CITY COUNCIL WORK SESSION
CITY COUNCIL CHAMBER CONFERENCE ROOM
1005 BAKER AVENUE
MONDAY, FEBRUARY 1, 2016, 5:00 PM

1. Call to order

2. Discussion of interest in a Local Climate Action Plan – Steve Thompson and others
    a. Local planning committee to report on local stakeholder conversations and to frame the options for scope and process;
    b. Chase Jones of City of Missoula to talk about the City of Missoula's emissions inventory and the City of Missoula Conservation and Climate Action Plan, adopted by the City Council in 2013;
    c. Amy Cilimburg and Chase Jones to discuss the public-private Climate Smart Missoula initiative led by the Missoula Community Foundation as well as a quick overview of what other Montana communities are doing;
    d. Q&A with Steve, Amy, and Chase and City Council discussion;

3. Public Comment

4. Direction to City Manager on above topics

5. Adjourn

Chuck Stearns

From: Steve Thompson <sthompsonmt@gmail.com>
Sent: Monday, January 25, 2016 9:24 AM
To: Chuck Stearns
Subject: Re: February 1st work session
Attachments: Missoula conservation and climate action plan summary.pdf; missoulacommunity_climatesmartactionplan_v1.0section1.pdf; 12.1.2015 MTN.pdf; Draft climate solutions project framework 1.25.2015.docx

Hi Chuck,

I'll swing by your office in 40 minutes for our 10 a.m. Attached are materials that I suggest should be included in Council packets.

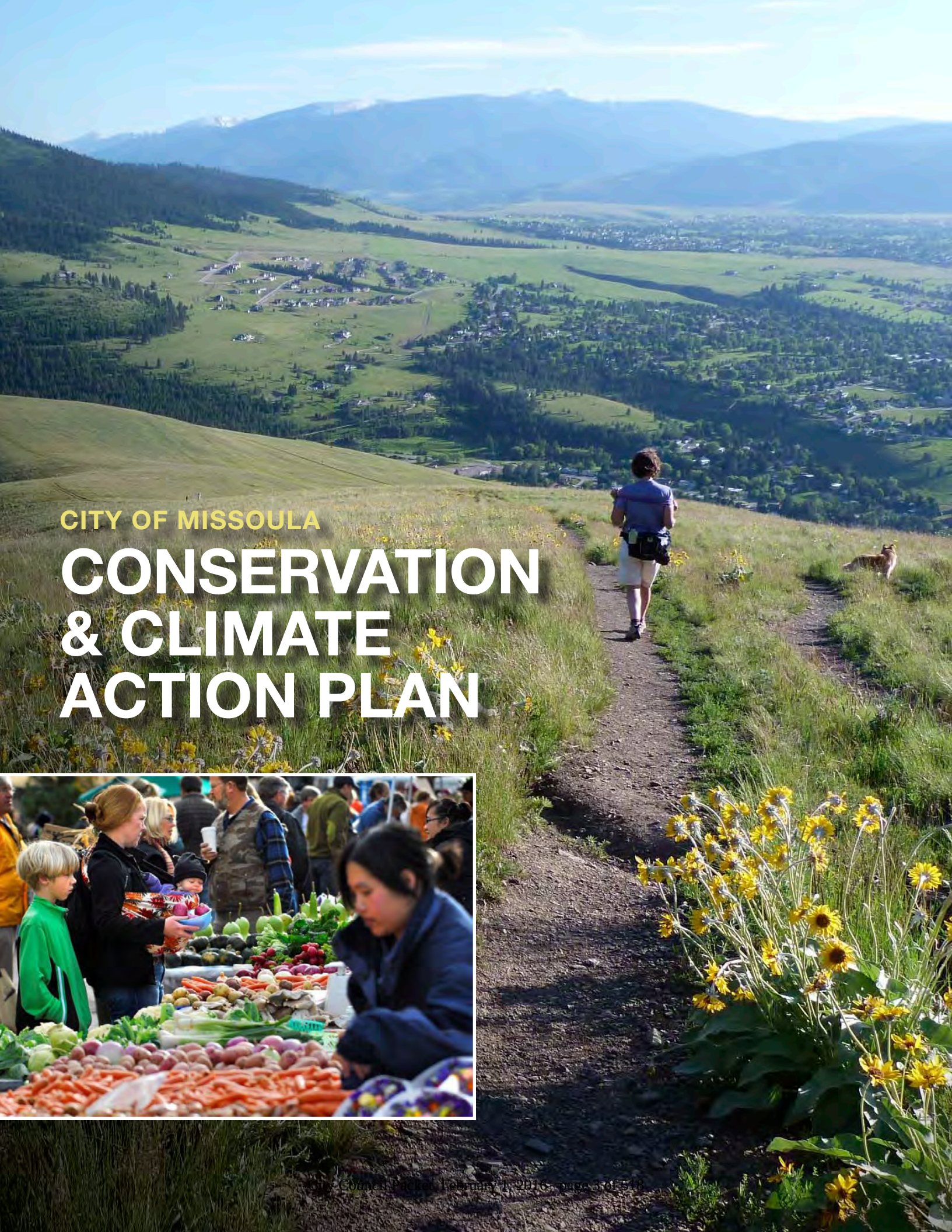
Missoula Conservation and Climate Action Plan Executive Summary - 9 pages
Climate Smart Missoula Executive Summary - 11 pages
December 1 Mountain Town News - 8 pages
Draft framework for community climate solutions project - 2 pages

