, reasonable attorneys’ fees, expenses and liabilities incurred in any action or proceeding brought by reason of any such claim or demand. If any proceeding is brought against an Indemnified Party by reason of such claim or demand, the Borrower shall, upon notice from an Indemnified Party, defend such proceeding on behalf of the Indemnified Party.

ARTICLE VII

ASSIGNMENT

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

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

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

ARTICLE VIII

THE SERIES 2014A BOND

Section 8.1 Net Revenues Available. The Borrower is authorized to charge just and equitable rates, charges and rentals for all services directly or indirectly furnished by the System, and to pledge and appropriate to the Series 2002 Bond, the Series 2008A Bond, the Series 2008B Bond, the Series 2010B Bond, the Series 2011B Bond, the Series 2011C Bond, the Series 2014 Bond, and the Series 2014A Bond, the Net Revenues to be derived from the operation of the System, including improvements, betterments or extensions thereof hereafter constructed or acquired. The Net Revenues to be produced by such rates, charges and rentals during the term of the Series 2002 Bond, the Series 2008A Bond, the Series 2008B Bond, the Series 2010B Bond, the Series 2011B Bond, the Series 2011C Bond, the Series 2014 Bond, and the Series 2014A Bond are expected to be more than sufficient to pay the principal and interest when due on such Bonds, and to create and maintain reasonable reserves therefor and to provide an adequate allowance for replacement and depreciation, as prescribed herein.

Section 8.2 Issuance and Sale of the Series 2014A Bond. The Council has investigated the facts necessary and hereby finds, determines and declares it to be necessary and desirable for the Borrower to issue the Series 2014A Bond to evidence the 2014A Loan. The Series 2014A Bond is issued to the DNRC without public sale pursuant to Montana Code Annotated, Section 7-7-4433(1).

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

4.1, and such advances shall be payable in accordance with Schedule B to the Series 2014A Bond as it may be revised by the DNRC from time to time in accordance with Section 5.1.

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

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

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

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

ARTICLE IX

SECURITY FOR THE SERIES 2014A BOND

The Series 2014A Bond is issued as an additional Bond under Article X of the Original Resolution and under this Supplemental Resolution and shall, with the Series 2002 Bond, the Series 2008A Bond, the Series 2008B Bond, the Series 2010B Bond, the Series 2011B Bond, the Series 2011C Bond, the Series 2014 Bond, and any other additional Bonds issued under the

provisions of Article X of the Original Resolution but excluding Section 10.4 thereof, be equally and ratably secured by the provisions of the Resolution and payable out of the Net Revenues appropriated to the Revenue Bond Account of the Sewer System Fund, without preference or priority, all as provided in the Resolution, and secured by the Reserve Account, as further provided in Section 11.5 of the Original Resolution. On the Closing Date, the Borrower shall deposit in the Reserve Account from legally available funds of the City an amount equal to the Reserve Requirement based on the maximum amount of the 2014A Loan. If an amount less than the maximum principal amount of the Series 2014A Bond is advanced, the amount by which the amount on hand in the Reserve Account allocable to the Series 2014A Bond exceeds the Reserve Requirement will be transferred by the City to an appropriate account in the Fund. Thereafter, upon each monthly apportionment, from the Net Revenues remaining after the apportionment to the Revenue Bond Account, the Borrower shall credit to the Reserve Account such additional Net Revenues as may be required to establish and thereafter maintain the balance in an amount equal, as of the date of calculation, to the Reserve Requirement. The Borrower shall keep, perform and observe each and every one of its covenants and undertakings set forth in the Resolution for the benefit of the registered owners from time to time of the Series 2002 Bond, the Series 2008A Bond, the Series 2008B Bond, the Series 2010B Bond, the Series 2011B Bond, the Series 2011C Bond, the Series 2014 Bond, and the Series 2014A Bond.

ARTICLE X

TAX MATTERS

Section 10.1 Use of 2014A Project. The 2014A Project will be owned and operated by the Borrower and available for use by members of the general public on a substantially equal basis. The Borrower shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the 2014A Project or the System or security for the payment of the Series 2014A Bond which might cause the Series 2014A Bond to be considered a "private activity bond" or "private loan bond" within the meaning of Section 141 of the Code.

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

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

Section 10.4 Arbitrage Rebate Exemption.

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

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

(2) The aggregate face amount of all "tax-exempt bonds" (including warrants, contracts, leases and other indebtedness, but excluding private activity bonds) issued by or on behalf of the Borrower and all subordinate entities thereof during 2014 is reasonably expected not to exceed $5,000,000. To date in 2014, the Borrower has not issued any tax-exempt bonds except for the Series 2014 Bond, and in the calendar years 2009 through 2013, the Borrower issued no tax-exempt bonds, except for the Series 2011B Bond, the Series 2011C Bond, the Series 2010B Bond, the Borrower's $120,100 Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2009B, and its $15,695,000 Tax Increment Urban Renewal Bonds (Emergency Services Center Project and Refunding), Series 2009.

(b) If notwithstanding the provisions of paragraph (a) of this Section 10.4, the arbitrage rebate provisions of Section 148(f) of the Code apply to the Series 2014A Bond, the Borrower hereby covenants and agrees to make the determinations, retain records and rebate to the United States the amounts at the times and in the manner required by said Section 148(f).

Section 10.5 Information Reporting. The Borrower shall file with the Secretary of the Treasury, not later than February 15, 2015, a statement concerning the Series 2014A Bond containing the information required by Section 149(e) of the Code.

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

ARTICLE XI

AMENDMENTS

Section 11.1 Authorization. Pursuant to Section 16.4 of the Original Resolution, the City reserved the right to amend the Resolution with the written consent of the DNRC.

Section 11.2 Consent of DNRC. The DNRC has consented in writing to the amendments of the provisions of the Original Resolution set forth herein.

Section 11.3 Amendments. (a) Definitions. Section 1.1 of the Original Resolution is hereby amended to amend the following definition, in its entirety, as follows:

> "'Reserve Requirement' means, as of the date of calculation, an amount equal to one-half the sum of the highest amount of cumulative principal of and interest payable on all outstanding Bonds in any one future fiscal year (giving effect to mandatory sinking fund redemption, if any)."

(b) Section 2.2(f). Section 2.2(f) of the Original Resolution is hereby amended to read, in its entirety, as follows:

> "(f) Financial Information. The Borrower agrees that for each fiscal year it shall furnish to the DNRC and the DEQ, promptly when available:
>
> (1) the preliminary budget for the System, with items for the Project shown separately; and
>
> (2) when adopted, the final budget for the System, with items for the Project shown separately.
>
> The Borrower will cause proper and adequate books of record and account to be kept showing complete and correct entries of all receipts, disbursements and other transactions relating to the System, the monthly gross revenues derived from its operation, and the segregation and application of the gross revenues in accordance with this Resolution, in such reasonable detail as may be determined by the Borrower in accordance with generally accepted governmental accounting practice and principles. It will cause such books to be maintained on the basis of the same fiscal year as that utilized by the Borrower. The Borrower shall, within 270 days after the close of each fiscal year, cause to be prepared and supply to the DNRC a financial report with respect to the System for such fiscal year. The report shall be prepared at the direction of the financial officer of the Borrower in accordance with applicable generally accepted governmental accounting principles and, in addition to whatever matters may be thought proper by the financial officer to be included therein, shall include the following:
>
> (A) A statement in detail of the income and expenditures of the System for the fiscal year, identifying capital expenditures and separating them from operating expenditures;

(B) A balance sheet as of the end of the fiscal year;

(C) The number of premises connected to the System at the end of the fiscal year;

(D) The amount on hand in each account of the Fund at the end of the fiscal year;

(E) A list of the insurance policies and fidelity bonds in force at the end of the fiscal year, setting out as to each the amount thereof, the risks covered thereby, the name of the insurer or surety and the expiration date of the policy or bond; and

(F) A determination that the report shows full compliance by the Borrower with the provisions of this Resolution during the fiscal year covered thereby, including proper segregation of the capital expenditures from operating expenses, maintenance of the required balance in the Revenue Bond Account (as hereinafter defined), and receipt of Net Revenues during each fiscal year at least equal to 110% of the maximum amount of principal and interest payable on outstanding Bonds in any subsequent fiscal year, or, if the report should reveal that the revenues have been insufficient for compliance with this Resolution, or that the methods used in accounting for such revenues were contrary to any provision of this Resolution, the report shall include a full explanation thereof, together with recommendations for such change in rates or accounting practices or in the operation of the System as may be required.

The Borrower shall also have prepared and supplied to the DNRC and the DEQ, within 270 days of the close of every other fiscal year, an audit report prepared by an independent certified public accountant or an agency of the state in accordance with generally accepted governmental accounting principles and practice with respect to the financial statements and records of the System. The audit report shall include an analysis of the Borrower's compliance with the provisions of this Resolution."

(c) Section 6.7. Section 6.7 of the Original Resolution is hereby amended to read, in its entirety, as follows:

"Section 6.7. Rate Covenant. While any Bonds are outstanding and unpaid, the rates, charges and rentals for all services and facilities furnished and made available by the System to the Borrower and its inhabitants, and to all customers within or without the boundaries of the Borrower, shall be reasonable and just, taking into consideration the cost and value of the System and the cost of maintaining and operating it, and the amounts necessary for the payment of all Bonds and the interest accruing thereon, and the proper and necessary allowances for the depreciation of the System, and no free service shall be provided to any person or corporation. It is covenanted and agreed that the rates, charges and rentals to be charged to all recipients of sewer services shall be maintained and shall be revised, whenever and as often as may be necessary, according to schedules

such that the gross revenues for each fiscal year will be at least sufficient to pay the current expenses of operation and maintenance as herein defined, to maintain a balance in the Reserve Account equal to the Reserve Requirement, to provide reserves for the replacement and depreciation of the System, to maintain the Operating Reserve herein established, to produce Net Revenues during each fiscal year, commencing with the fiscal year ending June 30, 2003, not less than 110% of the maximum annual principal and interest payable on any outstanding Bonds in the current or any future fiscal year, and to produce Surplus Net Revenues sufficient to pay the principal of and interest on any Subordinate Obligations as and when due.

"If at the close of any fiscal year the Net Revenues or Surplus Net Revenues actually received during such year have been less than required hereby, the Borrower will forthwith prepare a schedule of altered rates, charges and rentals which are just and equitable and sufficient to produce Net Revenues and Surplus Net Revenues in such amount, and will do all things necessary to the end that such schedule will be placed in operation at the earliest possible date."

(d) Section 10.3. Section 10.3 of the Original Resolution is hereby amended to read, in its entirety, as follows:

"Section 10.3. Other Parity Bonds. The Borrower reserves the right to issue additional Bonds payable from the Revenue Bond Account of the Fund, on a parity as to both principal and interest with the Series 2002 Bond, if the Net Revenues of the System for the last complete fiscal year preceding the date of issuance of such additional Bonds have equaled at least 110% of the maximum amount of principal and interest payable from said Revenue Bond Account in any subsequent fiscal year during the term of the outstanding Bonds, on all Bonds then outstanding and on the additional Bonds proposed to be issued. For the purpose of the foregoing computation, the Net Revenues for the fiscal year preceding the issuance of additional Bonds shall be those shown by the financial reports caused to be prepared by the Borrower pursuant to Section 2.2(f), except that if the rates and charges for services provided by the System have been changed since the beginning of such preceding fiscal year, then the rates and charges in effect at the time of issuance of the additional Bonds or finally authorized to go into effect within 60 days thereafter shall be applied to the quantities of service actually rendered and made available during such preceding fiscal year to ascertain the gross revenues, from which there shall be deducted to determine the Net Revenues, the actual operation and maintenance cost plus any additional annual costs of operation and maintenance which the Consultant estimates will be incurred because of the improvement or extension of the System to be constructed from the proceeds of the additional Bonds proposed to be issued. In no event shall any additional Bonds be issued and made payable from the Revenue Bond Account if the Borrower is then in default in any payment of principal of or interest on any outstanding Bonds payable therefrom or if there then exists any deficiency in the balances required by this Resolution to be maintained in any of the accounts of the Fund, which will not be cured or restored upon the issuance of the additional Bonds. In connection with the issuance of a series of additional Bonds, the Borrower shall cause the amount in the Reserve Account to be increased, from the

proceeds of the additional Bonds or from Surplus Net Revenues or other legally available funds of the Borrower, to an amount equal to the Reserve Requirement during the term of the outstanding Bonds or so much thereof as will not cause the Borrower to violate the provisions of Section 12.2 hereof."

ARTICLE XII

CONTINUING DISCLOSURE

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

ARTICLE XIII

MISCELLANEOUS

Section 13.1 Notices. All notices or other communications hereunder shall be sufficiently sent or given and shall be deemed sent or given when delivered or mailed by certified mail, postage prepaid, to the parties at the following addresses:

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

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

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

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

Section 13.2 Binding Effect. This Supplemental Resolution shall inure to the benefit of and shall be binding upon the DNRC, the Borrower and their respective successors and assigns.

Section 13.3 Severability. If any provision of this Supplemental Resolution shall be determined to be unenforceable at any time, it shall not affect any other provision of the Resolution or the enforceability of that provision at any other time.

Section 13.4 Amendments. This Supplemental Resolution may not be effectively amended without the written consent of the DNRC.

Section 13.5 Applicable Law. This Supplemental Resolution shall be governed by and construed in accordance with the internal laws of the State.

Section 13.6 Captions; References to Sections. The captions in this Supplemental Resolution are for convenience only and do not define or limit the scope or intent of any provisions or Sections of this Supplemental Resolution.

Section 13.7 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Supplemental Resolution shall be had against any director, officer or employee, as such, past, present or future, of the DNRC, the DEQ or the Trustee, either directly or through the DNRC, the DEQ or the Trustee, or against any officer, or member of the governing body or employee of the Borrower, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer or member of the governing body or employee of the DNRC, the Trustee or the Borrower is hereby expressly waived and released by the Borrower and by the DNRC as a condition of and in consideration for the adoption of this Supplemental Resolution and the making of the Loan.

Section 13.8 Payments Due on Holidays. If the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Supplemental Resolution or the Series 2014A Bond, shall not be Business Day, such payments may be made or act performed or right exercised on the next succeeding Business Day with the same force and

effect as if done on the nominal date provided in this Supplemental Resolution or the Series 2014A Bond.

Section 13.9 Right of Others To Perform Borrower's Covenants. In the event the Borrower shall fail to make any payment or perform any act required to be performed hereunder, then and in each such case the DNRC or the provider of any Collateral Document may (but shall not be obligated to) remedy such default for the account of the Borrower and make advances for that purpose. No such performance or advance shall operate to release the Borrower from any such default and any sums so advanced by the DNRC or the provider of any Collateral Document shall be paid immediately to the party making such advance and shall bear interest at the rate of ten percent (10.00%) per annum from the date of the advance until repaid. The DNRC and the provider of any Collateral Document shall have the right to enter the 2014A Project or the facility or facilities of which the 2014A Project is a part or any other facility which is a part of the System in order to effectuate the purposes of this Section.

Section 13.10 Authentication of Transcript. The officers of the Borrower are hereby authorized and directed to furnish to the DNRC and to Bond Counsel certified copies of all proceedings relating to the issuance of the Series 2014A Bond and such other certificates and affidavits as may be required to show the right, power and authority of the Borrower to issue the Series 2014A Bond, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the Borrower as to the truth of the statements of fact purported to be shown thereby.

Section 13.11 Effective Date. This Supplemental Resolution shall take effect immediately.

Adopted by the City Council of the City of Whitefish, Montana, on this 3rd day of November, 2014.

_____
John M. Muhlfeld, Mayor

Attest: _____
Vanice Woodbeck, Assistant City Clerk

(SEAL)

APPENDIX A

Description of the 2014A Project

The 2014A Project consists of improvements to the City's sewer system, consisting primarily of the extension of the River Lakes Lift Station force main and related improvements.