Web links that might be helpful:
City of Bozeman - Bozeman Climate Partners: http://bozemanclimatepartners.net/
City of Missoula - http://www.ci.missoula.mt.us/1709/Conservation-Climate-Action-Plan
Missoula Community Foundation, Climate Smart Missoula: http://www.missoulaclimate.org/

Steve

I'm thinking we may need the full 2 hours for the work session. Here's what I had in mind:

- 15 minutes for our local planning committee to report out on local stakeholder conversations and to frame the options for scope and process
- 15-20 minutes for Chase Jones to talk about City of Missoula's emissions inventory and the City of Missoula Conservation and Climate Action Plan, adopted by the city council in 2013
- 30 minutes for Amy Cilimburg and Chase Jones to discuss the public-private Climate Smart Missoula initiative led by the Missoula Community Foundation as well as a quick overview of what other Montana communities are doing
- 30 minutes Q&A with Amy and Chase council discussion and direction to staff or designated councilors
- 10 minute public comment



CITY OF MISSOULA

CONSERVATION & CLIMATE ACTION PLAN

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LETTER FROM THE MAYOR'S CLIMATE ACTION PLAN TASK FORCE

Dear Friends,

What makes the City of Missoula such a wonderful place to live, work, play and engage with family, friends and neighbors?

Some say it's the easy access to rivers, mountains, and open space. Others talk about the mix of vibrant local businesses, sporting events, outdoor concerts, farmer's markets, and family-friendly gatherings that make our city so unique. Some just say it's something intangible – the quality of life in Missoula that's pretty darned exceptional.

We, the members of Missoula's Climate Action Plan Task Force, believe that Missoula is a wonderful place – and keeps getting better – in large part because of its people. Business leaders, teachers, government employees, students, and citizens routinely work hand-in-hand with elected leaders to protect our public resources, support the local economy, and help care for this community.

We also understand that when challenges come up, community members must rise to meet them. And because we believe our city is unique, we want to help craft good decisions that will protect it for the long term. We can't predict the future, but we do know that our city will keep growing and changing — and that we'll need to find new, efficient ways to power our buildings and provide goods and services to citizens. And, with climate change already causing drought, declining snowpack, and shifts in our native plant and animal species, it is ever more critical to protect the clean air and clean water that are the lifeblood of our economy and our community.

In 2009, the City of Missoula took an inventory of its municipal energy use and carbon footprint, and Mayor John Engen convened this Task Force to move from research to action. We, the members, include small business owners, City employees, conservation professionals, University representatives, and more. Over the course of a year, we consulted with an even wider, more diverse group of individuals to develop conservation actions that will streamline our city-wide operations, reduce costs, decrease consumption, and build a safer future for the City of Missoula. We feel that this plan—although ambitious—is absolutely necessary. We also recognize that as we move forward, the plan will likely evolve and improve thanks to the ingenuity and dedication of Missoula's City government.

Many thanks are due to the City employees, local citizens, business leaders, and groups who contributed to this plan. In particular, Chase Jones and Andrew Valainis deserve special recognition for all their hard work and for keeping the rest of us on track. And most importantly, we thank Mayor Engen for convening this group and trusting us to create a plan this community deserves.

Please take a look at what our City can do, and then help support our local leaders as they implement these actions. A more efficient and sustainable Missoula won't happen overnight, and it won't happen without you. Together, we can create common-sense solutions that protect our valued way of life in the face of a changing climate. Together, we can set an example worthy of Missoula.

Thank you.

The Mayor's Climate Action Plan
Task Force, Missoula

LETTER FROM THE MAYOR

November 5, 2012

Greetings and welcome to our Conservation & Climate Action Plan.

Good work takes time, even when it's urgent.

There's no question that the City of Missoula feels a sense of urgency around climate change and our responsibility to do our part to temper it. We made a commitment years ago to our citizens and fellow municipalities to join in the effort to use less energy and generate fewer greenhouse emissions.

The work has been detailed and challenging. First, we had to commit. Then we had to understand what our carbon footprint looks like. Then we had to acknowledge that we have to balance our responsibilities to deliver services to our citizens with our responsibility to protect our environment for generations to come. Finally, we had to have a plan.

The plan in your hands is the product of the work of an extraordinary group of committed citizen volunteers with various areas of expertise who have created a practical way for the City of Missoula to become carbon neutral over time. It's smart, it's understandable and we've committed resources to ensuring it's put to work.

This is a good thing, a long time in the making, that will have consequences for many years to come. With this plan, we further commit to doing the right thing.

Sincerely,

John Engen
Mayor

ACKNOWLEDGMENTS

Prepared by

Chase Jones, *LEED Green Associate, Missoula Office of Planning and Grants*

Andrew Valainis, *Energy Corps Member, Missoula Office of Planning and Grants*

"Missoula "We picked carbon neutrality as a goal, because we believed that Missoula can get it done. Let's put our city on the map as having a dedicated and comprehensive program for mitigating our impacts to the climate."

- ROSS KEOGH

Task Force Members

Amy Cilimburg, *Montana Audubon (Task Force Co-Chair)*

Ross Keogh, *Sagebrush Energy (Task Force Co-Chair)*

Jill Alban, *Clark Fork Coalition*

Dan Daly, *Roseburg Forest Products Co.*

Chase Jones, *LEED Green Associate, Missoula Office of Planning and Grants*

Steve Loken, *Loken Builders*

Bryan von Lossberg, *Alternative Energy Resources Organization*

Ginny Merriam, *City of Missoula*

Cherie Peacock, *PE, LEED AP, University of Montana*

Robin Saha, Ph.D., *University of Montana*

Beth Schenk, *St. Patrick Hospital and Health Sciences Center*

Ben Schmidt, *Missoula City-County Health Department*

Jack Stucky, *City of Missoula*

Andrew Valainis, *Energy Corps, Missoula Office of Planning and Grants*

Krisztian Varsa, *University of Montana (Previous Energy Corps Member)*

Executive Summary

The City of Missoula has been engaged and involved in conservation and climate action-related commitments, projects, work and planning for many years as part of Municipal Operations. Each step has been an important block to a solid foundation of reducing energy consumption, saving money and contributing to a healthy, clean environment. This Municipal Conservation & Climate Action Plan (MCCAP) is the synergy of these activities and will serve as the formal roadmap and latest iteration of City actions to achieve and maintain commitments, resolutions and goals. Milestones include: joining the Cities for Climate Protection Campaign (1996), signing the U.S. Conference of Mayors' Climate Protection Agreement (1996), and conducting Missoula's first Greenhouse Gas Inventory (2009).

The City of Missoula believes that it is uniquely positioned to act as a leader and catalyst for positive action in the community through conservation and climate action planning. Operating efficiently and saving money is a high priority for the City. Conservation and climate action planning is an effective way to identify strategies that reduce energy and fuel consumption, lean operations, save money and free up funds to allow for long-term stability and viability. Climate change is a present and growing risk to Missoula's environment, economy, quality of life, and community. The City of Missoula is committed to taking action to mitigate greenhouse gas emissions, acting as a steward to sustain natural resources and our environment for future generations through conservation.

Emissions Inventory

In 2008, Missoula Mayor John Engen requested the assistance of University of Montana (UM) Environmental Studies professor Robin Saha and UM students in conducting a detailed municipal greenhouse gas (GHG) emissions inventory for Missoula. This inventory examines changes in emissions from fiscal years 2003 to 2008 to determine sectors and sources within sectors for which emissions are increasing, decreasing and remaining stable over time. 2008 was chosen as the "target year" because it was the most recent year for which an entire year's data could be obtained when the inventory began. Included in the inventory was a list of recommended actions that the City should take. One of them, and a logical next step, was to set a reduction target and develop a climate action plan. Municipal emissions for 2008 totaled 11,540 metric tons of Carbon Dioxide equivalents (mtCO2e). This value served as basis for the emissions targets and interim goals described in this document.

> "This plan, ambitious as it is, provides a solid foundation for a broader community climate action plan. It will no doubt catalyze Missoulians to craft a broader plan that sets us on the path to a sustainable and prosperous future, one that is fitting for this wonderful landscape and our children who will call it home."
>
> - AMY CILIMBURG

Emissions Reduction Targets and Goals

The greenhouse gas emissions target for the City of Missoula is to be carbon neutral by 2025. Carbon neutrality means that through conservation and reduction measures, along with the purchase of Carbon Offsets, the City's net greenhouse gas emissions will be zero. Achieving carbon neutrality requires the purchase of some form of Carbon Offsets[1] to account for emissions that remain after conservation and other forms of reduction have been fully explored. Short-term, interim goals were established to encourage beginning reduction activities as soon as possible and to help measure and track progress towards the overall carbon neutrality target. Those goals are:

Target:
Carbon Neutral by 2025

Interim Goal #1:
10% Reduction from 2008 baseline by 2015

Interim Goal #2:
30% reduction from 2008 baseline by 2017

Interim Goal #3:
50% reduction by 2020

Task Force and Working Groups

In 2011, Mayor Engen appointed members from his Mayor's Advisory Group on Climate Change and Sustainability, the Greenhouse Gas Energy Conservation Team, and other key community members to form a task force charged with drafting a Conservation & Climate Action Plan. The Task Force developed plan objectives and outlined emissions reduction goals. They then identified three areas of focus to craft the MCCAP: Fleet and Facilities, Internal Policies and Practices, and Renewable Energy and Offsets. These were created with focus areas that would be complementary parts of a holistic approach to emissions reductions. Each area of focus became a formal subcommittee or Working Group, with Task Force members self-assigning themselves based on expertise and interest. Next, Task Force members suggested additional working group members from the community for recruitment. From there, strategy creation was executed at the Working Group level while the Task Force served as the overall vetting and advisory body, as well as Plan and Process architect. Overlap and collaboration among strategies was intended and will increase the positive effects of each.

Strategies

The conservation and climate action strategies are the roadmap to reducing City energy consumption, costs, and emissions, and are steps to achieving conservation and climate action goals. In the Action Plan document, strategies include projected implementation costs, annual energy and dollar savings, and avoided emissions where possible. Estimates and projections are based on published research, case studies and best practices from established agencies, organizations and other municipalities, and are referenced in each strategy. Exact costs, savings, and avoided emissions will be tracked and reported after implementation where possible and will be evaluated on a case-by-case basis. Strategies included in this plan are intended to be the first in a series of Plan updates as we continually adjust to the changing realities of economics, technology, government policies, and our ecosystems. Table 0-1 below lists the strategies included in the Action Plan. They are organized alphabetically within each working group and subcategory.