Estimated Budget for Application of Proceeds of Series 2014A Bond

	Source: Series 2014A Bond	Source: City	Total:
Professional Services	$ 7,500		$ 7,500
Loan Reserves		$10,140	10,140
Bond Counsel & Related costs	8,000		8,000
Engineering/Arch. Design	28,000		28,000
Construction Engr. Services	27,860		27,860
Construction	201,055		201,055
Contingency	27,585		27,585
TOTAL PROJECT COSTS	$300,000	$10,140	$310,140

APPENDIX B

[Form of the Series 2014A Bond]

UNITED STATES OF AMERICA
STATE OF MONTANA
FLATHEAD COUNTY

CITY OF WHITEFISH

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

No. R-1 $300,000

FOR VALUE RECEIVED, the City of Whitefish, Montana (the "City"), a duly organized municipal corporation and political subdivision of the State of Montana, acknowledges itself to be specially indebted and, for value received, hereby promises to pay to the Department of Natural Resources and Conservation of the State of Montana (the "DNRC"), or its registered assigns, solely from the Revenue Bond Account of its Sewer System Fund, the principal sum equal to the sum of the amounts entered on Schedule A attached hereto under "Total Amount Advanced," with interest on each such amount from the date such amount is advanced hereunder at the rate of 2.00% per annum on the unpaid balance until paid. In addition, the City shall pay, solely from the Revenue Bond Account, an Administrative Expense Surcharge and a Loan Loss Reserve Surcharge on the outstanding principal amount of this Bond, each at the rate of twenty-five hundredths of one percent (0.25%) per annum. Principal, interest, Administrative Expense Surcharge, and Loan Loss Reserve Surcharge shall be payable in semiannual installments payable on each January 1 and July 1 (each a "Loan Repayment Date") commencing on the date first set forth in the column headed "Date" on Schedule B attached hereto. Principal shall be payable on the dates set forth in Schedule B hereto. Each installment shall be in the amount set forth opposite its due date in Schedule B attached hereto under "Total Loan Payment." The portion of each such payment consisting of principal, the portion consisting of interest, the portion consisting of Administrative Expense Surcharge, and the portion consisting of Loan Loss Reserve Surcharge shall be as set forth in Schedule B hereto. Upon each disbursement of 2014A Loan amounts to the City pursuant to the Resolution described below, the DNRC shall enter (or cause to be entered) the amount advanced on Schedule A under "Advances" and the total amount advanced under the Resolution (as hereinafter defined), including such disbursement, under "Total Amount Advanced." The DNRC shall prepare Schedule B and any revised Schedule B, or cause Schedule B and any revised Schedule B to be prepared, as provided in Section 5.1 of the Resolution. Schedule B shall be calculated and recalculated on a substantially level debt service basis assuming an interest rate of 2.50% per annum. Past-due payments of principal and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid. Interest, Administrative Expense Surcharge, and Loan Loss Reserve Surcharge shall be calculated on the basis of a 360-day year comprising 12 months of 30 days each. All payments under this Bond shall be made to the

registered holder of this Bond, at its address as it appears on the Bond register, in lawful money of the United States of America.

This Bond is one of an issue of Sewer System Revenue Bonds of the City authorized to be issued in one or more series from time to time, and constitutes a series in the maximum authorized principal amount of $300,000 (the "Series 2014A Bond"). This Series 2014A Bond is issued to finance a portion of the costs of the construction of certain improvements to the sewer system of City (the "System"), and to pay costs of issuance. The Series 2014A Bond is issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 7, Part 44, as amended, and ordinances and resolutions duly adopted by the governing body of the City, including Resolution No. 02-52, passed and adopted by the City Council of the City on October 7, 2002 (the "Original Resolution"), as amended and supplemented by Resolution Nos. 08-59, 10-01, 11-20, 12-37, 14-04, and 14-53 adopted by the City Council on December 1, 2008, January 4, 2010, April 4, 2011, November 5, 2012, February 18, 2014, and November 3, 2014, respectively (the Original Resolution, as so amended and supplemented, the "Resolution"). Terms used with initial capital letters but not defined herein shall have the meanings given such terms in the Resolution. The Series 2014A Bond is issuable only as a single, fully registered bond. The Series 2014A Bond is issued on a parity and is equally and ratably secured by the Net Revenues of the System with the City's outstanding First Amended and Restated Sewer System Revenue Bond (DNRC Revolving Loan Program), Series 2002 (the "Series 2002 Bond"), First Amended and Restated Sewer System Revenue Bond (DNRC Revolving Loan Program), Series 2008A (the "Series 2008A Bond"), First Amended and Restated Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2008B (the "Series 2008B Bond"), Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2010B (the "Series 2010B Bond"), First Amended and Restated Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2011B (the "Series 2011B Bond"), First Amended and Restated Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2011C (the "Series 2011C Bond"), and Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2014 (the "Series 2014 Bond").

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

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

Administrative Expense Surcharge and the Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2014A Bond is prepaid in part, such prepayments shall be applied to principal payments in inverse order of maturity.

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

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

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

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that the City has duly authorized and will forthwith undertake the improvements to the System hereinabove described, has fixed and established and will collect reasonable rates and charges for the services and facilities afforded by the System, and has created a special Sewer System Fund into which the revenues of the System as described in Section 11.1 of the Original Resolution (the "Gross Revenues"), including all additions thereto and replacements and improvements thereof, will be paid, and a separate and special Revenue Bond Account in that fund, into which will be paid each month, Net Revenues of the System then on hand (the gross revenues remaining after the payment of operating expenses of the System and providing for operating reserves), an amount equal to not less than the sum of one-sixth of the interest due within the next six months and one-twelfth of the principal due within the next twelve months with respect to all outstanding Bonds payable semi-annually from that account, and a Reserve Account in that fund into which shall be paid additional Net Revenues sufficient to establish and maintain a reserve therein equal to, as of the date of calculation, an amount equal to the maximum principal of and interest payable on the outstanding Bonds in any future fiscal year (giving effect to any mandatory sinking fund redemption); that the Revenue Bond Account and the Reserve Account will be used only to pay the principal of, premium, if any, and interest on the Bonds issued pursuant to the authority herein recited; that the rates and charges for the System will from time to time be made and kept sufficient to provide Net Revenues for each fiscal year at least equal to 110% of the principal and interest payable from the Revenue Bond Account in any subsequent fiscal year, to maintain the balance in the Reserve Account at the Reserve Requirement, to pay promptly the reasonable and current expenses of operating and maintaining the System and fund an operating reserve, to pay the principal of and interest on any subordinate obligations and to provide reserves for the replacement and depreciation of the System; that additional Bonds may be issued and made payable from the Revenue Bond Account on a parity with the Series 2002 Bond, the Series 2008A Bond, the Series 2008B Bond, the Series 2010B Bond, the Series 2011B Bond, the Series 2011C Bond, the Series 2014 Bond, and the Series 2014A Bond upon certain conditions set forth in the Resolution, but no obligation will be otherwise incurred and made payable from the Net Revenues, unless the lien thereof shall be expressly made subordinate to the lien of the Series 2002 Bond, the Series 2008A Bond, the Series 2008B Bond, the Series 2010B Bond, the Series 2011B Bond, the Series 2011C Bond, the Series 2014 Bond, the Series 2014A Bond, and other

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

IN WITNESS WHEREOF, the City of Whitefish, Montana, by its governing body, has caused this Bond to be executed by the signatures of the acting Mayor, City Finance Director, and the Assistant City Clerk, and has caused the official seal of the City to be affixed hereto, and has caused this Bond to be dated as of the 20th day of November, 2014.

_____
John M. Muhlfeld, Mayor

(SEAL)

_____
Dana M. Smith, City Finance Director

_____
Vanice Woodbeck, Assistant City Clerk

REGISTRATION AND TRANSFER

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

REGISTER

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

Date of Registration	Name and Address of Registered Holder	Signature of City Finance Director
November 20, 2014	Department of Natural Resources and Conservation 1625 Eleventh Ave. Helena, MT 59620	

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

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

Date of Transfer	Name of New Registered Holder	Signature of Bond Registrar

FORM OF ASSIGNMENT

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

By:_____
(Authorized Signature)

For: _____
(Holder)

SCHEDULE A

SCHEDULE OF AMOUNTS ADVANCED

Date	Advances	Total Amount Advanced	Notation Made By

SCHEDULE B

Date	Principal	Interest	Administrative Expense Surcharge	Loan Loss Reserve Surcharge	Total Loan Payment

APPENDIX C

ADDITIONAL REPRESENTATIONS AND COVENANTS

None

Staff Report

To: Mayor John Muhlfeld and City Councilors

From: Dana Smith, Finance Director

Date: November 3, 2014

Re: Resolution 14-53: $300,000 Sewer System Revenue Bond

Introduction/History

During the Council Meeting held on October 20, 2014 the Council awarded a construction contract for the River Lakes Force Main Project to Pilot West Corporation of Bonners Ferry, Idaho in the amount of $201,055. The notice of award for the River Lakes Force Main Project was completed by the Public Works Department and construction is expected to begin within two to three weeks.

Current Report

Resolution 14-53 authorizes the $300,000 Sewer System Revenue Bond, which is the anticipated financing for this project. The revenue bond is purchased by the Montana DNRC as part of its SRF (State Revolving Fund) program.

The City Attorney, Mary VanBuskirk, has reviewed Resolution 14-53.

Financial Requirement

The River Lakes Force Main Project was anticipated to be funded through the SRF Loan Program in the FY15 Wastewater Fund budget.

A budget detailing the use of the proceeds of the revenue bond can be found in Appendix A (page A-1) of the bond resolution. The term of the bond is 2.5% over 20 years with an average annual debt service of approximately $9,600. The current wastewater rates will support the debt service obligation.

Recommendation

We respectfully recommend that the City Council approve Resolution 14-53 that authorizes the issuance along with the terms and conditions of the $300,000 Sewer System Revenue Bond (DNRC Water Pollution Control SRF Program), Series 2014A.

Staff Report

To: Mayor John Muhlfeld and City Councilors

From: Dana Smith, Finance Director

Date: October 22, 2014

Re: First Quarter Financial Report for Fiscal Year 2015

This quarterly financial report provides a summary version of the financial results of the City during the first quarter of fiscal year 2015. The first section is an overview of the City's financial condition specifically related to property tax supported funds. Subsequent sections further describe analysis and details of the first quarter ended September 30, 2014.

Financial Condition – Property Tax Supported Funds

An analysis of available cash in property tax supported funds provides an effective insight into the City's financial condition. The following table lists the FY13 first quarter cash balance in column (a), the FY14 first quarter cash balance in column (b) and the FY15 first quarter cash balance in column (c) for comparison purposes.

Cash Balance in Property Tax Supported Funds

	a	*b*	*c*	*d (c-b)*
	Sept 30, 2012 Cash Balance	Sept 30, 2013 Cash Balance	Sept 30, 2014 Cash Balance	One Year Change
General	$810,223	$331,635	$480,030	$148,395
Parks & Recreation	($211,935)	($149,121)	($98,681)	$50,440
Law Enforcement	$101,239	$141,955	$54,871	($87,084)
Library	($15,166)	$13,131	$51,342	$38,211
Fire & Ambulance	$502,998	$467,130	$236,677	($230,453)
Building	$34,411	$117,023	$95,975	($21,048)
	$1,221,770	$921,753	$820,214	($101,539)

Total cash in property tax supported funds as of September 30, 2014 decreased by $101,539 or 11.02% compared to the balance on September 30, 2013. This decrease is primarily due to spending cash for an advance payment on the Fire Department's new water tender truck. The City is in good financial condition and revenues and expenditures are tracking as expected. The significant changes from the prior year are discussed below.

General Fund – The General Fund cash balance compared to a year ago has increased by $148,395 or 44.75%. With revenues and expenditures increasing approximately the same from the prior year, the increase in cash is attributed to the higher cash balance at the end of June 30, 2014 compared to June 30, 2013. At the end of the first quarter in FY13, the cash balance appears to be significantly higher compared to FY14 and FY15. However, this difference is due to the timing of the transfer of resort tax relief monies from the Resort Tax Fund to the General Fund. In the past, the transfer would be done in August, but it has since been done in December.

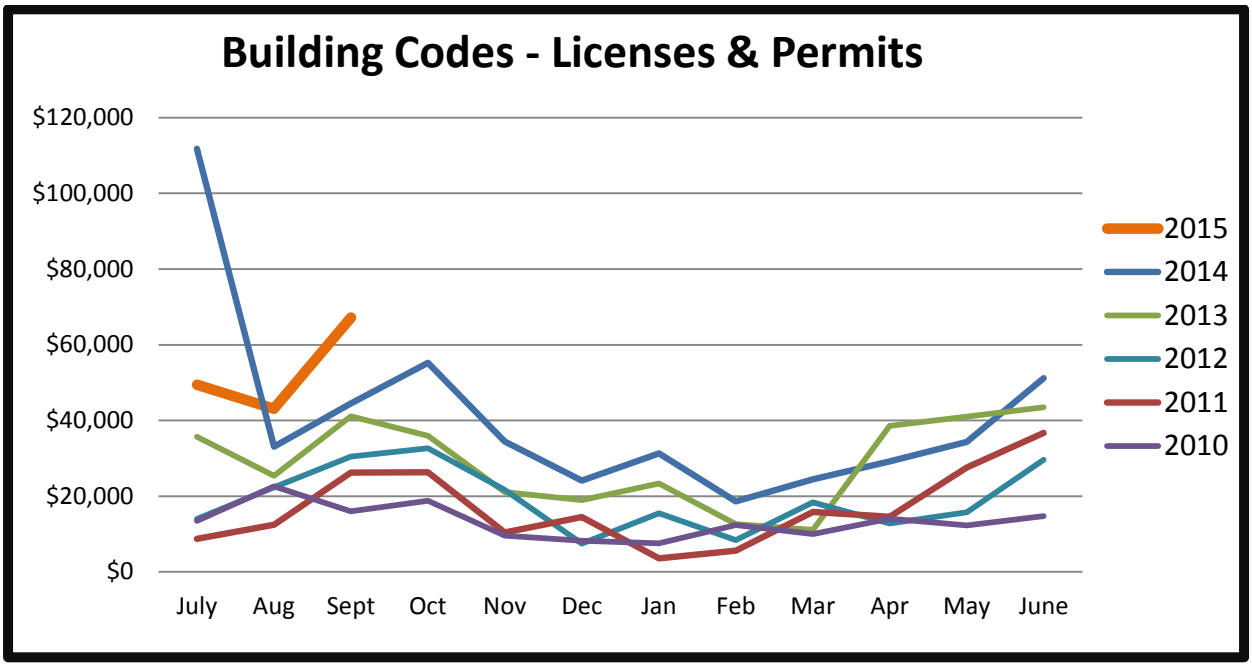
Parks & Recreation Fund – Although Parks & Recreation had negative cash as of September 30, 2014, the cash balance compared to the prior year has improved by $50,440 or 33.8%. The continued negative cash balance in the first quarter is primarily the due to the timing startup costs that must be incurred prior to a significant portion of the season's revenue being collected, specifically the ice rink. The Department has continued to strive to make each adult recreation program self-supporting.

Law Enforcement Fund – As expected, the Fund had an overall decrease in the cash balance. This is due to the FY14 budget and FY15 both allowing for the spending of cash on hand. The revenues exceeded expenditures for the quarter and additional grant monies are expected to be received in the coming months for expenditures that were made in the first quarter.

Fire & Ambulance Fund – Similar to the Law Enforcement Fund, the Fire and Ambulance Fund started the year off with a lower cash balance than prior years due to the use of cash on hand in FY14. In addition, with the purchase of the new water tender truck, the Fire & Ambulance Funds had a partial pre-payment of $126,879 in the first quarter. The loan proceeds to cover this purchase will not be received until the water tender is delivered late this fall.

Building Fund – Although not directly supported by property tax revenues, in prior years the Building Fund received loans from the General Fund to support operations during the recession. The loans were essentially comprised of property tax revenue. Monitoring the financial condition of the Building Fund is important as it looks to repay the loan from the General Fund. With the continued higher revenue amounts (see below), the Building Fund is expected to pay-off a portion, if not all, of the remaining loan from the General Fund of $171,669 at the end of FY15.

In July of FY14, the license and permit revenue in the Building Fund received an unusually large amount of revenue (high school). This dramatic increase was the result of one significant project in the City that brought in approximately $52,186 in licenses and permit revenue. When comparing the prior year first quarter with this year's first quarter, a notable decrease in revenue occurred. Licenses and permits revenue, however, was at 38% of the budgeted revenue at the end of the first quarter in FY15. In addition, the cash balance for the first quarter of FY2015 is up 178.9% compared to FY13.



Financial Highlights

- The Columbia Falls Building Code Contract revenues are 115% higher than the prior year and 46% of the FY15 budget.

- Ambulance Service Charges are about 11% higher than the previous first quarter.

- Zoning Plan Review Fees collected are already 48% of the budgeted revenue to be received in FY15.

- The Resort Tax collections were up by $44,012 or 5.5% compared to the prior year's first quarter.

- Total expenditures in each fund at the end of the first quarter were at or below the expected percentage of budget authority to be used (25%). The following line-items will be monitored as the expenditures during the first quarter of FY15 were significantly higher than expected:

    - Parks & Recreation Fund
        - The City Beach Concessions account was 161% and the Repairs and Maintenance Supplies account was 135% of the budget at the end of the first quarter. These expenditures could increase when City Beach operations startup again for the summer of 2015.

    - Other Line-items
        - Operating Supplies, Repairs and Maintenance Supplies, and Repairs and Maintenance Services were generally higher than expected at the end of the first quarter for numerous funds. These expenditures can vary based on needs through the year so these accounts will be monitored closely for each department/fund.

- The new Bobcat Toolcat was delivered to the Parks & Recreation Department at the end of September.

- The Fire Department received its new 2014 Rosenbauer Fire Engine on October 1st and the new water tender truck is expected to be delivered late this fall.

Additional Detailed Analysis

The following discussion further highlights the attached three spreadsheets.

General Fund Revenue (line 8 to 15)
Total General Fund revenues are 16% of budget and have increased by 5% from the prior quarter.

Charges for services were 18% less than last year. This was mainly due to a project in FY14 providing a significant amount of planning fees. The change is reasonable and can be expected. Overall the charges for services have remained steady with last year's first quarter collections.

Due to a timing difference, it would appear that the miscellaneous revenue has decreased in the first quarter of FY15 (J13). However, the significance of the decrease is much less than depicted. The FY14 first quarter numbers include the FY13 Golf Course lease payment that would have typically been paid in June of the previous fiscal year.

General Fund Expenditures, Net Revenue, & Cash (line 20 to 36)
Total General Fund expenditures are on track at 25% of the FY15 budget.

The General Fund cash balance was $480,030 compared to $331,635 at the end of the prior year's first quarter (see J36). The graph on page 1 of the spreadsheets shows the General Fund cash balance trends for the past 6 years. December, January, June, and July are months that tend to have higher cash balances due to the collection of property taxes. Building cash reserves to a minimum of 10% or more each year is important to ensure an adequate cash balance throughout the year.

Other Property Tax Supported Funds (p.2, line 75 to 112)
The funds supported by property tax have continued to have revenues exceed expenditures. Revenues were at 22% of the budget, while expenditures were 21% of the budget at the end of the first quarter of FY15.

When compared to a year ago, these funds experienced an overall decrease in cash with detailed discussion above. Also compared to the prior year, overall revenue collected is down and expenditures have increased. A significant portion of the increase in expenditures is attributed to the pre-payment on the Fire Department's water tender truck that will be financed via an Intercap loan later this fall. Other items that have had an effect on this financial situation include the revenues that were received in FY14 for a significant project (high school) in the Building Fund were not repeated in FY15.

Other Tax, Fee, & Assessment Supported Funds (p.2, line 119 to 148)
These funds located on the second half of the second page of the spreadsheet, receive no general property tax support.

Resort Tax collections are at 40% of the budgeted revenues as of the end of the first quarter of FY15. The increase is broken down further as follows: 11% increase in lodging, 3.6% increase in retail, and 3.6% increase in restaurants and bars.

Street and Alley operations are also in good financial condition with the revenues exceeding expenditures. The expenditures are only at 11% of the budgeted authority, which has led to a significant increase of revenues less expenditures compared to the prior year (see J128). Next spring's street overlay project will comprise two years' worth of works, so cash balance will come down then.

Impact Fees have seen a $49,391 (see J137) decrease from the prior year revenues at the end of the first quarter of FY15. This decrease is due to a significant increase (approximately $60,000) in impact fees collected from one project of considerable size in the City in FY14. When compared to FY13, the FY15 impact fees are significantly higher at 54%.

Enterprise Funds (p.3)
Metered water sales are up only 0.34%, while sewer service charges up 4%. The minimal change from the prior year in metered water sales is likely due to the City receiving more precipitation in June 2014 and overall lower temperatures for the summer of 2014 compared to the summer of 2013 based on data from the National Weather Service. The revenue for both Water and Sewer amounts are expected to continue to grow this year as an approved rate increase of 3.6% for Water and Sewer rates became effective as of October 1, 2014.

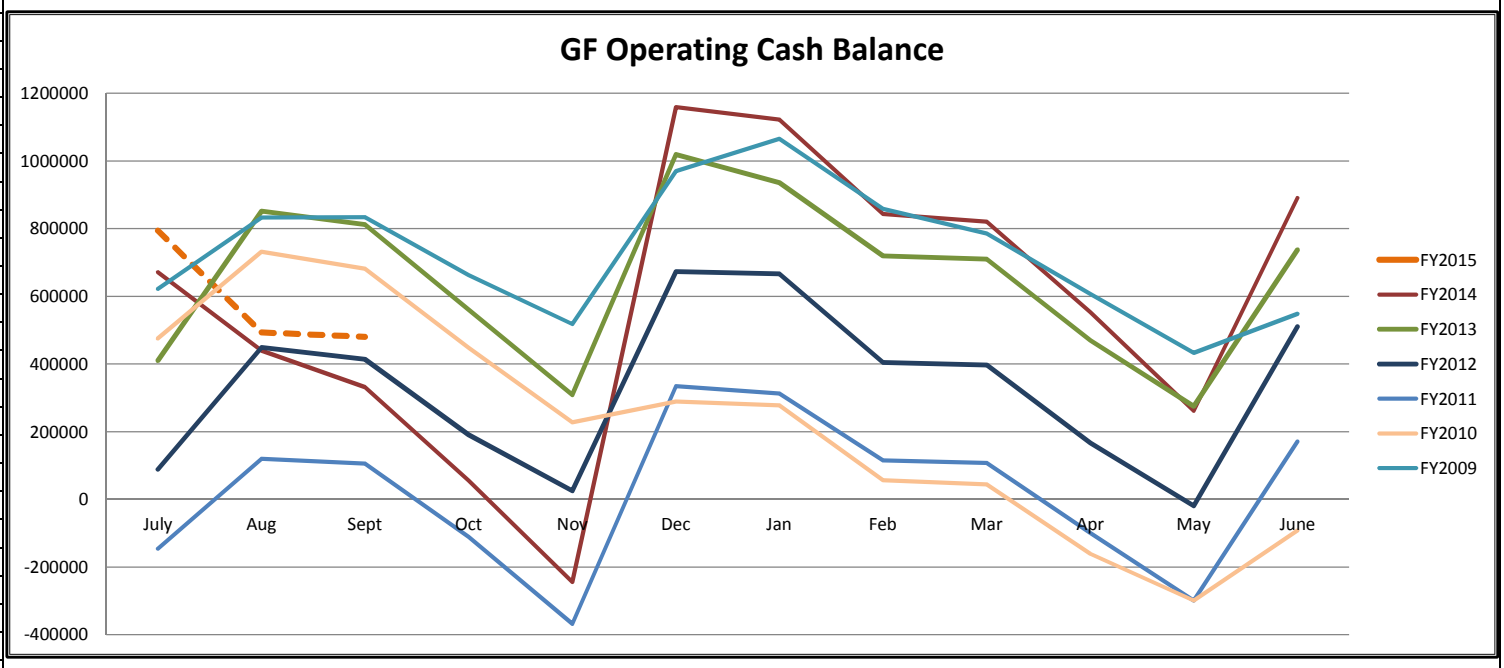
Capital expenditures in the Water and Sewer Funds are 139% and 682% higher than the prior year, respectively. This decrease is due to the continued progress on the Hwy 93 project, as well as other capital improvement projects. A total of $1,255 of Water Impact Fees and $400,696 of Sewer Impact Fees have been spent in the first quarter relating to these capital expenditures. An additional $201,193 has been paid with the final amounts of Plant Investment Fees in the Water fund during the first quarter.

Solid Waste had an increase in revenues of 6% during the first quarter. A 3% rate increase also became effective as of October 1, 2014. The expenditures show an increase of 49%; however, this is due to a timing difference of the September payment, which was made in October in 2013. The amount of revenue less expenditures is very comparable to FY13 and had there not been a timing difference, FY15 revenues less expenditures would have exceeded FY14.

Please contact me if you have any questions on this report.

City of Whitefish
Quarterly Financal Review
First Quarter of Fiscal Year 2015
July 1, 2014 - September 30, 2014

	YTD Sep 30, 2012		YTD Sep 30, 2013		YTD Sep 30, 2014			
	Dollars	**% of Budget**	**Dollars**	**% of Budget**	**Dollars**	**% of Budget**	**Chng Prev YR**	**% Chng Prev Yr**
General Fund Revenues								
Property Taxes	$253,351	13%	$254,423	13%	$322,544	16%	68,121	27%
Total Licenses and Permits	$4,450	8%	$3,548	6%	$3,662	6%	115	3%
Intergovernmental Revenue	$198,277	26%	$185,439	24%	$196,550	24%	11,111	6%
Charges for Services	$67,755	54%	$97,136	47%	$79,208	33%	(17,928)	-18%
Fines and Forfeitures	$71,436	30%	$64,373	25%	$59,928	26%	(4,446)	-7%
Miscellaneous	$8,438	23%	$30,106	75%	$2,380	5%	(27,725)	-92%
Investment Earnings	$3,959	16%	$2,839	14%	$4,377	29%	1,538	54%
Resort Tax & SID RevolvingTransfer In	$598,007	100%	$0	0%	$0	0%	0	0%
Total General Fund Revenues	$1,205,673	32%	$637,863	16%	$668,648	16%	30,785	5%
General Fund Expenditures								
Municipal Court	$67,887	23%	$65,027	23%	$63,404	21%	(1,623)	-2%
Prosecution Services	$24,226	25%	$24,380	25%	$23,400	21%	(980)	-4%
Administrative Services	$14,441	20%	$40,193	49%	$15,576	20%	(24,618)	-61%
Total Resort Tax Admin	$4,949	82%	$0	0%	$6,100	122%	6,100	100%
Legal Services	$7,280	20%	$12,924	33%	$8,334	20%	(4,590)	-36%
Community Planning	$69,828	23%	$63,197	18%	$67,355	17%	4,158	7%
Budgeted Interfund Loan (Building & Drug F)	$0	0%	$0	0%	$0	0%	0	0%
Transfer to Park Fund	$118,000	25%	$150,750	25%	$215,419	31%	64,669	43%
Transfer to Law Enforcement Fund	$448,750	25%	$461,250	25%	$471,250	25%	10,000	2%
Transfer to Fire Fund	$123,649	25%	$143,750	25%	$203,750	25%	60,000	42%
Transfer to Library Fund	$8,593	25%	$8,593	25%	$8,593	25%	(0)	0%
Cemetary/Other	$17,015	31%	$67,471	71%	$14,295	18%	(53,175)	-79%
Total General Fund Expenditures	$904,617	25%	$1,037,534	26%	$1,097,475	25%	59,942	6%
General Fund Revenues Less Expenditures	$301,056		($399,670)		($428,827)		($29,157)	-7%
General Fund Operating Cash Balance	$811,885		$331,635		$480,030		$148,395	45%
Prop Tax Supported Funds (no General) Net	($59,270)		$288,210		$159,304		($128,906)	
Prop Tax Supported Funds (no General) Cash	$409,652		$590,158		$340,184		($249,974)	
Total General & Prop Tax Supported Funds Net	$241,786		($111,460)		($269,523)		($158,063)	
Total General & Prop Tax Supported Funds Cash	$1,221,537		$921,793		$820,214		($101,579)	



	A	D	E	F	G	H	I	J	K
70									
71		YTD		YTD		YTD			
72	**Property Tax Supported Funds**	Sep 30, 2012		Sep 30, 2013		Sep 30, 2014			
73		**Dollars**	**% of Budget**	**Dollars**	**% of Budget**		**% of Budget**	**Chng Prev Yr**	**% Chng Prev Yr**
74									
75	Parks and Rec Operating Cash Balance	($213,384)		($149,121)		(98,681)		$50,440	34%
76	Parks, Rec & Community Services Revenues	$242,823	16%	$383,986	23%	362,425	21%	($21,561)	-6%
77	Parks, Rec & Community Services Exp.	$437,682	29%	$420,301	27%	428,178	27%	$7,877	2%
78	Revenues less Expenditures	($194,859)		($36,315)		(65,754)		($29,438)	-81%
79									
80	Law Enforcement Operating Cash Balance	$100,627		$141,995		54,871		($87,124)	-61%
81	Law Enforcement Revenues	$511,113	23%	$466,939	21%	472,324	19%	$5,385	1%
82	Law Enforcement Expenditures	$480,217	21%	$392,495	17%	434,693	18%	$42,198	11%
83	Revenues less Expenditures	$30,896		$74,444		37,631		($36,813)	-49%
84									
85	Library Operating Cash Balance	($15,166)		$13,131		51,342		$38,211	291%
86	Library Revenues	$26,741	13%	$42,235	19%	39,184	19%	($3,051)	-7%
87	Library Expenditures	$46,934	23%	$49,489	24%	44,629	19%	($4,861)	-10%
88	Revenues less Expenditures	($20,193)		($7,254)		(5,445)		$1,809	25%
89									
90	Fire & Ambulance Cash Balance	$503,164		$467,130		236,677		($230,453)	-49%
91	Fire & Ambulance Taxes, Penalty and Interest	$68,307	13%	$69,002	13%	87,930	16%	$18,928	27%
92	Ambulance Services Revenue	$275,708	32%	$324,092	34%	359,692	36%	$35,600	11%
93	Total Fire & Ambulance Revenue	$702,218	19%	$732,093	20%	845,991	23%	$113,898	16%
94	Fire & Ambulance Expenditures	$614,950	16%	$590,842	15%	754,026	20%	$163,184	28%
95	Revenues less Expenditures	$87,268		$141,251		91,964		($49,286)	-35%
96									
97	Building Codes Operating Cash Balance	$34,411		$117,023		95,975		($21,048)	-18%
98	Payable to the General Fund	($460,977)		($401,848)		(171,699)		$230,148	57%
99	Budgeted Loan from General Fund	$0	0%	$0	0%	0	0%	$0	0%
102	License and Permits Revenues	$102,158	33%	$190,124	61%	160,097	38%	($30,027)	-16%
103	Building Codes Expenditures without C. Falls	$62,915	22%	$75,619	25%	70,414	19%	($5,205)	-7%
104	*Columbia Falls Contract Revenues*	$7,516	29%	$8,460	28%	18,210	46%	$9,750	115%
105	*Columbia Falls Contract Expenditures*	$9,141	24%	$6,880	24%	6,986	23%	$106	2%
106	Revenues less Expenditures	$37,618		$116,085		100,907		($15,178)	-13%
107									
108	**Total Property Tax Supported Funds (not including General Fund)**								
109	Total Property Tax Supported Cash	$409,652		$590,158		340,184		($249,974)	-42%
110	Total Property Tax Supported Revenue	$1,592,569		$1,823,836		1,898,231		$74,394	4%
111	Total Property Tax Supported Expenditures	$1,651,839		$1,535,626		1,738,927		$203,301	13%
112	Revenues less Expenditures	($59,270)		$288,210		159,304		($128,906)	-45%
113									
114	**Other Tax, Fee & Assessment Supported Funds**								
117									
118	Resort Tax Operating Cash Balance	$2,148,585		$2,221,186		$2,008,450		($212,736)	-10%
119	Resort Tax Collections	$706,903	41%	$800,698	41%	$844,710	40%	$44,012	5%
120	Resort Tax Investment Earnings	$1,713	11%	$984	16%	$1,184	24%	$200	20%
121	Resort Tax Expenditures and Transfers	$983,012	34%	$722,717	24%	$698,221	22%	($24,496)	-3%
122	Revenues less Expenditures	($274,396)		$78,965		$147,673		$68,708	87%
123									
124	Street and Alley Operating Cash Balance	$746,433		$957,507		$1,156,395		$198,889	21%
125	Street and Alley Revenues	$254,799	19%	$259,346	20%	$296,376	22%	$37,030	14%
126	Street and Alley Expenditures	$388,209	23%	$329,242	19%	$234,141	11%	($95,101)	-29%
127	Revenues less Expenditures	($133,410)		($69,896)		$62,236		$132,131	189%
128									
129	Tax Increment Operating Cash Balance	$1,217,004		$1,731,975		$1,919,356		$187,381	11%
130	Tax Increment Property Taxes, Penalty & Interest	$783,862	19%	$745,131	17%	$852,921	18%	$107,790	14%
131	Tax Increment Total Revenues	$791,045	18%	$752,894	16%	$860,049	17%	$107,155	14%
132	Tax Increment Expenditures & Transfers	$1,647,822	26%	$879,675	16%	$940,259	15%	$60,585	7%
133	Revenues less Expenditures	($856,777)		($126,780)		($80,210)		$46,570	37%
134									
135	Impact Fees Cash Balance	$304,477		$559,229		$747,965		$188,736	34%
136	Impact Fee Collections - Revenues	$54,277	43%	$132,794	103%	$83,403	36%	($49,391)	-37%
138									
139	Street Lighting #1 Operating Cash Balance	$40,093		$59,547		$42,348		($17,199)	-29%
140	Street Lighting District #1 (Rsdntl) Revenues	$8,828	13%	$9,547	12%	$12,442	16%	$2,895	30%
141	Street Lighting District #1 (Rsdntl) Exp.	$11,363	11%	$13,374	14%	$14,520	17%	$1,145	9%
142	Revenues less Expenditures	($2,535)		($3,827)		($2,077)		$1,750	46%
143									
144	Street Lighting #4 Operating Cash Balance	$67,474		$64,167		$26,749		($37,419)	-58%
145	Street Lighting District #4 (Cmmrcial) Revenues	$10,621	19%	$11,439	19%	$11,504	17%	$65	1%
146	Street Lighting District #4 (Cmmrcial) Exp.	$13,583	15%	$13,064	10%	$15,091	17%	$2,027	16%
147	Revenues less Expenditures	($2,962)		($1,625)		($3,587)		($1,961)	-121%

	A	D	E	F	G	H	I	J	K
148		YTD		YTD		YTD			
153	**Enterprise Funds**	Sep 30, 2012		Sep 30, 2013		Sep 30, 2014			
154		**Dollars**	**% of Budget**	**Dollars**	**% of Budget**			**Chng Prev YR**	**% Chng Prev Yr**
155									
156	Water Operating Cash Balance	$1,667,347		$1,149,313		$1,604,795		$455,482	40%
157	Water - Metered Water Sales	$813,807	35%	$890,164	37%	$893,197	36%	$3,033	0.3%
158	Water - Operating Revenues	$898,447	36%	$995,617	38%	$1,006,130	36%	$10,513	1%
159	Water - Operating Expenditures	$346,798	22%	$346,028	21%	$393,350	23%	$47,322	14%
160	Operating Revenues less Expenditures	$551,649		$649,589		$612,780		($36,809)	-6%
161	*Net Opr. Rev Required by Year End*	*$740,841*		*$740,841*		*$681,808*			
162									
163	Non Operating Revenue	$204,473	20%	$400	16%	$259	52%	($141)	-35%
164	Water Capital Expenditures	$420,919	16%	$95,039	7%	$226,884	13%	$131,845	139%
165	Water Debt Service	$0	0%	$0	0%	$0	0%	$0	0%
166									
167									
168	Wastewater Operating Cash Balance	$709,323		$684,458		$729,826		$45,368	7%
169	Wastewater - Sewer Service Charges	$578,779	30%	$609,674	29%	$631,623	30%	$21,949	4%
170	Wastewater - Operating Revenues	$657,917	35%	$680,097	31%	$732,766	32%	$52,669	8%
171	Wastewater - Operating Expenditures	$356,324	22%	$284,798	17%	$328,062	16%	$43,264	15%
172	Operating Revenues less Expenditures	$301,593		$395,299		$404,704		$9,405	2%
173	*Net Opr. Rev Required by Year End*	*$338,000*		*$288,733*		*$288,733*			
174									
175	Non Operating Revenue	$6,027	1%	$0	0%	$112	0%	$112	100%
176	Wastewater Capital Expenditures	$3,744	1%	$54,648	3%	$427,526	17%	$372,878	682%
177	Wastewater Debt Service	$0	0%	$0	0%	$0	0%	$0	0%
178									
179									
180	Solid Waste Operating Cash Balance	$53,453		$139,820		$122,098		($17,722)	-13%
181	Solid Waste Revenues	$188,875	25%	$193,709	26%	$204,382	27%	$10,673	6%
182	Solid Waste Expenditures	$173,762	23%	$127,247	17%	$189,197	25%	$61,950	49%
183	Revenues less Expenditures	$15,113		$66,462		$15,184		($51,278)	-77%

MEMORANDUM
#2014-032

To: Mayor John Muhlfeld
City Councilors

From: Chuck Stearns, City Manager

Re: Staff Report – Future City Hall – Consideration of Addendum #1 to contract with Mosaic Architecture for fees related to Phase 2 of the Architectural Contract – Schematic Design and Design Development

Date: October 27, 2014

Introduction/History

On December 11, 2013, the City Hall Steering Committee held a design competition among four architectural firms who were the finalists selected for the City Hall architectural design project. The City Hall Steering Committee subsequently met and decided to recommend Mosaic Architecture of Helena, MT as the preferred architectural firm to negotiate a contract with. The City Council approved their recommendation that we negotiate a contract with Mosaic Architecture at the City Council meeting on January 21, 2014.