[1] A Carbon Offset is one metric ton of carbon dioxide equivalent (CO_2e) that is taken out of the atmosphere, or one metric ton of CO_2e that is not emitted to the atmosphere. Carbon Offsets are generated by carbon sequestration or emissions reduction activities that are quantified, reported, verified, validated, and certified via the regulatory or voluntary market. ClearSky Climate Solutions: www.clearskyclimatesolutions.com

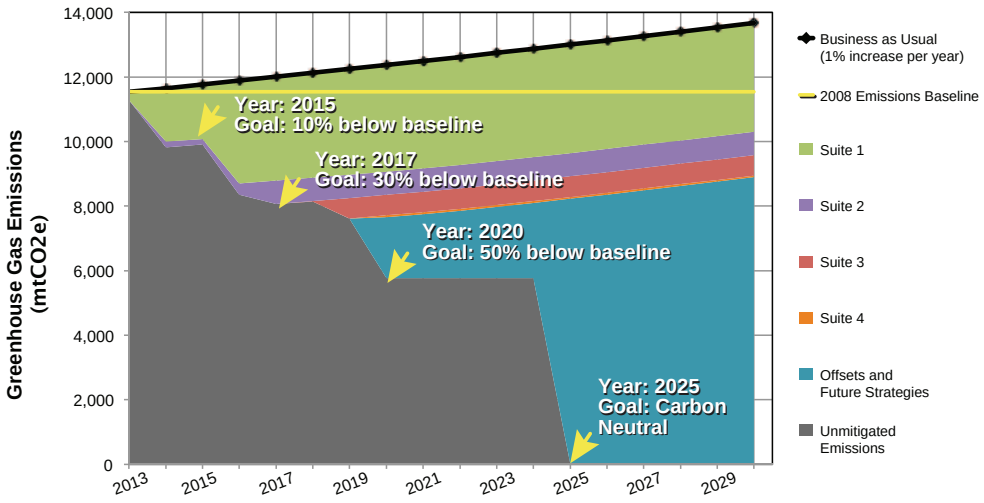

Figure 0-1: Impact of Implementing Strategy Suites on City of Missoula Greenhouse Gas Emissions, Showing Interim Goals

Implementation

Using the tentative timeline established by the Task Force for implementation of each strategy, the City will achieve all of the interim goals and carbon neutrality target described in this Plan. However, in order to achieve them, progress must begin immediately. Below are crucial steps that should be taken as soon as possible to facilitate implementation.

Establish a Full-time, Dedicated Staff

A dedicated, full-time staff member to oversee this Plan is needed to successfully implement recommended strategies across all departments and staff and produce the desired results and expected benefits. This staff person would take responsibility for the coordination of the City's conservation and climate action efforts. This would include strategy implementation and establishing timelines for review and updates to the City's Greenhouse Gas Emissions Inventory and Conservation & Climate Action Plan.

The importance of establishing a full-time, dedicated staff to oversee the City of Missoula's Conservation & Climate Action Plan and associated activities was recognized and approved in the budget for Fiscal year 2013 with an FTE. Specific job description, details and hiring will occur in Fiscal year 2013. Once hired, the FTE will interact and collaborate where appropriate with all levels of City government including the Mayor/Administration, Staff, City Council, Mayor's Advisory Group on Climate Change and Sustainability, Greenhouse Gas Energy Conservation Team and stakeholders to ensure success.

Establish a Data Monitoring and Reporting System

Collecting data and reporting on the impacts of each strategy is essential to the Climate Action Planning process. Tracking and monitoring provides evidence of energy, fuel, water, and cost savings, feedback on project success, and progress toward goals. In addition, it provides sound reasoning and results to justify continued internal and external investment and funding.

Establish a Budget and Financing Strategy

This plan presents a wide variety of strategies, and thus requires a robust mix of funding mechanisms. Many recommendations will require both financial and human investment. Below is a list of commonly used mechanisms to be included and used as appropriate and available.

- Integration and Inclusion in annual City Budget
- Grants
- Energy Savings Performance Contracts
- Bonds
- Revolving Loan Funds
- Utility Rebates and Incentives
- Reinvestment of Rebates, Incentives, and/or Energy Savings
- Public/Private Partnerships

Table 0-1: Conservation and Climate Action Strategies

FLEET AND FACILITIES

- **Fleet**
  - Bike Fleet Infrastructure
  - Eco Drivers Manual
  - Efficient Fleet Vehicle Purchasing (Fuel economy)
  - Expand Route Optimization Software/GPS
  - Hybrid/Electric Vehicle Purchasing
  - Sustainable Commute Infrastructure (Bike, etc.)
  - Utilize Cleaner Fuels
- **Facilities**
  - Continuous Building Retro and Re-commissioning for Existing Buildings
  - Groundwater Cooling Systems
  - LEED for Existing Buildings: Operations and Maintenance Policy (EBOM)
  - Real-time Energy Monitoring Systems
  - Shut Off/ Remove Water Fountain Cooling
  - Water Wise Bathroom Features
  - Water Wise Park Areas

INTERNAL POLICIES AND PRACTICES

- **Employee Commute**
  - Employee Commuting Incentive Program
  - Flexible Work Scheduling
  - Rideshare Scheduling plan for Employees
- **Employee Culture**
  - Conservation and Sustainability in Work Plans and Annual Review
  - Fostering Sustainable Workplace
  - Include Conservation and Sustainability in Job Descriptions
  - Include Sustainability in Employee Orientation
- **Products, Procurement, & Facilities**
  - Green Purchasing Policy
  - LEED for New Construction and Major Renovations Policy
  - Paper and Printing Policies
  - Reduce Electronics Energy Use
  - Waste Stream Reduction Policy