The City Council approved a contract with Mosaic Architecture at their May 5, 2014 meeting and the contract was signed and dated on May 6, 2014. Subsequent to that time, Mosaic Architecture has progressed and finished Phase 1 of the contract for Programming and Conceptual Design. After interviews with each department, Mosaic created several conceptual designs, culminating in the City Council's consideration of Scheme 1.5 at the November 3, 2014 City Council meeting. If Scheme 1.5 is accepted, it is time to move onto Phase 2 of the Architectural Contract and consider approving an addendum to the contract for Phase 2 services.

Current Report

Addendum No. 1 to the Mosaic Architecture contract is attached to this report in the packet. Phase 2 of the contract covers both Schematic Design for $153,695.75 and Design Development for $164,674.01. During this phase, the final design process will occur and all remaining design decisions will be done. Once this phase is done, the detailed construction documents for the City Hall and Parking Structure are prepared for building inspection review and bidding.

There are also pages attached in the packet which show the architectural fee breakdown in more detail than in the Addendum. At this point in time, the estimated total architectural contract (including engineering design fees) is estimated to be $1,097,657 or 8.6% of the basic City Hall/Parking Structure cost of $12,765,428 provided by Mosaic. In addition, reimbursable costs for copies, plan sets, travel costs etc. can add another $44,679 or 0.35% to the architectural contract for a total of $1,142,506 or 8.95% of the cost of construction. By way of comparison, on infrastructure projects, engineering costs of 15-18% of the cost of construction are often typical.

Financial Requirement

The total cost of Phase 2 for both Schematic Design ($153,695.75) and Design Development ($164,674.01) equals $318,369.76 plus reimbursable expenses. Reimbursable expenses for the entire project are capped at $44,679.

To date we have spent $73,933.63 on conceptual design including $65,700 for Mosaic basic services, $6,433.63 for Mosaic reimbursable costs, and $1,800.00 for Kimley-Horn services.

All of these costs are paid out of the City Hall Construction Reserve Fund which was financed and built up year by year with annual contributions from the Tax Increment Fund. There is still a balance in the City Hall Construction Reserve Fund of $2,180,767.36 as of September 30, 2014, so there are plenty of funds available to progress to the next phase of architectural services.

Recommendation

Staff respectfully recommends the City Council approve Addendum No. 1 to the Professional Architectural Services contract with Mosaic Architecture and authorize progressing to Phase 2 of the project for Schematic Design and Design Development.

This **ADDENDUM** is made to the AGREEMENT entered into on May 6th, 2014, is made as **of October 20, 2014**:

BETWEEN the City of Whitefish, Montana, hereinafter identified as the "**City**":

And the **ARCHITECT/ENGINEER**:

MOSAIC ARCHITECTURE, P.C.
428 NO. LAST CHANCE GULCH
HELENA, MT 59601
P (406) 449-2013

For the following Project:

WHITEFISH CITY HALL AND PARKING GARAGE
HALF BLOCK LOCATED ALONG BAKER BETWEEN 1ST AND 2ND STREETS

Paragraph 4 - PAYMENT

1.1.1 **The AGREEMENT is amended as follows:** The City shall compensate the Architect/Engineer in accordance with the full Terms and Conditions of this Agreement as follows:

Worksheet for final contract		**EXHIBIT B**
BASIC SERVICES		**AMOUNT**
Phase 1 - Programming/Concept Design		**$65,700.00**
Phase 2 - Schematic Design (SD)		**$153,695.75**
Phase 2 - Design Development (DD)		**$164,674.01**
Phase 3 - Construction Documents (CD)		**$439,130.71**
Phase 4 - Bidding (BID)		**$54,891.34**
Phase 5 - Construction Administration (CA)		**$219,565.35**
Basic Services Total =		**$1,097,657**
ADDITIONAL SERVICES (Estimated amounts)		**AMOUNT**
Site Survey (estimated amount)		**TBD**
Geotech Investigation		**TBD**
Civil Engineering		**TBD**
LEED Documentation (hourly not-to-exceed)		TBD
Fire Protection Design		TBD
Interior Furnishings Selection/Procurement		TBD
Record Drawings		TBD
Warranty Inspection		included in basic services
Hazardous Material Investigation		**Completed by City of Whitefish**
Fundemental Commissioning Services	**estimated**	**TBD**
Additional Services Total =		**$0.00**
SUPPLEMENTAL SERVICES/REIMBURSABLES		**AMOUNT**
Document Reproduction		At Cost +5%
Kimley Horn Travel Labor Cost per Trip	$5,000	
Direct Project Expenses (travel cost, etc.)		
Owner Initiated Change Orders		6% of Actual Construction Cost
Supplemental Services Total =		
		AMOUNT
TOTAL SUM FOR ALL SERVICES		**$1,097,657**

EXECUTION OF THIS ADDENDUM TO THE AGREEMENT

This Agreement entered into as of the _____

Architect/Engineer:

_____
Ben Tintinger, AIA
Project Architect/President

20-0333701
Federal Tax ID Number

Is this company incorporated? Yes **X** No_

Person signing for the Architect/Engineer shall be a principle owner in the firm or a corporate officer and be legally able to bind the Architect/Engineer to all provisions of this Agreement.

CITY OF WHITEFISH, MONTANA
a municipal corporation

_____
Chuck Stearns, City Manager

_____
Date

CTA Architects /Engineers - Mosaic Architects
406.452.3321 / 406.449.2013

Whitefish City Hall Building & Parking Garage
Whitefish, Montana

PART 1: CONSTRUCTION BUDGET

ESTIMATED CONSTRUCTION COST			**TOTAL ESTIMATED OFFICE BUILDING CONSTRUCTION COST**		**$12,765,428**
A/E DESIGN FEE	@	8.2%			1,046,765
PROGRAMMING	@	0.4%			51,062
HIGH PERFORMANCE DESIGN	@	0.0%	**Verify need for LEED Building**		0
				BASIC FEE	**$1,097,827**

PART 2: PROJECT FEE DISTRIBUTION BY OPERATION

BASIC LABOR FEE (DOLLARS) TO SPREAD = $1,097,827

PROJECT FEE BREAKDOWN	%	**TOTAL**	**Phase 01 Program/Concept**	**Phase 02 Schematic**	**Phase 03 D.D.**	**Phase 04 C.D.**	**Phase 05 BID**	**Phase 06 C.A.**
Project Management	20.50	$225,054	$21,957	$49,402	$32,935	$49,402	$16,467	$54,891
Architectural Design	38.10	$418,272	$43,913	$65,870	$60,380	$148,207	$16,467	$83,435
Interior Design	2.75	$30,190	$0	$2,745	$5,489	$10,978	$2,745	$8,234
Landscape Design	1.00	$10,978	$0	$2,745	$1,098	$5,489	$0	$1,647
Structural Engineering	11.50	$126,250	$0	$10,978	$13,723	$65,870	$8,234	$27,446
Mechanical Engineering	12.75	$139,973	$0	$10,978	$30,190	$71,359	$5,489	$21,957
Plumbing Engineering	4.75	$52,147	$0	$5,489	$5,489	$32,935	$2,745	$5,489
Electrical Engineering	8.65	$94,962	$0	$5,489	$15,370	$54,891	$2,745	$16,467
TOTALS	100.00	$1,097,827	$65,870	$153,696	$164,674	$439,131	$54,891	$219,565

LABOR FEE PERCENTAGES PER PHASE	**TOTAL %**	**Phase 01 Programming**	**Phase 02 Schematic**	**Phase 03 D.D.**	**Phase 04 C.D.**	**Phase 05 BID**	**Phase 06 C.A.**
		%	%	%	%	%	%
Project Management	20.50	2.00	4.50	3.00	4.50	1.50	5.00
Architectural Design	38.10	4.00	6.00	5.50	13.50	1.50	7.60
Interior Design	2.75	0.00	0.25	0.50	1.00	0.25	0.75
Landscape Design	1.00	0.00	0.25	0.10	0.50	0.00	0.15
Structural Engineering	11.50	0.00	1.00	1.25	6.00	0.75	2.50
Mechanical Engineering	12.75	0.00	1.00	2.75	6.50	0.50	2.00
Plumbing Engineering	4.75	0.00	0.50	0.50	3.00	0.25	0.50
Electrical Engineering	8.65	0.00	0.50	1.40	5.00	0.25	1.50
TOTALS	100.00	6.00	14.00	15.00	40.00	5.00	20.00

Whitefish City Hall Building & Parking Garage
Whitefish, MT
4/28/2014

Project Summary

DESIGN FEE

WHITEFISH CITY HALL

a. A/E BASIC FEE (A/M/P/E/S/L/C)		8.2%	$1,046,765
PROGRAMING		0.4%	$51,062
High Performance Building' Incentive		0.0%	$0
Estimated Reimbursables	@	0.35%	$44,679
		Subtotal	***$1,142,506***
Professional Fees Estimate			***$1,142,506***

b. ADDED VALUE SERVICES		***BEST GUESS***
Interiors Furnishings Selection / Procurement		**TBD**
Fire Protection Design		$20,000
LEED Documentation		**verify**
Building Commissioning		$30,000
Civil Engineering		$25,000
Geo tech Estimate		$30,000
Site Survey		$7,500
Hazardous Materials Investigation		**completed**
ADDED VALUE SERVICES		***$112,500***
TOTAL		**$1,255,006**

SUMMARY

WHITEFISH CITY HALL BUILDING SUMMARY

BUILDING ESTIMATED COST	**$12,765,428**
(Construction, contingency, site development)	
BUILDING ESTIMATED BASIC FEE	**$1,142,506**
(Basic fee, Prog, LEED, Reimbursable)	
BUILDING ESTIMATED ADDITIONAL DESIGN FEES	**$112,500**
(Added Value Services: Furn., Commis, FP, Stl.DTL, Geo Tech)	
CONSTRUCTION TESTING	**$76,593**
NWE OFFICE BUILDING FURNISHINGS ALLOWANCE	**$420,000**

TOTAL PROJECT ESTIMATE $14,517,026

MEMORANDUM
#2014-031

To: Mayor John Muhlfeld
City Councilors

From: Chuck Stearns, City Manager

Re: Staff Report – Future City Hall – Consideration of "Construction Manager At Risk" method of construction rather than traditional "Design-Bid-Build" method

Date: October 23, 2014

Introduction/History

For the construction of municipal buildings and infrastructure projects, cities have long used and often been required to use what is called the "Design-Bid-Build" method. This method is where the city uses a Request for Qualifications (RFQ) or Request For Proposals (RFP) to select an architect or engineer (depending on type of project), the architect/engineer then designs the project and uses recent bidding information or standards to estimate cost, and finally the project is bid out and awarded to the lowest responsible bidder.

Because of some of the problems inherent in such methods (disagreements between architect and contractor and building owner, not using contractor knowledge and expertise in designing the building, increasing number of change orders, etc.), the private construction world and later the public construction world started considering and often using either "Design-Build" or "Construction Manager At Risk" methods of competitive selection and construction of projects in a number of situations.

In 2005, the Montana Legislature approved using alternative construction methods such as Design-Build or Construction Manager At Risk. The law is now codified as Section 18-2-501*et. seq*. MCA (copies attached to this report in the packet). The City of Whitefish has used a design-build method one time for the hydro-electric project because of the complexity of using a Design-Bid-Build method for that project. I am also attaching to this report in the packet some comparisons of the pros and cons of each method of construction and additional information on the Construction Manager at Risk (CMAR) method.

It is too late to use a Design-Build method on our City Hall because that method is where either a single contractor with architects on staff is selected for the project at the beginning or where a joint venture between a contractor and an architectural firm is selected at the beginning.

Current Report

Mosaic Architecture and I believe that a Construction Manager At Risk (CMAR) method of bidding and construction would benefit the City Hall/Parking Structure by getting a construction company involved early. That way difficult issues such as costs, staging areas, street closures, City Hall staff relocation, and other areas could be better explored. CMAR still involves bidding and competition, but the bidding is typically done for all the sub-contractor components after a general construction manager/contractor is selected in a competitive qualifications basis (somewhat like selecting an architect or engineer). The selected contractor/construction manager provides a guaranteed price for the entire project during the process. Cost reduction and/or "value engineering" are typically primarily done before going out for bids.

The attachments in the packet provide description and pros/cons of CMAR and other methods. Mosaic Architecture has used the CMAR project method for the Helena project that was similar to our project (State Fund office building with City parking structure) and they used it for the current project under construction in Butte for NorthWestern Energy's new office building.

The new High School project used CMAR as the delivery method as well. I know there were 2-3 City Council members who had questions or concerns about this method of bidding and project delivery as they called me with questions. However, I think most of that concern was caused by the lack of familiarity with this new process as compared with the traditional Design-Bid-Build approach.

Financial Requirement

There is no financial requirement at this time, however both I and Mosaic Architecture believe that the CMAR method of project delivery will save money in the design and construction of the City Hall/Parking Structure project.

Recommendation

Staff respectfully recommends the City Council approve using the Construction Manager At Risk method of construction and project delivery for the future City Hall/Parking Structure.

Montana Code Annotated 2014

18-2-501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Alternative project delivery contract" means a construction management contract, a general contractor construction management contract, or a design-build contract.

(2) "Construction management contract" means a contract in which the contractor acts as the public owner's construction manager and provides leadership and administration for the project, from planning and design, in cooperation with the designers and the project owners, to project startup and construction completion.

(3) "Contractor" has the meaning provided in 18-4-123.

(4) "Design-build contract" means a contract in which the designer-builder assumes the responsibility and the risk for architectural or engineering design and construction delivery under a single contract with the owner.

(5) "General contractor construction management contract" means a contract in which the general contractor, in addition to providing the preconstruction, budgeting, and scheduling services, procures necessary construction services, equipment, supplies, and materials through competitive bidding contracts with subcontractors and suppliers to construct the project.

(6) "Governing body" means:

(a) the legislative authority of:

(i) a municipality, county, or consolidated city-county established pursuant to Title 7, chapter 1, 2, or 3;

(ii) a school district established pursuant to Title 20; or

(iii) an airport authority established pursuant to Title 67, chapter 11; or

(b) the board of directors of a county water or sewer district established pursuant to Title 7, chapter 13, parts 22 and 23.

(7) "Project" means any construction or any improvement of the land, a building, or another improvement that is suitable for use as a state or local governmental facility.

(8) "Publish" means publication of notice as provided for in 7-1-2121, 7-1-4127, 18-2-301, and 20-9-204.

(9) "State agency" has the meaning provided in 2-2-102, except that the department of transportation, provided for in 2-15-2501, is not considered a state agency.

History: En. Sec. 1, Ch. 574, L. 2005; amd. Sec. 1, Ch. 29, L. 2009.