RENEWABLE ENERGY AND OFFSETS

- **Renewable Energy**
  - Enhance Methane Utilization at Wastewater Treatment Plant (WWTP)
  - Micro-hydropower Electricity Generation at WWTP
  - Solar PV Installations on Municipal Buildings
  - Solar Thermal Heating System and Thermal Pool Blanket at Splash Montana and Similar Energy Efficiency Improvements at Currents
- **Offsets**
  - Carbon Offset Development
  - Carbon Offset Purchasing
- **Carbon Sequestration**
  - Missoula Open Space Portfolio
  - Poplar Plantation near WWTP
  - Urban Tree Planting and Maintenance

RECOMMENDED ACTIONS

- **Fleet and Facilities**
  - Aeration blower retrofit
  - Building De-Construction Policy
  - Review Operation-and-Maintenance (O&M) Program for MCCAP Integration
- **Internal Policies and Practices**
  - Incentives and Department Competitions
- **Renewable Energy and Offsets**
  - Expansion of Solar Thermal at Fire Stations

CONSERVATION DEMONSTRATION PROJECTS

- **Fleet and Facilities**
  - Compost
  - Gray Water Systems (Purple Pipe)
  - Green Roof
  - Hydrogen Fleet Retrofits
  - Native and Water Wise Garden around City Hall
  - Permeable Surfaces
- **Renewable Energy and Offsets**
  - AlgEvolve Pilot Project

COMMUNITY CCAP PROJECTS

- **Fleet and Facilities**
  - Street Light Efficiency Retrofit
  - Traffic Light Efficiency Retrofit
- **Internal Policies and Practices**
  - Ride share on community level
- **Renewable Energy and Offsets**
  - Community Solar PV Project
  - Wetland Development and Riparian Enhancement

CLIMATE SMART MISSOULA – CITY OF MISSOULA

MISSOULA COMMUNITY CLIMATE SMART ACTION PLAN V1.0

July 2015

Authors: Amy Cilimburg (Climate Smart Missoula), Chase Jones (City of Missoula), Beth Schenk (St. Patrick Hospital), and Caroline Lauer (City of Missoula)

Missoula Community Climate Smart Action Plan v1.0

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SECTION 1

EXECUTIVE SUMMARY

Missoula is a community of passionate people willing to work hard to protect our quality of life and address the challenges of today. Climate change is one of the most critical issues we face, and Missoulians are stepping up to be a significant part of the climate solution. Local solutions by themselves may not change the trajectory of climate change, but efforts to create a thriving, resilient community help ensure a livable future. These and similar efforts in Missoula are gaining traction and are inspirational. Using this Community Climate Smart Action Plan as a guide, we will enhance the work that the City of Missoula and other entities, groups, and businesses are already doing. We are fortunate that the Missoula area boasts such an incredible resource in its networks and people-power. And we are fortunate that community leaders and members share a vision that protects our environment and health and encourages economic opportunities for all. This plan is represents that vision.

Over the course of many meetings, community "summits," and cross-sector conversations, a group of dedicated leaders have pulled together Missoula specific goals and strategies to work together to reduce our carbon footprint and build a more resilient community. The result is this Action Plan v1.0, a plan that is creative, positive, deepens relationships, enhances networks, and aims to get stuff done! The strength of the plan is housed in 12 focal areas for action—called "Buckets:" Education and Outreach; Green Building, Energy Efficiency and Conservation; Healthy, Thriving Community; Inventory and Metrics; Local Food and Agriculture; Renewable Energy; Smart Growth; Sustainable Economic Development; Transportation; Urban and Wildland Forests and Open Lands; Water Conservation and Protection; and Zero Waste. We invite you to keep reading to understand the origins of this plan, how we intend to move it forward, and just how each bucket is aligned to make a difference in our community and beyond.

Lead authors of this plan are Amy Cilimburg (Director, Climate Smart Missoula), Chase Jones (Energy Conservation Coordinator, City of Missoula), Beth Schenk (St. Patrick Hospital) and Caroline Lauer (City of Missoula). Additional contributors include members of the Climate Smart Leadership Team and various Missoula area leaders and experts. In addition to Chase, Amy, Beth and Caroline, the 2015 Leadership Team consists of community members Jill Alban, Bonnie Buckingham (Community Food and Agriculture Coalition), Amy Chadwick, Katie Deuel (Home ReSource), Karen Knudsen (Clark Fork Coalition), Bryan von Lossberg (Missoula City Council), Cherie Peacock (Latticework Sustainability Consulting), Nicky Phear (University of Montana), Meredith Printz (Missoula Community Foundation), Eva Rocke (University of Montana), and Molly White (Greenhouse Gas Management Institute).

Support for crafting this plan has come from the Bullitt Foundation, High Stakes Foundation, and Cinnabar Foundation. The City of Missoula and numerous organizations and businesses provided generous in-kind support.

Find this plan and the detailed Bucket Strategies at: missoulaclimate.org.

Thank you and we look forward to many years of collaboration and action.