Provided by Montana Legislative Services

Montana Code Annotated 2014

18-2-502. Alternative project delivery contract -- authority -- criteria. (1) Subject to the provisions of this part, a state agency or a governing body may use an alternative project delivery contract. A state agency or governing body that uses an alternative project delivery contract shall:

(a) demonstrate that the state agency or the governing body has or will have knowledgeable staff or consultants who have the capacity to manage an alternative project delivery contract;

(b) clearly describe the manner in which:

(i) the alternative project delivery contract award process will be conducted; and

(ii) subcontractors and suppliers will be selected.

(2) Prior to awarding an alternative project delivery contract, the state agency or the governing body shall determine that the proposal meets at least two of the sets of criteria described in subsections (2)(a) through (2)(c) and the provisions of subsection (3). To make the determination, the state agency or the governing body shall make a detailed written finding that:

(a) the project has significant schedule ramifications and using the alternative project delivery contract is necessary to meet critical deadlines by shortening the duration of construction. Factors that the state agency or the governing body may consider in making its findings include, but are not limited to:

(i) operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early project completion;

(ii) demonstrable public benefits that result from less time for construction; or

(iii) less or a shorter duration of disruption to the public facility.

(b) by using an alternative project delivery contract, the design process will contribute to significant cost savings. Significant cost savings that may justify an alternative project delivery contract may derive from but are not limited to value engineering, building systems analysis, life cycle analysis, and construction planning.

(c) the project presents significant technical complexities that necessitate the use of an alternative delivery project contract.

(3) The state agency or the governing body shall make a detailed written finding that using an alternative project delivery contract will not:

(a) encourage favoritism or bias in awarding the contract; or

(b) substantially diminish competition for the contract.

History: En. Sec. 2, Ch. 574, L. 2005.

Provided by Montana Legislative Services

Montana Code Annotated 2014

18-2-503. Alternative project delivery contract -- award criteria. (1) (a) Whenever a state agency or a governing body determines, pursuant to 18-2-502, that an alternative project delivery contract is justifiable, the state agency or the governing body shall publish a request for qualifications.

(b) After evaluating the responses to the request for qualifications, a request for proposals must be sent to each respondent that meets the qualification criteria specified in the request for qualifications. The request for proposals must clearly describe the project, the state agency's or the governing body's needs with respect to the project, the requirements for submitting a proposal, criteria that will be used to evaluate proposals, and any other factors, including any weighting, that will be used to award the alternative project delivery contract.

(2) The state agency's or the governing body's decision to award an alternative project delivery contract must be based, at a minimum, on:

(a) the applicant's:

(i) history and experience with projects similar to the project under consideration;

(ii) financial health;

(iii) staff or workforce that is proposed to be committed to the project;

(iv) approach to the project; and

(v) project costs; and

(b) any additional criteria or factors that reflect the project's characteristics, complexities, or goals.

(3) Under any contract awarded pursuant to this part, architectural services must be performed by an architect, as defined in 37-65-102, and engineering services must be performed by a professional engineer, as defined in 37-67-101.

(4) At the conclusion of the selection process, the state agency or the governing body shall state and document in writing the reasons for selecting the contractor that was awarded the contract. The documentation must be provided to all applicants and to anyone else, upon request.

(5) A state agency or the governing body may compensate unsuccessful applicants for costs incurred in developing and submitting a proposal, provided that all unsuccessful applicants are treated equitably.

History: En. Sec. 3, Ch. 574, L. 2005.

Provided by Montana Legislative Services

Design-Bid-Build
CM at Risk
Design Build
Integrated Project Delivery

What is the best approach?

Introductions

- Owner
  - David Jansen, PE
    Director,Capital Projects
    Washington State Department of Corrections
- Architect
  - Jerry Winkler, AIA
    President
    INTEGRUS Architecture, P.S.
- Contractor
  - Bob Payne
    Construction Manager
    Hunt Construction Group

Presentation Objectives

- Present an open evaluation of different delivery approaches
- Develop a good understanding on where the risk lies between owner/contractor/architect
- Learn the owner's view on how do they assure that they receive the best value

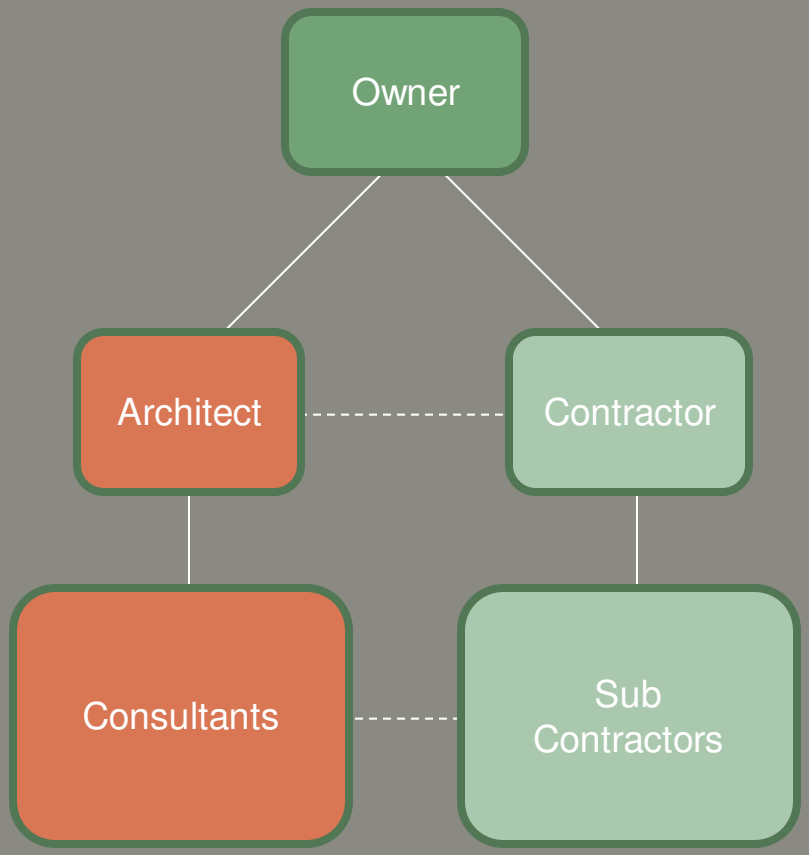
Design/Bid/Build

Pros & Cons

Pros	Cons
• Best understood • Longest legal history • Can produce highly competitive pricing • Auditors, politicians, public and code officials are most comfortable with this • Default method for Government; need special permission to use other methods • Well suited to uncomplicated projects with straightforward objectives and adequate time; owner knows what they will get • Least personality driven of all the choices	• Inherently antagonistic • Can create significant legal issues where unforeseen problems arise • Encourages cost cutting and lowest quality for lowest price; can lose quality in periods of high escalation • Low bids can encourage high change orders • Can be difficult for inexperienced contractors in constrained environments • Can be difficult to accomplish scope changes • Owner liable for design • Guaranteed price late in process • Can be dangerous for inexperienced owners • Potential philosophical disconnect

CM at Risk

Structure



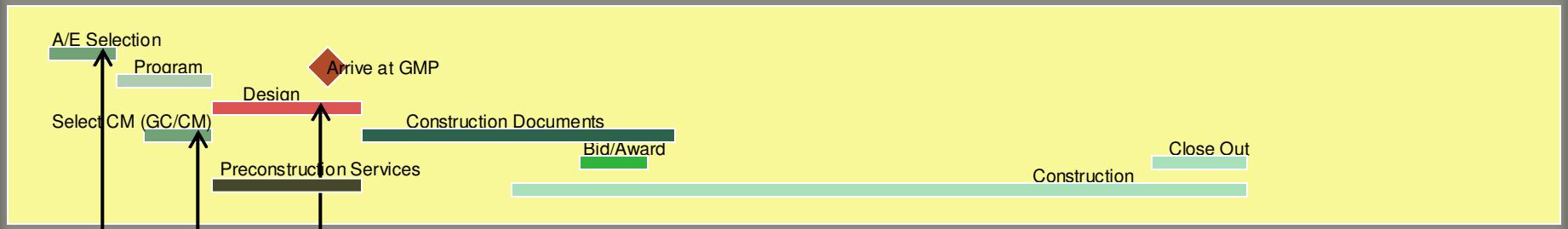
CM at Risk

Pros & Cons

Pros	Cons
• Can work well for sites where early construction contractor participation is desirable • Complex scheduling • Resolving challenging constructability issues early in the process • Provides more certainty to the owner than design/build • Clear schedule • Explicit design • Suitable where facility must continue to operate during construction • Pricing & cost model are developed along with design • Owner gets to select designer and construction manager	• Needs to have the right mesh of personalities • Project staff turnover can create problems • Contractor must be comfortable being directly responsible to the owner • Owner needs to have sufficient expertise to manage both contractor and designer • Designer & builder still have separate contractual relationships with the owner and can be a source of conflict • Potential philosophical disconnect

CM at Risk

Timeline



Guarantee Price

Select Contractor

Select Architect

Design/Build

Pros & Cons

Pros	Cons
• Well suited to repetitive projects • Well suited for complex projects where the owner has capacity to participate • Allows for fast track projects • Works effectively with LEED requirements • Works well for complex projects with multiple specialties that must integrate Allows flexibility if project scope is changed • Owner is not mediating between the designer and the contractor • Teamwork • Early contractor involvement • Allows creativity • Guaranteed maximum price early	• Can be difficult in periods of high construction escalation • Requires right mesh of personalities • Owner must accept some uncertainty • Need competent bridging documents • Code officials need to be flexible and responsive • Few legal precedents when problems arise • Can be more expensive because it is faster • Requires extensive pre-project communication • Needs a defined conflict resolution process • Owner could lose control of process • Free design

Common Themes for all Methods

- Must be aware of the construction market
- Must understand the views and goals of the other parties
- Using the lawyer-antagonist approach may not produce the best results
- Turnover creates confusion and loss of history

THE RISK IN CM "AT-RISK"

BY WARNER STRANG

INTRODUCTION

The objective of professional construction managers should be to give their clients the best possible experience with design and construction, without endangering their own firms and families. The focus of this article is to describe how a construction manager can improve an Owner experience by accepting the transfer of some cost risk, without endangering the relationship of trust, or the CM 'firms' financial footing.

In the last thirty years, public agencies in the United States have won the right to use a method of construction contracting that engages a construction manager early in or prior to the design process. It uses that entity to manage the project until its completion. The construction manager is an agent of the Owner in managing the design process, but takes the role of a vendor when a total cost guarantee is given. Many professional construction managers are leery of this change of role, and resist being placed "At-Risk".

The traditional system of public construction in the United States requires the selection of an architect who prepares complete plans for lump sum bids by general contractors. The development of construction management can be seen as a moral revolution against the poor performance of the traditional system[1], or as a natural extension into the public sector of practices that had improved work in private construction since the end of World War II[2]. Regardless of whose writing of history is correct, with the advent of CM At-Risk owners on public projects now have the option to be protected from cost overruns beyond a certain point in the project, in exchange for some worries. The objective of this paper is to pick those worries apart, and suggest some ways to alleviate them.

In choosing the CM At-Risk method there are some potential advantages to both the Owner and the construction manager, and there are some potential drawbacks to each of them. Since the objective is to improve the Owner's experience with the process, this article will start with the Owner's point of view. Then it will look at the issues from the construction manager's point of view.

The contractual arrangement of the parties is not the sole determinant of the success of building projects. Indeed, there are situations in which contracts are an afterthought, and their terms are quickly forgotten. If the Owner, builder, and designer are competent and expect to depend on each other far into the future, they will probably

---

[1] In *The CM Contracting System,* Edwin Haltenhoff portrays the root form of construction management as agency construction management, and discusses departures from that system as necessary evils.

[2] The Harvard Business Review of March-April 1973 had an article entitled *How To Avoid Construction Headaches* that heralded a new approach as an outgrowth of success in private construction. That trend continued slowly for the next 30 years.

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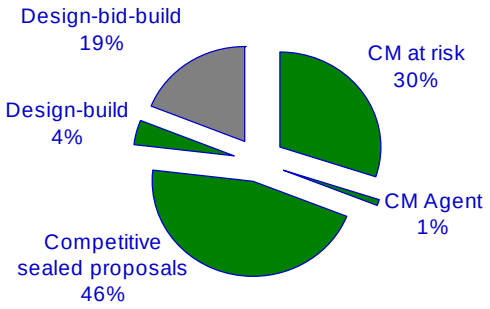
do their best regardless of the form of contract. If the participants suspect one another of dishonor, and believe that punishment for poor work will not be possible, it is unlikely that they will produce a success. None-the-less, in most real situations a well thought out set of relationships helps produce a good result, and construction managers owe it to their clients.

FROM THE OWNERS POINT OF VIEW

The great advantage to CM At-Risk for most public Owners is that their governing bodies accept it. In most states it is the most widely used form of construction management practiced[3]. Most Owners see having a Guaranteed Maximum Price (GMP) as equivalent to having a Stipulated Sum Cost, and on that basis are willing to enter the experiment.

Texas K-12 and public higher education projects



Relationships are a selection factor in 81% of this work

Source: Effects of State Legislation on Contracting Methods of Public Schools and Universities, Forum on Construction Project Delivery for Texas Public Work, January 31, 2001, K. Everette Sylvester, Ph.D, Principal Investigator

Agency Multi Prime Construction Management is available to public Owners in most states. It appears that its use has been small because of the fear of creating a lack of accountability for the total cost[4]. Most governing bodies have a healthy knowledge of the lack of control they have over the cost consciousness of their staff.

The choice then for most public Owners is between CM At-Risk and the traditional system. If they do not want to use the traditional method because of past poor results,

[3] A reference here on the state laws. Damian Hill, AGC, study to be completed in August 2002.

[4] Ibid

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and are not bold enough to try Design-Build, they are encouraged in this direction. Let's look at the risks involved.

THE COST OF THE WORK

Does using a Construction Manager At-Risk raise or lower the cost of the building? On one hand one might imagine that having a very cost conscious group involved early might lower it. On the other hand, the usual CM process seems to involve less risk-taking on cost by the Construction Manager than that taken by a lump sum Contractor. So In this case, maybe the total cost is may be raised. The Construction Industry Institute Study seems to indicate a substantial savings in cost growth, but no good information on comparative initial cost[5].

The issue is difficult to get hard information on. Each project is unique and can't be done built both ways several times to do an experiment. There is one good laboratory, - though. In the Florida schools program it is common to have one prototypical set of plans built several times in several different ways. The conventional wisdom is that the results of a study of those instances would find that on the same set of plans Construction Management At-Risk was on the average less expensive than Lump Sum Bidding, but only because it did not have the occasional terrible result of low bid contracting. Eight times out of ten the low bidder was less expensive than the CM At-Risk, but two times the lump sum bid project was far more expensive because of lawsuits, and lost use of the facility. The resulting belief is that there is a cost advantage to CM At-Risk over lump sum bidding because it reduces the risk of the disastrous, lawsuit-riddled project. There is, however, no academic study to confirm that widely held belief.

There is no data about CM Agency construction in the Florida's school programs because it appears that it is seldom used.

The larger question concerns whether the presence of a cost conscious group during design will tend to hold the cost of the work down. That effect would be present with both CM Agency and CM At-Risk. Most Construction Managers feel it is true, but there aren't any clear studies on this question either.

FEES FOR CONSTRUCTION MANAGEMENT

An Owner might want to know if the fees paid to a CM At-Risk are higher or lower than the comparable costs to a general contractor in the traditional system, or the fees to an Agency CM. The answer is that the accounting group that monitors construction companies, the Construction Financial Management Association (CFMA), can find no systematic differences between CM At-Risk and lump sum general contracting[6].

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[5] Construction Industry Institute (CII), Research Report 133-1, Alan Champagne et al, 1999.

[6] CFMA Annual Financial Survey 2000, p 53.

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Different sorts of Construction Managers At-Risk price work differently, but overall it appears that it is about as well or poorly paid as other types of construction. The fees for CM Agency are usually less, because there is no element of business risk.

There is one negative element to CM At-Risk fees. In many areas of the country they are subject to some marvelous sleight of hand. If the "fee" that is quoted is to be a part of the selection, you can be sure that it will be only a small part of the final gross margin to the Construction Manager. An Owner, in order to not be misled, needs a close advisor not to be misled. The calculation of the actual gross margin to the builder from fee, mark-ups on labor, allocations of fixed expenses like insurance, and savings sharing should be done by an experienced person. The negotiation of a final contract should center on assuring the builder a fair profit for a good job.

THE TIME IT TAKES

Does putting the CM At-Risk raise or lower the time it takes to complete the work? To the extent that the Owner is willing to begin construction before the plans are complete, either CM Agency or CM At-Risk lowers to the total time over using the traditional system. If a cost guarantee gives the Owner the confidence to do that, then the CM At-Risk system takes less time. There are several studies that find better schedule performance of CM At-Risk than traditional systems, but no comparisons of CM At-Risk and CM Agency[7].

THE QUALITY OF THE RESULT

Does using a CM At-Risk produce a better or worse building than CM Agency or the traditional system? It is likely to produce better quality than lump sum bidding, for the same reason that it is likely to be a little more expensive much of the time. It tends to use bondable, therefore better, more expensive subcontractors.

On the surface it should be about the same between CM Agency and CM At-Risk. They both bid the work to subcontractors under the scrutiny of the Owner. There are, however, some social tendencies based on the usual backgrounds of the firms that may make a difference in quality. CM At-at Risk contractors are usually descended from general contractors, and that gives them one advantage and two disadvantages.