CLIMATE SMART
MISSOULA

MISSOULA

435 RYMAN MISSOULA, MONTANA 59802-4297 (406) 552-6001

July 30, 2015

Greetings and welcome to our Climate Smart Action Plan v1.0:

There's no question that the City of Missoula feels a sense of urgency around climate change and our responsibility to do our part to temper it. As such, we made a commitment in 2013 to our citizens to join in the effort to use less energy and generate fewer greenhouse gas emissions with our municipal Conservation and Climate Action Plan. That plan is being implemented and has our operations on the path to carbon neutrality by 2025.

During that process, I heard over and over that scaling up climate action and sustainability planning beyond municipal operations to encompass the entire community better prepares Missoula to be a healthy and resilient community for generations to come. This plan delivers on that notion. To that end, I enthusiastically endorse the Missoula Community's Climate Smart Action Plan v1.0.

A plan with the goal of balancing environmental quality, economic development and social equity is simply smart and responsible. I plan to continue to work with Climate Smart Missoula to tap Missoula's top leadership for flagship engagement and support. Local action is both nimble and imperative in this global issue, and Missoula wants to be out in front of that movement. With this plan, we further commit to doing the right thing as a community.

Sincerely,

John Engen
Mayor

INTRODUCTION

Overview

Missoula has long been a community that prides itself in addressing the challenges of today, with a vision to create an ever better tomorrow. As such, Missoulians recognize that the time to come together and act on climate change and sustainability is now. Community members increasingly are more informed and energized to work together on climate solutions, preparing ourselves and this region by building environmental and economic resiliency. Missoulians also understand that climate change poses a disproportionate risk to vulnerable populations, and therefore we orient this work towards well-established and important community equity and social justice goals.

This Climate Smart Action Plan v1.0 serves as Missoula's collaborative response to climate change, outlining the values, vision, goals, and actionable steps to build environmental, economic, and social resilience and sustainability for and in our community. The plan is based on extensive public and private, cross sector input and expertise derived from a series of community conversations and "summits" convened by what is now called "Climate Smart Missoula" and the City of Missoula. It is admittedly all encompassing and aspirational – as the community and quality of life in Missoula demands. This plan intends to define, guide, and encourage climate action and sustainability. We hope to build community, strengthen networks, offer opportunities and leadership for those who don't know where or how to participate, and foster new partnerships and innovative funding opportunities. And we hope to do this in creative, positive, and hopeful ways.

The Climate Smart Action Plan v1.0 builds on the foundation of the City's Conservation and Climate Action Plan by scaling up beyond municipal operations to encompass and involve the entire community. It does this via mitigation and adaptation climate action and sustainability approaches in twelve focal areas or "buckets." Missoulians recognize that our community does not end at the city limit – we are larger than current boundaries, including many residents and businesses not located within the City boundary. At present, this plan addresses the Missoula area. It has been developed with ideas and input from the many who call the Missoula community home, and the strategies contained herein are crafted to be applicable and effective as that boundary develops and evolves.

This plan will be augmented in Climate Smart Action Plan v2.0 with an inventory of community greenhouse gas emissions, as well as the development and tracking of key sustainability metrics or indicators. Climate Smart v1.0 intends to serve as the foundation for action and progress, but only as the first in a series of iterative blueprints for balancing the environmental quality, economic development and equity goals of the Missoula community. We aim to be an example to other communities in Montana and beyond.

The Plan Crafters

This plan has been crafted by leaders from the City of Missoula and Climate Smart Missoula, with input from a wide array of community members over the past few years. Missoula area leaders have long been involved with efforts to build a more sustainable community and address climate change. Climate Smart Missoula grew out of these efforts. It acts as the hub that fosters partnerships and actions to address climate change in our community. We envision a vibrant and resilient Missoula that has a zero carbon footprint and the crucial networks to address future climate-related issues in an equitable way. Climate Smart Missoula evolved out of various workshops, municipal climate action planning efforts, summits, and other activities. It is a major initiative of the Missoula Community Foundation, where this effort is housed, and the City of Missoula, with significant and continued support from Mayor John

Engen. Climate Smart's Leadership Team comes from the non-profit, city government, business, and academic arenas. See page 10 of this plan for more details.

The Buckets

This Climate Smart Action Plan v1.0 outlines actions and strategies in 12 community areas of focus or "buckets" that have been identified and developed over the course of Climate Smart Missoula and the City's work. They are represented in Figure 1 below and connect to build and support a climate smart Missoula community. The buckets were defined via two community Climate Summits, workshops, several events, and extensive individual conversations with community leaders. Each is accompanied by specific climate action and sustainability strategies to guide Missoula area Climate Smart activities for years to come.

Within Section 2 of this Climate Smart Action Plan v1.0 are comprehensive strategies for each bucket, including vision, goals, key activities (with, where possible, metrics and timetables), a snapshot of how these efforts address community climate and sustainability planning, and partners. These are also featured on the Climate Smart Missoula website, which will serve as the dynamic "go to" place for continued updates, new activities, and the latest news; and will be linked and prominently featured on the City of Missoula's Energy and Climate Action pages.

These bucket goals and strategies are ambitious. Clearly our success as a community will depend on partner involvement and support from a wide cross-sector of entities and individuals, on funding, and on our ability to work collaborate on improved policy.

No matter the challenges, opportunities, and enthusiasm for solutions, Climate Smart Missoula and the City of Missoula cannot tackle all these activities alone! Progress and success will only come with continued interconnection with local government, businesses, non-profits and community members, and by the diligent and strategic linking of crucial community partners around the connected concepts, projects and goals of each bucket. Figure 1 (right) demonstrates multiple connections between these buckets, and a depiction of Climate Smart Missoula, working closely with the City of Missoula, as the networking hub.