On the plus side for CM At-Risk, it is usually easier for the firms to discourage poor quality subs from bidding. The CM At-Risk firm has the image of a general contractor who can punish poor work more easily by not providing work for them on the other projects on which they work, and by demanding better work. On the negative side, the existence of a cost guarantee may influence the field staff to look the other way when a problem comes up that would tend to push the cost over the guarantee. In most cases the only

[7] Construction Industry Institute (CII) Research Summary 133-1, December 1997

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way the CM At-Risk can lose money is to have a big field problem. So there may be less enthusiasm for good inspection in close situations. Also on the negative side, the background of the CM At-Risk's personnel is usually from lump sum bidding, and they often feel closer to the subcontractors than the Owner by habit.

It is hard to judge construction quality by any objective standard. The CII study makes a case for the quality of a CM At-Risk project being higher than a lump sum project but there is no data on CM Agency.

WHAT'S THE RISK?

Often discussions of CM At-Risk focus on the risk of a cost overrun costing the CM a great deal of money. That doesn't happen often.

When it is possible most Owners wait until the guarantee is given on the basis of completed, or almost completed, plans. The CM is allowed a contingency for the normal mistakes in construction. If later bid packages come in above the amount allowed for them in the GMP there is pressure to reduce the scope of the work so that it's the cost to the CM fits within his guarantee. In thirty years of work of this sort I have only seen two GMP's exceeded during the project causing the CM to make up the difference. But many GMP's have escalated above the original number.

A greater risk is that the CM now is the vendor of a product, and bears all of the risks that manufacturers and operating companies do in other lines of work. Hidden defects can come back to cost dearly years later. Accidents to craftsmen can exceed insurance coverage. The normal dangers of buying and selling multi-million dollar pieces of work mean that the CM At-Risk has a great many hidden risks, and that consequently the Owner now doesn't. The CM Agent is less in the position of selling a product, and so has less of the risk of a manufacturer.

FROM THE CONSTRUCTION MANAGER'S POINT OF VIEW

All of the foregoing deals with how the Owner should look At-Risk. How should practitioners feel about it?

For a professional service Construction Manager who is accustomed to doing CM Agency work, assuming the position of the CM At-Risk has the attraction of affording his client some comforting assurance on total cost, but exposing the CM to some commercial risk. Managing this risk will require some changes in procedures and objectives, but will bring with it some additional fee for risk.

For the general contractor the change will be the advocacy of the client's position that is imposed by the role of a Construction Manager. CM At-Risk is still largely a position of representing the Owner's interests, and if it is pursued as simply a negotiated general contract it will leave the Owner dissatisfied and the CM without future work.

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PROTECTING AGAINST OVERRUNS

For the professional service CM, the financial questions come down to preventing cost overruns on units of work that have been bid prior to the guarantee, and bid overruns on units which are only estimated in the guarantee. The main changes in procedures are:

Estimating with a larger contingency. A CM who can see himself paying the difference can see more potential problems in any incomplete set of plans. The challenge is to combine prudence with a desire not to seriously over estimate.

Being more selective on subcontractors. In many cases an Agency CM will allow some subcontractors to propose for secondary Owner-driven social reasons. As a CM At-Risk, he will find himself with a harder heart, and perhaps require subcontract bonds where he once thought them unnecessary.

Being more aggressive on change orders. If the CM At-Risk has been on board all along, he will find asking for changes because of ambiguities in the plans as hard difficult as ever. He will however find it necessary to be more aggressive on changed conditions, and external problems like the weather. He will find himself at times on the other side of the table from the Owner. Doing this without giving offense or provoking a reaction requires a measure of skill at relationships, and at playing the role of the "good builder".

Billing to allow positive cash flow. The CM At-Risk pays the bills, so he will need to make sure he has the money to do so. Often that means billing on a schedule of values basis more than the sum of the bills in hand, to allow for costs in the middle of the next month. An Agency CM can adopt a distant attitude to these problems, but a CM At-Risk cannot.

A Construction Manager who comes from a background of negotiated general contracting for progressive private Owners does not find it difficult to reconcile the obligation to serve his client and his obligation to protect his business. One who comes from the professional service Agency background may find it difficult. Succeeding in making this change in a professional service firm may mean some cultural changes and perhaps some staff changes. An Agency CM turned At-Risk CM runs the real risk of financial loss if he doesn't pay devote attention to this.

THE ASPECT OF TIME

Another common aspect of CM At-Risk is the requirement for damages for delay. It is a comfort to some Owners to have such a clause. It poses a greater risk of ruining the relationship, however, than all of the cost guarantees that are requested.

Most of the time risk in a construction project occurs away from the site. The design work remaining when construction begins, including submittals and their approval, and

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the decision-making on changes during construction, account for most of the reasons for delay in completion[8]. If one were to assemble all the information needed to confirm orders for materials, and all the design decisions, and provide all of the funds needed, and shield all those on site from changes, the construction time would have relatively little risk in it.

A CM At-Risk, who has damages for delay, must clearly point out when he is delayed so he does not incur those damages. In pointing that outdoing so, he is criticizing imperfections in his client's organization. That criticism often leads to a breakdown in the relationship. For that reason most Construction Managers rarely agree to such damages on projects with significant potential delays.

HOW DOES A CM MOVE INTO WORK AT RISK?

A Construction Manager who has worked on a professional service basis for some time has a host of questions to answer to himself before he proposes to act as a CM At-Risk. The first and most important question is whether that role is against his "religion". That is, can he imagine reconciling the diverse obligations to his client and his own firm?

Almost every occupation has inherent conflicts that are resolved by practitioners every day. Insurance agents and stock stockbrokers reconcile their obligations to act for their clients with the sales commissions from selling their various wares. Architects reconcile their desire to build beautiful buildings with their clients need for practical structures within their budgets. But if an individual cannot see himself playing this role comfortably he should not start the process.

The next question is whether he has the right staff. A CM At-Risk is in part a general contractor in the public sector. A general contractor lives and dies by the quality of his superintendents. A professional service construction manager will need to have superintendents that he has confidence in, and that he pays well to manage contentious subcontractors. .If he has already been providing Agency Multi-Prime Contracting CM services, he should already have this type of person on staff. But the CM's who become superintendents must understand that they are now in the business of managing their own company's risk, in addition to providing good service to the Owner.

Another important arrangement is the provision of surety bonds. The company, or its principal owners or guarantors, will need to pledge assets to a surety in the event of a default. The company must have assets left in the business, and continue to accrue assets. Many professional service companies regularly make discretionary bonus disbursements each year of almost all of the profits, and so have little equity to back a bond. Becoming a CM At-Risk means changing the capital structure of a professional service company.

[8] R.F.Cushman, J.D.Carter & A. Silverman, *Construction Litigation:Representing the Contractor,* New York: Wiley, p 382

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Insurance will also change. General liability is much more expensive, and some contracts will need excess liability coverage. There are a host of special situations and perils that come up from year to year. Someone must now think of insurance as an important part of their job.

The good news that goes with all this is that a CM At-Risk can expect to make a breakeven labor multiple on his valuable people plus a risk premium of 2-4% of the cost of the project. That means that doing a large project well can be as lucrative as doing several CM Agency projects, and at the same time can fill a valuable role for clients.

HOW DOES A GENERAL CONTRACTOR MOVE INTO CM AT RISK?

It is nominally easier for a general contractor to become a CM At-Risk, because he has most of the arrangements made already. He has a bonding capacity and liability insurance. He is accustomed to warranty work and acting as the seller of a product. To many general contractors it looks like falling off a log.

That attitude won't last long. Owners expect Construction Managers to be faithful to their client, rather than faithful to the contract. There will be many times that the Owners will ask to be rescued from their own decisions. There will be other times when they would like to blame someone else for imperfect outcomes. Managing these attitudes and situations are all within the work of Construction Managers, and getting used to them will take some doing.

To prosper in the role of Construction Manager, a traditional general contractor will need to add people who are relentlessly focused on client satisfaction. He will need to work hard to interface with each client's organization at least at three levels. He will need to avoid assigning people to these projects who are hard-bitten lump sum bid contractors. If he doesn't, he will enter an unending paper chase and have both a dissatisfied client and employees.

Construction Management At-Risk has some significant advantages for Owners, and therefore to professionals who are dedicated to serving those Owners. CM At-Risk is allowed under most state laws, and is easier to adopt for most public bodies than CM Agency. It is often faster and less expensive than the traditional contracting system. It seems to cost no more in fees than the traditional system, although it has higher fees than Agency CM.

The risks to a CM entering the "At-Risk" world are real, but manageable. The CM At-Risk must learn to provide a professional level of service while managing his own risks. He needs to structure his contracts and practices to provide meaningful guarantees while avoiding conflict of interest with the Owner. He must learn more about insurance and make the financial sacrifices to obtain bonding. If he accomplishes this, however, he can provide his clients with a higher level of protection and service.

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About the Author: Warner Strang is a Senior Vice President of 3D/International in Houston. He has spent 35 years in the management of construction projects, 20 of them as a Construction Manager At-Risk and 15 as a professional service Construction Manager.

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CM at Risk

Construction Management at Risk (CM at Risk), similar to established private sector methods of construction contracting, is gaining popularity in the public sector. It is a process that allows a client to select a Construction Manager (CM) based on qualifications; make the CM a member of a collaborative project team; centralize responsibility for construction under a single contract; obtain a bonded guaranteed maximum price; produce a more manageable, predictable project; save time and money; and reduce risk for the client, the architect and the CM. CM at Risk, a more professional approach to construction, is taking its place along with design-build, bridging and the more traditional process of design-bid-build as an established method of project delivery.

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Some History

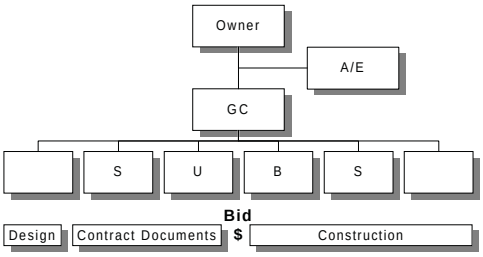
The traditional process

Public organizations traditionally have selected architects and engineers (AEs) based on qualifications and general contractors (GCs) based on competitive bid.

The rationale for this difference in selection procedure is that it's difficult to define and measure the experience, wisdom or creativity of AEs. And AEs typically represent their client's interests with a fiduciary responsibility. So clients avoid bidding and look for the most qualified firm.[1]

However, construction has been considered a tangible product that can be specified and measured, not a professional service. So public organizations buy brick and mortar by competitive bid. The conventional wisdom is that bidding construction work gives everybody an equal chance to do business on the public dollar, prevents favoritism and gives the appearance of least cost.

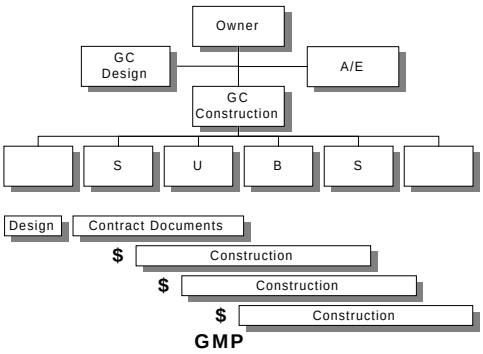
But today, increasing industrialization and specialization in the construction industry invalidate this conventional wisdom. Building construction can be entirely subcontracted. And most of the cost and technical knowledge for the manufactured portion of buildings resides with specialty trade contractors and manufacturers. GCs are now managers of multiple subcontractors and specialists. They win work by skillful purchasing and management of subcontracts.



Traditionally, public clients select AEs on the basis of qualifications and select contractors by competitive bid.

Negotiated GMP contracts

Private sector clients recognize that contractors have experience, wisdom and creativity, too. They want this talent on their side of the table during the design phase, not just during construction. And they want a more manageable and predictable procurement process for construction. So they frequently select a GC during design to provide advice on cost, schedule and constructibility. As contract documents near completion, the contractor negotiates or takes bids from subcontractors and builds the project under a cost-plus-a-fee contract, usually with a guaranteed maximum price (GMP). (However, if a GMP is given well before construction drawings are complete, conflict may arise over what was logically implied by the drawings.)



Private sector clients often select a GC during design. The GC negotiates subcontracts and builds the project, usually under a cost-plus with a guaranteed maximum price contract (but sometimes with a negotiated lump sum price).

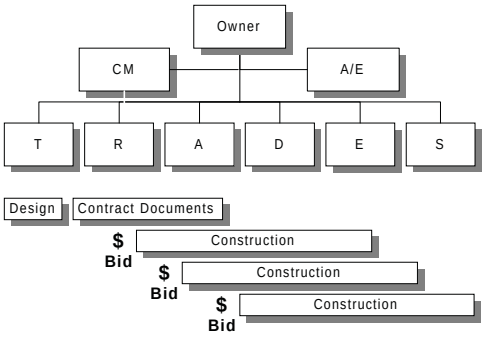
[1] Federal procurement regulations and some state laws prohibit bidding as a method of selecting AEs and stipulate that they be selected for their qualifications.

A deliberate, phased procurement of subcontracts benefits the project. During the completion of construction drawings a GC will often negotiate prices for alternate building systems (such as elevators or mechanical equipment). When the most cost-effective system is selected, the AE will design around it. This produces drawings that are specific to systems that are actually used and reduces errors.

The project also benefits from the knowledge of construction technology and cost that the GC, specialty trade contractors and manufacturers provide during design. Furthermore, since the client chooses the firm based on qualifications and can do so again, the GC wants a good recommendation and, hopefully, a repeat client. This motivates the GC to serve the client's interest.

Agency CM

In an attempt to gain similar benefits (but restricted by procurement regulations), public clients often select construction management organizations under professional service contracts—often under AE procurement regulations. The CMs provide advice during design, take bids for construction from multiple prime trade contractors and then manage the prime trade contractors in the functional role of a GC. However, the client holds the contracts to keep the CM in a professional position and to avoid the appearance that the CM is a vendor of brick and mortar.



With agency CM, a client selects the CM based on qualifications. The CM provides advice during design and manages the trade contractors during construction in the functional role of a GC. The client holds all the contracts.

These clients and CMs often use fast-track procedures. When this occurs, the CM may provide a professional guarantee early in the project. The guarantee typically states that if the project bids in over the budget, the CM will work with the architect to reduce the cost of the project.

While most CMs deliver successful projects, many clients are troubled by issues such as:

- the administrative burden of managing many contracts for a single project
- concern about third party liability in the event one prime trade contractor damages another
- the lack of a single guaranteed, bonded price for the total project (although the trade contractors are typically bonded)

Since the clients hold the contracts, many feel the need to duplicate some of the CM's oversight with a few representatives of their own. That often increases the client's cost, confuses and weakens the CM's role in the eyes of the prime trade contractors and adds complexity to the CM's job. The

CM has a proactive (but often inexperienced) client to manage as well as a set of contractors.

Furthermore, the lack of CM industry standards can create problems. There are no licensing requirements[2] as there are for architects and engineers and no bonding requirements as for general contractors. Occasionally, unqualified firms have produced poor results for clients that did not have the sophistication necessary to pick a qualified firm.

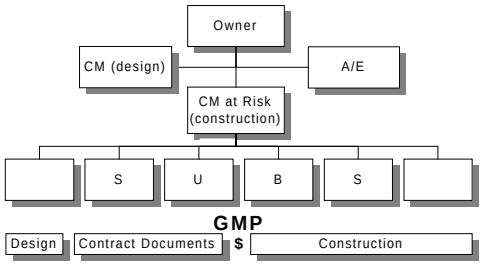
A changing industry

Contractors working with private sector clients have grown increasingly professional. They are paid fees for services and operate in their client's interest just as the AEs with whom they collaborate.

Meanwhile, government procurement regulations are changing. Florida recently passed legislation that allows CM at Risk in the public sector, and Texas passed laws allowing CM at Risk for school district and higher education construction. Federal Acquisition Regulations have also been modified to allow similar processes.[3]

As GCs have assumed professional roles, AE firms have developed construction management skills. To their traditional professionalism, AEs have added construction experience and a willingness to furnish bonds and to guarantee cost and schedule. CM companies that have provided agency CM are providing CM at Risk.

The result of these changes is a process that allows a client to select a CM as a professional based on qualifications, experience and reputation. The CM subcontracts by proposals or by competitive bid from trade contractors. The process makes the CM a member of a collaborative project team; centralizes responsibility for construction under a single contract; obtains a bonded guaranteed maximum price; produces a more manageable, predictable project; saves time and money; and reduces risk for everyone.



A public client selects a CM to provide CM at Risk services based on qualifications and makes the CM a member of a collaborative project team during design. When construction begins, the CM provides a bonded Guaranteed Maximum Price.

[2] The Construction Management Association of America (CMAA) is currently developing certification procedures for CMs. Initiated in 1996, this process is already gaining acceptance.

[3] The Texas 74th Legislature passed Senate Bill No. 1 that authorized school districts to use a number of methods to procure construction contracts. The 75th Legislature amended Senate Bill No. 1 with Senate Bill No. 583, which specifically permits the use of CM at Risk for school district construction. (*Texas Education Code*, Title 2. Public Education, Chapter 44. Fiscal Management Subchapter B. Purchases; Contracts, 44.038. Contracts for Facilities: Construction Manager-at-Risk, Paragraph (a): *A school district may use the construction manager-at-risk method for the construction, rehabilitation, alteration, or repair of a facility.*)

CM at Risk: How to do it

Selection procedures

A client's objective should be to select the best CM for the project at a fair and reasonable fee. Most issue an RFP[4], receive proposals and interview a short list of the most qualified firms. Some of the more careful clients visit the CM's office, check references and examine their control systems in great detail.

Typically the information requested by the RFP will include:

- *Corporate information:* the CM's company history, size, staff, general experience and a financial statement
- *Personnel information:* an organization chart with resumes of the project team and key corporate leaders
- *Systems approach:* a management plan and project management control systems that will be used on the project
- *Experience:* a list, with references, of similar projects the CM has done

The client then selects the CM using criteria such as purchase price, reputation, quality of services, past relationship with client, ability to comply with laws regarding underutilized businesses, etc. Typically, the client negotiates the CM's fee and the terms of the contract.[5] In some cases the fee may be part of the CM's proposal or requested separately during the selection process. However, the client isn't required and shouldn't feel compelled to accept the lowest fee.

Ideally, selection occurs at the project's beginning (before or just after selection of an architect).

Services

The CM becomes a collaborative member of the project team. Preconstruction services include budgeting, cost estimating, scheduling, constructibility reviews and value engineering studies. As construction

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[4] *Texas Education Code*, Title 2. Public Education, Chapter 44. Fiscal Management Subchapter B. Purchases; Contracts, 44.031. Purchasing Contracts, Paragraph (g) stipulates that for projects exceeding $25,000, school districts shall publish notice of the time by when and of the place where bids, proposals or responses to a request for qualifications shall be received in any newspaper in the county where the District's central administrative office is located. Notices shall be published at least once a week for at least two weeks before the deadline for receiving bids, proposals or responses to a request for qualifications.

[5] The American Institute of Architects has a standard form of agreement (AIA A121/CMC) and the Association of General Contractors has another (AGC 565). Both are good contracts.

drawings progress or near completion, the CM divides the project into appropriate scopes of work for bidding, prequalifies subcontractors and takes bids or accepts proposals for the work. The CM, architect and client review bids and proposals for compliance with the contract documents and determine which ones to accept. (They are not required to select the lowest bids, but there should be clear explanations if they do not, particularly if they have prequalified bidders.) The CM then prepares cost estimates for the unbid portion, adds a contingency and a budget for General Conditions construction items, provides a guaranteed maximum price and a bond and manages construction as a general contractor would. In some states a general contractor's license may be required. It is an open book process: the CM tracks all the costs for the client's and architect's review.

Bonding

The CM provides the client with a performance and payment bond. The CM will also require bonds from major subcontractors.[6]

The contingency

The CM's contingency This contingency belongs to the CM if it is needed but is returned to the client if it goes unused. It is a stated line item within the GMP that reflects the incomplete nature of the drawings and specifications which limits the CM's ability to predict the cost of unbid work with absolute accuracy. It may also cover unanticipated costs that arise during construction. The more work that is actually bid at the time the GMP is given, the smaller the contingency can be.

The client's contingency This contingency is for changes that the client inevitably will want to make during construction. The CM's contingency lies within the GMP, the client's contingency outside the GMP.

The GMP

The CM at Risk contract is a cost-plus-a-fee contract with a guaranteed maximum. It is the sum of the CM's fee, the CM's contingency, the General Conditions construction, all the subcontracts, plus an estimate for unbid subcontracts. The CM agrees to pay for costs that exceed the GMP and are not a result of changes in the contract documents.

[6] Texas Government code, Chapter 2253 requires bonding for "*contracts for construction, alteration, or repair of a public building or completion of any public work: (1) performance bonds for construction in excess of $100,000; (2) payment bonds for all construction in excess of $25,000.*" Other states have similar regulations.

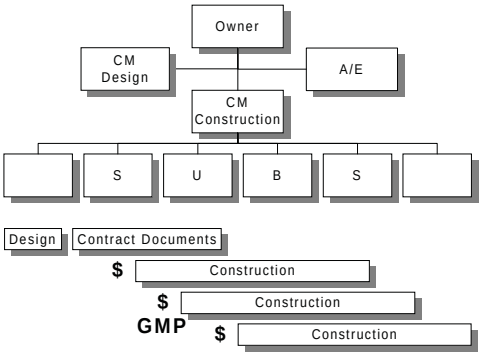
page 6 The GMP is subject to adjustment if the client or the AE makes changes. If the CM gives a GMP prior to the completion of construction documents, and if items not logically implied by the GMP documents are later added to the construction, the CM may in-

The GMP is subject to adjustment if the client or the AE makes changes. If the CM gives a GMP prior to the completion of construction documents, and if items not logically implied by the GMP documents are later added to the construction, the CM may increase the GMP.

CM at Risk and fast-track

With CM at Risk, construction can start before the AE finishes the contract drawings. However, most clients want a GMP before construction begins. A GMP can be given at any time in the process, but there's a right and a wrong way to do so.

The wrong way If the AE brings all of the contract documents to partial completion and then asks the CM for a GMP, there is potential for conflict. The CM can't get enforceable subcontracts with incomplete drawings. The CM must rely on the CM's own estimates or must get unenforceable estimates from subcontractors. The process can work with competent people on the project team, but it is not legally sound. Disputes may arise over what was logically implied but not included in the incomplete plans and specifications. Put in this position, a CM is apt to estimate the work conservatively and include large contingencies. That will reduce the budget the AE has to work with. Conversely, if the CM underestimates the figures, claims and conflict will follow.



If a GMP is given before the completion of contract documents it is essentially a defined price for an undefined product.

"Guaranteed Maximum Price" has a wonderful ring. A good CM makes it work, and with an adequate contingency, the process goes smoothly. But the CM may not anticipate items of work not yet defined in the construction drawings when the GMP is given. If the CM underestimates unbid work, or if the AE and owner make capricious changes or additions, the CM will submit change orders and claims, and the old adversarial relationship returns.

The right way A better approach is to bring a *part* of the contract documents to *100%* completion. Then the CM can execute enforceable contracts with subcontractors for the completed part. The CM can add an appropriate contingency to the unbid portion and give a sound GMP. A 7.5% contingency on the entire project amounts to a 15% contingency on the unbid portion if half of the work is bid.

If the GMP is given before contract documents are complete, it's a defined price for an undefined product. It has no more enforceability than a lump sum competitive bid based on incomplete contract documents. In either case, the size of the contingency inevitably varies with the completion of the contract documents. A GMP based on completed construction documents minimizes risk and the contingency.

What not to do

Shared savings The CM should not share in the unused portion of the contingency that is part of the GMP. Some clients feel that they should share a portion of that contingency with the CM to motivate the CM to save money. That is unwise, for the following reasons:

- A client has balanced goals of cost, schedule and quality. If a CM is rewarded for achieving only one of these goals, the others may suffer.
- Trust is vital for the success of the project. If the CM shares in cost savings, the client and AE may suspect the CM is inclined to sacrifice quality or schedule to save money whenever the CM advises the client to reduce the cost of materials, methods or systems. That will hurt the culture of teamwork that is a major benefit to the CM at Risk concept.
- If the CM receives a portion of the unused contingency, the client may feel that the CM might set the contingency unfairly high or might pad estimates of unbid work when the GMP is given.

Many clients ask themselves what incentive a CM has to save them money. The answer is clear. In an environment where GCs must win jobs by competitive bid, they are motivated to maximize profits on each job. In this system, the major incentive is financial. But when the selection standards reflect qualifications rather than price, the CM's motivation changes. Now the CM's motivation is to build trust and confidence, provide service and obtain a good reference and repeat work. Another job is far more important than excessive profits on change orders.

Self-performed work It is bad practice for a CM to furnish construction labor or do any portion of the construction work. This leads to a perceived (or real) conflict of interest, and perceptions are critical in the public sector. CMs should take bids for all construction work to give everyone a fair chance at the work. Then the CM should see to it that each subcontractor delivers what is specified. A CM cannot perform that role on work done by the CM's own employees without being exposed to criticism for conflict of interest. And if a CM bids against other subcontractors, the subcontractors may feel that the CM has an advantage and cry foul.

Equipment For similar reasons, CMs should not furnish construction equipment. Even though the CM might refer to some authority for fair rental rates, such rates are notoriously overstated. Also, there have been situations where CMs "parked" equipment on-site when it was not needed elsewhere. Even if the CM is scrupulously fair, perceptions can be misleading.

Terms of Payment

The payment structure commonly used for CM at Risk can confuse inexperienced clients. It is typically broken down into the following categories.

Fee

Typically the fee is a fixed lump sum, but it can also be a percentage. The fee covers the CM's home office overhead, profit, and design phase services. It is usually broken down into two parts, design and construction. The fee usually runs 4–6 % of the construction cost.

General Conditions costs

Reimbursable General Conditions costs are typically divided into two categories.

On-site overhead This refers to the cost (without home office overhead and profit but including benefits) of the CM's full-time, on-site management staff and the cost of an on-site office and office equipment, utilities and communications. Some clients ask that the CM fix these costs and include them in the fee. However, making them reimbursable at cost (without overhead and profit) is usually better. The CM can adjust the site staff based on the needs of the project without the client feeling that the CM is acting out of self-interest. It provides a conflict-free approach to making corrections.

General Conditions construction This refers to the cost of non-permanent construction work that is necessary to support subcontractors. This work can include a job-site trailer with office equipment, communications and printing machines, tools, barricades, security fencing, signs, temporary power, utilities, clean-up services, site toilets or perhaps gravel for a workers' parking area.

A CM can put these work items into a subcontract or procure them directly. For instance, the gravel, barricades or site toilets could be included in the package of work done by a foundation contractor. However, the foundation contractor will likely add overhead and profit to those costs. If the CM procures those items directly, the CM takes on more work and is reimbursed at the cost of the purchase without markup. That saves money for the client and makes more work for the CM. So a CM that proposes a large budget for General Conditions construction items may be saving money for the client and assuming extra work without extra fee. Therefore, the cost of General Conditions construction should not be considered part

of the CM's compensation, and it should not be considered when comparing one CM's fee to another. It should be reviewed in detail to compare the competing CMs' understanding of the project.

Subcontractor costs

The CM is reimbursed the cost of the subcontracts without markup. Typically the CM doesn't pay the subcontractors until the CM is paid. The CM agrees to a payment schedule with the subcontractors based on industry standards for payment and retainage, percentage complete, material on site and/or a cost-loaded CPM diagram. The CM calculates the amount due and then gains concurrence from the AE and approval from the client. The client pays the CM who promptly pays the subcontractors.

Minimizing Risk and Cost

The old way

Traditional construction projects are characterized by high risk. In traditionally bid construction contracts, subcontractor prices are verbally collected in a few weeks with little legal support and frequent misunderstandings about scope responsibility among subcontractors and general contractors.

Subcontractors often align with their favored general contractors, providing them with a lower price than their competitors. Yet no one general contractor has the entire set of best prices. And in the bidding process subcontractors float high bids early in the bidding cycle, afraid that their bid will leak to their competitors. As the bid deadline approaches, the prices drop. The lower prices aren't always communicated to all the bidders. Furthermore, some subcontractors will pad bids, anticipating bid shopping after the contract is awarded. Competition among the subcontractors may be limited. Friendly relationships may influence who works on the project. The process is unprofessional, unbusinesslike and not cost-effective.

A GC is therefore aligned with subcontractors, manufacturers and suppliers in opposition to the AE and the client. Conflict is common. Plans and specifications always contain errors, clients always make changes, and bids always contain either speculation or outright errors. The result is strained relationships, and the work inevitably suffers.

The new way

CM at Risk minimizes risk for everyone. The experience, wisdom, creativity or engineering skills of AE and CM firms are combined at the table with the client's understanding of requirements. This group has more complete control and unity. Together they command the classic tripod of functional requirements, design and construction. They are non-adversarial. They collaborate to make decisions. The CM can review the AE's drawings and often catches errors, reducing the AE's and client's risk. The AE can review the CM's approach to the work, making helpful recommendations. The CM is allowed to take bids or proposals from subcontractors during completion of contract documents, prior to the GMP, which reduces the CM's risk and provides useful input to design. The procedure is more methodical, manageable, predictable and less risky for all.

The procurement of construction is also more business-like. Each trade contractor has a fair shot at being the low bidder without fear of bid shopping.

Each must deliver the best bid to get the project, so the client winds up with the low sub-set of prices. Competition in the community is more equitable: all subcontractors have a fair shot at the work.

A contingency within the GMP covers unexpected but justifiable costs, and a contingency above the GMP allows for client changes. As long as the subcontracts are within the GMP they are reimbursed to the CM, so the CM represents the client in negotiating inevitable changes with subcontractors.

Summary

The CM at Risk process has many characteristics attractive to clients, AEs and CMs.

1. The client makes selections based on qualifications, so the client hires better CMs. Because they are selected for their qualifications, CMs are inclined to maximize their service and their allegiance to the client in order to obtain repeat work and a good reference.
2. All parties collaborate. CMs provide advice on construction cost and technology during design to keep the project within budget and reduce design error; AEs are more involved in the construction process and make recommendations that are helpful to the project's success.
3. Costs and fees are out in the open, helping eliminate adversarial relationships among the contractors, clients and architects.
4. Elimination of bid shopping also results in lower costs and better relationships in the community.
5. The CM can minimize risk to all by taking many or all trade bids prior to providing the GMP. Minimizing risk means minimizing cost to the client.

3D/International, Inc.

Architecture, engineering, construction management and environmental services

1900 West Loop South, ***Houston*** *TX 77027, 713/871-7000 ◎ 112 Pecan St, 23rd Floor,* ***San Antonio*** *TX 78205, 210/227-2500 ◎ 12221 Merit Dr., Suite 1460,* ***Dallas*** *TX 75251, 972/308-8118 ◎ 1011 West Loop 281, Suite 9,* ***Longview*** *TX 75601, 903/297-4673 ◎ 1331 Garden Hwy., Suite 200,* ***Sacramento*** *CA 95814, 916/447-7600 ◎ 12100 Wilshire Blvd., Suite 1950,* ***Los Angeles*** *CA 90025, 310/447-7895 ◎ 1640 Powers Ferry Rd., Building 21,* ***Marietta*** *GA 30067, 770/980-2512 ◎ 1001 G St. NW, Suite 875,* ***Washington*** *DC 20001, 202/478-2500 ◎ 67 E. Weldon Ave., Suite 121,* ***Phoenix*** *AZ 85012, 602/230-0672 ◎ 781 Neeb Road,* ***Cincinnati*** *OH 45233, 513/922-8199 ◎ 7039 Maynardville Hwy., Suite 7,* ***Knoxville*** *TN 37918, 423/922-4305 ◎ 1000 Legion Place Suite 1440,* ***Orlando*** *FL 32801, 407/648-4990*

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Chip Weber, Supervisor
Flathead National Forest
650 Wolfpack Way
Kalispell, MT 59901

Dear Supervisor Weber;

Montana's Whitefish Range is an exceptional example of all that is prized in our local community; from its timbered mountain crest to its river-bottom boundary with Glacier National Park, the Whitefish Range is our playground, our workplace, our water source, our refuge, our hunting ground, and, most importantly, our home. Along with the many opportunities this inheritance provides, we also are heir to a legacy of stewardship – a responsibility to protect and preserve the beauty and the economic integrity of these lands, as have those who came before us.

Community members involved in the Whitefish Range Partnership (WRP) realized that we have a unique opportunity to impact the future of these lands and our adjacent towns; that through cooperation between stakeholders and local residents we can ensure a balanced and dynamic approach to both land management and community development; and that local solutions, reached through honest discussion, can produce both conservation and economic strength, while at the same time increasing recreational opportunities for a diversity of forest users.

The adjacent Glacier National Park was established in 1910 to ensure the enjoyment and use of future generations through careful stewardship of natural resources. Likewise, a shared community vision for the Whitefish Range and North Fork Flathead River Valley can ensure that the benefits of both traditional and modern land uses continue. The recommendations made by WRP members seek to maintain the distinctive qualities of this mountain region, while still providing a space for multiple uses by diverse municipal, residential, recreation, and economic interests.

The WRP proposes a balanced combination of timber harvest, prescribed fire, stream and fisheries management, vegetation and weed management, wildfire mitigation, watershed protection/restoration, recreation, and wildland/wildlife conservation. Specifically:

- The WRP recommends a combination of timber harvest and prescribed burning to minimize negative impacts of wildfires and their cost to the public, including costs to city water supplies. This management plan also encourages landowners to secure their properties and manage private-land forest fuels around structures.
- The WRP recommends maintaining and upholding current standards for streamside management, concentrating on retaining and improving native fish populations. These efforts include enacting the provisions of the North Fork Watershed Protection Act through forest planning, and without future water quality or quantity loss.
- The WRP recommends a landscape-scale management plan to guarantee ecosystem resiliency and variety, without compromising commercial certainty for the timber industry. This includes a proposed increase of the "Sustainable Timber

Base" from 54,000 acres to roughly 89,500 acres. Weed management recommendations are focused around invasive species, with weed-response plans for front-country and backcountry, as well as for river corridors.