Figure 1. Climate Smart Missoula's 12 connected "Buckets"

Bucket Table

The following table (next page) shares the vision, goals and top strategies for each of our 12 Buckets:

TABLE 1. Visions, Goals, and Strategies for Climate Action in Twelve Buckets			
BUCKET	*We envision…*	GOAL. *Our community will…*	KEY STRATEGIES:
Education and Outreach	… a knowledgeable Missoula community that is informed on the issues of climate change, understands the community's goal to be carbon neutral, and is aware of the various community networks that are addressing climate-related issues.	…build synergies among those motivated to take climate action, facilitate cross-sector collaboration, creating targeted education and policy changes.	• Build on the interests, passions, and motivations of those committed to climate action • Target specific sectors for education about climate mitigation and resiliency • Educate and activate via community forums and community dialogue processes.
Green Building, Energy Efficiency and Conservation	… a community where the built environment is part of the climate solution, where resident, business, non-profit, and government buildings are increasingly energy efficient, and where community members of all socio-economic status benefit.	… reduce greenhouse gas emissions that stem from buildings and develop a high demand for green buildings (new and retrofits) from all community sectors. We will verify that the community is making progress and that specific buildings are performing as designed.	• Support Five Valleys High Performance Building Collaborative • Develop and encourage financing and funding opportunities • Initiate neighborhood energy efficiency and conservation projects
Healthy, Thriving Community	… Missoula as a caring community, focusing on health, preparedness, and personal and community resilience to create a healthy place where people thrive, even in the midst of climate change stress.	… enhance our climate-related disaster and threats preparedness, educate Missoulians about the climate-health link, and build more resilient individuals and community.	• Enhance community disaster and threats preparedness • Link health and climate change; work to address health issues. • Build personal and community resilience with equity in mind.
Inventory and Metrics	… a vibrant and resilient Missoula community that has established the necessary metrics and carbon emissions inventory to track, report, and make progress toward Climate Smart Missoula goals	… create a framework for conducting a community wide carbon emissions inventory, establish the necessary infrastructure to complete successive inventory updates, and work with each Bucket to design metrics that can track the progress of projects and initiatives.	• Conduct community carbon emissions inventory • Develop and track Bucket specific metrics • Create communication and education plan • Build Personal and Community Resilience
Local Food and Agriculture	… a vibrant, affordable, and resilient local food and agriculture economy in the Missoula community with an educated consumer base that creates sufficient demand for local food.	… educate Missoulians about the importance of climate change's effect on local agriculture, assist farmers in food production and irrigation efficiencies, enhance our ability to use local foods, and protect our remaining agricultural land from future development.	• Engage in comprehensive education • Expand local food distribution and establish food processing facilities • Promote the use of land planning tools
Renewable Energy	… a Missoula area that is powered by renewable energy and where community members are engaged with and have control over affordable energy systems.	… significantly reduce our reliance on carbon-based fuels and increase the % of renewable energy in Missoula's energy budget. By 2050, generate enough renewable energy to supply the community's electrical energy needs.	• Accelerate renewable energy projects for Missoula • Advocate for needed policy • Engage in education and outreach

BUCKET *cont.*	*We envision…*	**GOAL:** *Our community will…*	**KEY STRATEGIES**:
Smart Growth	… a community that focuses growth inward toward existing infrastructure, neighborhoods, and public services to reduce our contribution to climate change and prepare us for its impacts.	… develop infrastructure and new growth that is sustainable, adaptable, and in the direction of existing services.	• Utilize "Trails as Transportation" designation • Update parking management strategy • Create update parking management strategy
Sustainable Economic Development	… a local economy that is increasingly prepared for forthcoming climatic challenges and opportunities, and that works for all people, the planet, and profits.	… develop and strengthen long-term economic strategies, policies, and financing for the Missoula area that fits the latest climate science, follows relevant resiliency recommendations, and builds social equity in our community.	• Initiate a climate smart economic conversation • Develop funding mechanisms • Develop strategies for enhancing state level policy
Transportation	… a safe, comprehensive transportation system that empowers people to choose active transportation, helping them to save money, breathe cleaner air, and reduce their carbon footprint, and that helps create a community that is resilient to economic volatility and growth.	… design and deliver education and outreach programs that reinforce "multi-modal" as an efficient, affordable, and sustainable way to meet our transportation, and we'll work to reducing vehicle miles traveled, expand access to affordable public transit, and held build sustainable infrastructure for a promising future.	• Reduce Vehicle Miles Traveled • Enhance expansive, Accessible, and affordable Public Transit • Develop safe, comprehensive transportation Infrastructure
Urban and Wildland Forest and Open Lands	… that our surrounding forests and open lands, together with our urban forests, are healthy and adapted to local climate conditions, contribute to climate mitigation, and are supported by a broad sector of the community.	… work together to enhance forests and local habitats that are resilient and adapted to changing climate conditions so they can provide a broad array of goods and services including: shade and cool temperatures, carbon capture and storage, clean and abundant water, diverse wildlife habitat, and renewable wood products.	• Support and Enhance our Urban Forestry • Re-plant and restore open space and public and private lands • Connect Forests and Water • Engage in Forest and Climate Education
Water Conservation and Protection	… the Missoula area will have sustained quality and quality of water needed for human, animal and ecosystem health.	… enhance Missoula's water resources and floodplains so they have the resiliency to withstand new pressures imposed by climate change and continue to provide clean water and ecosystem benefits to our community.	• Enhance stream and wetland protection and restoration • Protect floodplains and wetlands to reduce flooding and enhance groundwater infiltration • Expand water-focused education initiatives
Zero Waste	… a community that continually reduces its waste by reducing, reusing and recycling all materials possible, providing opportunities and incentives to do so for members of all socio-economic groups.	…. actively work to become a Zero Waste Community.	• Build support for waste reduction across sectors • Investigate community waste behaviors and barriers to waste reduction • Foster community understanding of benefits of waste reduction