The WRP agreement, in partnership with Whitefish Mountain Resort, also recommends expanded "front-country" recreation on town-adjacent forest lands, as well as increased backcountry access and integration of community and forest trail systems. This recommendation increases the miles of trail for mountain bikers, hikers, snowmobilers and others, thus providing better access for locals and tourists alike. While Glacier National Park remains a tremendous draw for summertime visitors, bolstering these park-based activities with a broader range of year-round Whitefish Range opportunities will help keep our economy thriving, and keep people in our towns and utilizing our services.

Similar trail system additions may be possible for summer wheeled recreation, as well. The Whitefish Range Partnership recommends that the Flathead National Forest assess the potential for an increase in single-track motorcycle recreation in the southeast portion of the Whitefish Range. This also would add yet another facet to regional tourism, and potentially attract an expanded demographic.

While ease of access is essential to our continued use and enjoyment of the Whitefish Range, the WRP also has sought to provide a place for more traditional experiences associated with backcountry solitude. North of Whitefish Mountain Resort are opportunities for new and improved backcountry trails, tracking into recommended wilderness as well as into roadless refugia for backcountry hunters and anglers.

The common thread in the WRP recommendations is community. The Whitefish Range and North Fork Flathead River Valley are rich in rural beauty and historic tradition; as a community, we can plan together for a dynamic future on these lands so they may be enjoyed for years to come.

As signators to this letter, we ask that the Flathead National Forest implement the WRP Agreement in its entirety as part of the Flathead National Forest planning process. This thoughtful and Montana-made solution for our national forest was built through honest engagement and community partnership, and represents the diverse interests of the many people who live, work and recreate directly on these US Forest Service lands.

Sincerely,

John Muhlfeld
Mayor

THE
WHITEFISH RANGE
PARTNERSHIP
AGREEMENT
A community vision for a special place
N
W
E
S
Waterton - Glacier International Peace Park
Wigwam River
Port of Entry Roosville
UNITED STATES / CANADA BORDER
Mt. Hefty
Tuchuck Mtn.
Stahl Peak
Eureka
Mount Thompson-Seton
Trail Creek Rd.
Trail Creek
Hornet Mtn. Lookout
North Fork Road
Kintla Lake
Kintla Peak
Bowman Lake
Quartz Lake
North Fork of the Flathead
Grave Creek
Whale Creek
Moose Creek
Mt. Marston Lookout
Nasukoin Mtn.
Red Meadow Creek
Polebridge
Hay Creek
Stryker Mtn.
Kootenai National Forest
Logging Lake
Cyclone Lookout
Coal Creek
Coal Ridge
Glacier National Park
Stryker
Swift Creek Rd.
Glacier View Mountain
Camas Road
U.S. Hwy 93 N.
Big Creek Environmental Education Center
Olney Crossover Rd.
Werner Peak Lookout
Lake McDonald
Olney
Big Creek
Canyon Creek
North Fork Rd.
Standard Peak
Whitefish MountainResort
West Glacier
Whitefish
Columbia Falls
Tally Lake
U.S. Hwy 40
U.S. Hwy 93 S.
U.S. Hwy 2
Snowmobiling
Mountain biking
ATV
Kayaking
Rafting
Equestrian
Fishing
Boat Access
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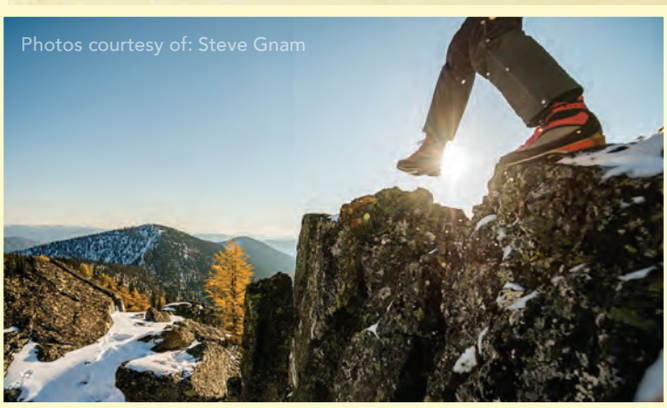
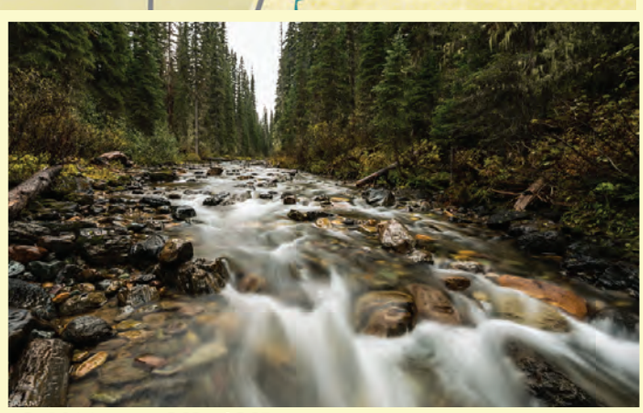
Logging
Lookout
Trailer camping
Tent camping
Haskill Basin


Photos courtesy of: Steve Gnam



• THE WHITEFISH RANGE •
PARTNERSHIP AGREEMENT

WRP MEMBERS:

Bob Brown
Chair

Rick Anderson
motorized recreation

Noah Bodman
Flathead Fat Tires

Chas Cartwright
fmr GNP Superintendent

Allen Chrisman
North Fork Compact

Flannery Coates
Polebridge Mercantile

Cris Coughlin
Montana Raft Co. &
Glacier Wilderness Guides

Bill Dakin
Columbia Falls Realtor

Tom Edwards
North Fork Compact

Greg Gunderson
Forestoration Inc

John Frederick
North Fork Preservation Association

Dave Hadden
Headwaters Montana

John Hanson
Montana Logging Association

Annemarie Herrod
North Fork landowners

Robert Holman
Flathead Snowmobile Association

Sarah Lundstrum
National Parks Conservation Association

Paul McKenzie
FH Stoltze Land & Lumber

Cecily McNeil
North Fork Compact

Chester Powell
Whitefish Mountain Resort

Debo Powers
North Fork Landowners Association

Amy Robinson
Montana Wilderness Association

Greg Schatz
Back Country Horsemen of the Flathead

Roger Sherman
Sustainability Fund, Lex Blood

Larry Timchak
Trout Unlimited

Steve Thompson
Whitefish Legacy Partners

Frank Vitale
Backcountry Hunters and Anglers

Bill Walker
North Fork Preservation Association

Larry Wilson
North Fork landowner

This map was produced by
Headwaters Montana
in partnership with the
Montana Wilderness Association

Illustration & design by
www.jennifergolandesign.com

04/2014

Summary of Individual Agreements

WILDLAND AND PRESCRIBED FIRE

The Partnership has agreed to manage fire using all the tools in the toolkit, including timber harvest, prescribed fire, and private landowner responsibility for managing fuels on their property and around their structures. This recommendation will help reduce the impact of wildfires, and their cost on everyone.

FISHERIES AND STREAMSIDE MANAGEMENT

The Partnership recommends maintaining current standards for streamside management, placing a high standard on retaining and improving native fish populations, and reducing wildfire effects on fish habitat. We also recommend Trail Creek and its tributaries as "eligible" under the Wild and Scenic Rivers Act. In addition, the Partnership recommends protecting water quality and quantity — as well as long-term timber and recreation opportunities — through adoption of specific land management policies as proposed in the North Fork Watershed Protection Act.

HI-INTENSITY RECREATION

The Partnership recommends a "Front Country Recreation" management area that includes Whitefish Mountain Resort and neighboring lands. This will allow better integration of recreation in the southern Whitefish Range for all users, especially mountain bikers and trail users.

SNOWMOBILING

The Partnership recommends improving snowmobile play areas in the southern Whitefish Range, while maintaining existing snowmobiling in the rest of the Range, in accordance with Amendment 24. This will provide a large increase in recreation opportunities for snowmobilers, and allow North Fork landowners to commute across national forest land.

SUMMER WHEELED MOTORIZED RECREATION

The Partnership recommends that the Flathead Forest assess possible opportunities for additional single-track motorcycle recreation in the southeast portion of the Whitefish Range.

TIMBER AND VEGETATION MANAGEMENT

The Partnership recommends landscape-scale management to help ensure ecosystem resiliency and integrity, and commercial certainty for the timber industry. This recommendation would increase the potential "Suitable Timber Base" from 54,000 acres to 89,500 acres an increase of about 45 percent and potentially available once the grizzly bear is removed from the endangered species list.

BACKCOUNTRY TRAILS

The Partnership recommends providing a range of backcountry trail experiences, moving from hi-intensity use near Whitefish Mountain Resort in the south to more primitive experiences moving north. It also recommends a trails assessment in specific areas, looking at trail uses, trail reconstruction and/or new trail construction. These recommendations will provide improvements for the backcountry trail using public.

WEED MANAGEMENT

The Partnership recommends an adequately funded invasive species plan, based on front-country, backcountry, and river corridor management using public/private partnerships and an interagency network. This will lead to reducing or eliminating weeds to the benefit of private landowners and publicly owned lands.

WILDLIFE

The Partnership recommends maintaining the world-class wildlife habitat and wildlife populations found in the Whitefish Range. In particular, the Partnership recognizes the critical habitat found in portions of the northern range. These recommendations will benefit everyone and help maintain hunting, wildlife viewing, and habitat connection to Canada.

WILDERNESS

The Partnership recommends a wilderness section that includes a wilderness recommendation for the Hefty, Tuchuck and Thompson Seton roadless areas. It also provides important fire protection for North Fork landowners by adjusting recommended wilderness boundaries to provide a firefighting "buffer" around private property. This recommendation will ensure an enduring resource of wilderness in the Whitefish Range.

CONTACTS:

Bob Brown, Chairman

Sarah Lundstrum, Secretary
(406) 862-6722

MEDIA COVERAGE LINKS:

http://www.flatheadbeacon.com/articles/article/after_the_timber_wars/36720/

http://missoulian.com/news/state-and-regional/longtime-white-fish-range-adversaries-celebrate-accord-on-land-use-plan/article_0c043518-54be-11e3-aadb-001a4b-cf887a.html

Chuck Stearns

From: Kevin Gartland <kevin@whitefishchamber.org>
Sent: Wednesday, October 29, 2014 12:11 PM
To: 'Chuck Stearns'
Subject: RE: City Hall Committee opening

Hey there:

Jeff volunteered at our Board meeting last week, and the Board voted unanimously to submit his name for nomination. Dan Graves was at the meeting and didn't mention anything about Brian applying for the same spot, so I'm not sure what to make of that.

If the Council is going to consider making the appointment next Monday, should Jeff be there to answer questions, etc.? If so, I'll clue him in … or you can contact him directly (jeff@nationalparksrealty.com, or 862-8400).

KOG

Kevin O. Gartland
Executive Director
Whitefish Chamber of Commerce
307 Spokane Avenue; Suite 103
Whitefish, MT 59937
(406) 862-3501 Office
www.WhitefishChamber.org

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

received
10-31-14

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ATTORNEYS AT LAW

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October 30, 2014

Mary VanBuskirk
Whitefish City Attorney
PO Box 158
Whitefish, MT 59937-0158

Re: PUD density blending issue for Whitefish Crossing application, 6348 Highway 93 South, WPUD 14-04/WZC 14-08

Dear Mary:

This firm represents Montana Development Group in regards to the above referenced application for PUD approval currently pending before the Whitefish City Council. I am writing to address the legal issues raised in attorney Tom Tornow's letter of October 27. I ask that my letter please be included in the packet being supplied to the City Council.

Mr. Tornow's analysis does not recognize that a PUD is actually the creation of a new zoning overlay, and that oversight leads him to assert that the Zoning Code does not allow a PUD to blend the combined allowed densities of the underlying zoning districts of the land subject to the PUD.

The most applicable Zoning Code provision for the land at issue in this application is Subsection 11-2-2(C), as that subsection addresses tracts of land that are subject to two different zoning use districts. That Subsection states as follows:

> C. Guidelines: District boundaries shall, except for unique conditions or circumstances, take into consideration property boundaries as platted and every effort shall be made to not divide a platted lot, parcel or tract of land into two (2) or more use districts.
>
> If, however, a property is divided into two (2) use districts, the property may be utilized in conformance with one zoning district or the other as long as the use is confined to that portion of the property for which it is zoned. The remainder of the lot lying within the other zoning classification will remain open. **This is not meant to preclude the possibility of the owner applying for a zone map amendment or subdivision of the lot to address the situation.** (Emphasis added).

The last sentence of Subsection 11-2-2(C) is very important, and I have highlighted it. In order to address the multiple zoning use districts issue, the pending application is for a "zone map amendment" in the form of a PUD zoning overlay. This is exactly what the Zoning Code

anticipates an owner to do in this type of situation, as the PUD provides a flexible and cohesive manner of dealing with the two zoning districts that this parcel is subject to.

The application does not deviate from the densities allowed for this single parcel of land. Instead, the application complies with Subsection 11-2S-5(B)(1) by simply adding together the number of residential units that this parcel is allowed pursuant to the PUD regulations for the different zoning use districts and then requiring the precise location of those units to be in a reasonable and coherent placement on the parcel. The allowed density must be considered for the parcel as a whole as subject to the PUD, not just for portions of the parcel on a piecemeal basis. This is because the PUD combines the two underlying zoning districts into one new PUD zoning district.

Planning Director David Taylor in his October 28 letter to the City Council pointed out five examples of previously approved PUD applications that blended both the densities and uses of the underlying zoning districts. These examples include blending of densities in the same manner as the current application is requesting. The blending of development entitlements in a PUD zoning overlay is clearly a well accepted interpretation of the Zoning Code that has multiple precedents over the years.

Mr. Taylor states in his letter that "blending the uses and densities from two zoning districts is not considered a deviation." Section 11-7-3(A) of the Zoning Code states that Mr. Taylor, as the Zoning Administrator is "charged with the administration, interpretation and enforcement of these zoning regulations." Mr. Taylor's interpretation of the Zoning Code in regards to the blending issue is unequivocal and supported by past approvals of PUD applications by the City Council.

In conclusion, the blending of the densities in a PUD zoning district is allowed by the Zoning Code and supported by prior PUD approvals by the City Council. Therefore, there are no legal restrictions on the City Council's ability to approve this PUD application.

Sincerely,

VISCOMI, & GERSH, PLLP

Judah M. Gersh

JMG/cas

Received 11-3-14

CITY OF WHITEFISH
CASH RECEIPT

Printed 15:31:08 - 11/03/14

Batch:15095
Transaction:144

Reference Number:
Name: THOMAS TORNOW
Address:

Item(s) Description:
MISC REVENUE 990.00

Check # 5847	990.00
Cash Paid	
Credit Paid	
Less Change Given	( )
TOTAL:	990.00

Comments:
notice of appeal

v, P.C., *Attorneys-at-Law*
ıue, Whitefish, MT 59937
(406) 862-7451 Website: www.tornowlaw.com

Katherine C. Troiano, Paralegal
katherine@tornowlaw.com
Justin E. Pfaff; Legal Assistant
assistant@tornowlaw.com

ıer 3, 2014

Notice of Appeal
Hand Delivered

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ır Trac (a/k/a Dear Track a/k/a Whitefish Crossing)
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ıg Regulations; and

cifically aggrieves my clients by adversely impacting

Enclosed is a check for $990, which we understand to be the fee prescribed by the City Council.

Pursuant to Section 11-7-6(B)(6) of the City's Zoning Code, this appeal stays all proceedings in the matter appealed from unless the Zoning Administrator certifies to the Board of Adjustment that, by reason of the facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. There is no question in this case that a stay would not cause imminent peril to life or property. As such, this appeal stays all proceedings on the Applications until a final decision on the appeal.

Received 11-3-14

Thomas T. Tornow, P.C., *Attorneys-at-Law*

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November 3, 2014

The City of Whitefish
c/o Dave Taylor
Zoning Administrator

RE: Notice of Appeal
Hand Delivered

To whom it may concern:

I represent the Park Knoll Estates Homeowner's Association, comprised of persons who are homeowners within the Park Knoll Subdivision.

The Park Knoll Subdivision is near the Dear Trac (a/k/a Dear Track a/k/a Whitefish Crossing) property that is the subject of a Re-zoning Application and a Planned Unit Development (PUD a/k/a WPUD) Application ("the Applications"); and is the subject of written decision or interpretation by the Whitefish Zoning Administrator dated October 28, 2014, concerning those Applications ("the Decision or Interpretation").

By this letter, my clients allege that:

1. In the Decision or Interpretation, the Zoning Administrator made an error in the interpretation of the City's Zoning Regulations; and

2. The erroneous interpretation specifically aggrieves my clients by adversely impacting the value of their homes.

Enclosed is a check for $990, which we understand to be the fee prescribed by the City Council.

Pursuant to Section 11-7-6(B)(6) of the City's Zoning Code, this appeal stays all proceedings in the matter appealed from unless the Zoning Administrator certifies to the Board of Adjustment that, by reason of the facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. There is no question in this case that a stay would not cause imminent peril to life or property. As such, this appeal stays all proceedings on the Applications until a final decision on the appeal.

If you have any questions, desire additional information, or if we have omitted anything necessary for the appeal, please contact me at your convenience.

Sincerely,

THOMAS T. TORNOW, P.C.

By: Thomas T. Tornow

Enc.

cc (w/o enc.): City Clerk
Mary VanBuskirk (*via* email)
City Council
Client