GETTING TO CLIMATE SMART ACTION PLAN V1.0

Setting the Stage

As local communities strategically plan for a changing future, they can be the drivers for change both within and beyond their borders. Indeed, numerous institutions, entities, and groups in the Missoula area have made climate change action a priority by leading efforts to identify climate change related risks and threats to our community, as well as create organization-specific climate action and sustainability plans and goals focusing on climate mitigation and adaptation planning. Such efforts have been critical in providing leadership and examples for the Missoula community as well as for the State of Montana. While these efforts have moved the needle toward action and progress and have all been important milestones, this Climate Smart Action Plan v1.0 fulfills the unmet need of collaboration and planning together at a community-wide level. The resulting network and plan, convened by Climate Smart Missoula and the City of Missoula, is strong, active, resourceful and capable of supporting and achieving both individual organizational plans and goals, while simultaneously working together to implement action on a community-wide scale.

Identified Risks and Threats to the Missoula area

We know that accelerating climate change poses risks to residents, businesses, our infrastructure and our natural systems. Indeed our community is already feeling the effects of warmer winters, drought, lower stream flows, extended wildfire seasons and resulting smoke and more. Some threats may appear obvious, with others less so.

This action plan is informed by the research and assessments conducted to date for the Missoula area, like ClimateWise described below, as well as information collected from an extensive network of cross sector experts through Climate Smart hosted Summits, outreach and community planning participation. Additionally, Climate Smart Missoula, in partnership with the City of Missoula, will continue to bring forward the best physical and social science related to climate to develop a set of metrics to inform future plan iterations and efforts moving forward, as well as to measure success.

What is Mitigation? Resiliency?

Mitigation: Efforts to limit the magnitude and/or rate of global warming, usually by making reductions in greenhouse gas emissions or increasing the capacity of carbon sinks.

Resiliency: Efforts that increase our ability to anticipate and prepare for, and to survive and recover from, the effects of climate change.

The Rockefeller Foundation (2011) defines climate change resilience as: *the capacity of an individual, community, or institution to dynamically and effectively respond to shifting climate change risks and impacts, while continuing to function at an acceptable level*.

ClimateWise

The most comprehensive assessment of climate risks to Missoula County come from ClimateWise, a research and community workshop project conducted in 2011. Here we highlight some of the key findings. The full report is available at Headwaters Economics: Climate change adaptation in Missoula County. Convened by the Clark Fork Coalition and developed by the Geos Institute, ClimateWise brought together over 100 public officials, conservationists, landowners, and specialists in forestry, wildlife, water, agriculture, business, engineering, public health, and other relevant sectors to identify the top five threats to Missoula's land, water, and community and identified strategies to address these.

The top risks:

1. Local impacts from global change: Climate refugees may relocate to the Missoula region. Growth will likely bring more buildings, infrastructure, traffic, and energy use, all which impacts our ability to reduce our carbon footprint.

2. Increased wildfire severity and development of the wildland-urban interface: More people and property will be in the path of extreme wildfire.
3. Declining snowpack and decreased streamflow: Less water means increased conflict over the resource.
4. Increased flooding and impacts to water quality: Extreme weather and changes in runoff patterns can have extreme economic impacts.
5. Disruptions in native fish and wildlife populations: Habitat loss will harm fish and wildlife populations and impact recreation economies.

Additional Identified Risks

Additional work by this community over the past four years, including the City of Missoula, Missoula County, and Climate Smart Missoula efforts, has expanded and further developed this list. During the spring of 2015, the City and County, together with Climate Smart Missoula, attended a Sonoran Institute workshop to further address community risks and solutions. We have now added:

6. Impacts of increased heat and wildfire smoke to human physical and mental health, and to our community's economic drivers and natural systems.
7. Concern for an over reliance on fossil fuels, and considerations of energy price increases of future, and the need to broaden our energy options.
8. Additional economic impacts from climate change to our local food and agriculture systems, our recreation-based businesses, our health care system, community infrastructure, and more.

Additional Local Climate Planning Efforts

In 2013, the City of Missoula passed its Conservation and Climate Action Plan, which outlines its goals to streamline city operations, reduce costs, decrease energy use, and build a safer future for the City. While the City's Plan was a huge step for Missoula and is presently being implemented, it was intended to address the municipality only. It helps build momentum for this important next step, planning at a community wide scale.

Other entities and efforts are also taking bold steps, focusing on climate mitigation and adaptation planning and on sustainability practices and community response. For example:

- The University of Montana passed its Climate Action Plan in 2010, which outlines goals for achieving carbon neutrality by 2020, and is actively making great progress.
- St. Patrick Hospital, an affiliate hospital of Providence Health and Services in Western Montana, espouses a commitment to stewardship and sustainability in its Core Values. Since 2008, St. Patrick Hospital has measured its energy use, initiated a recycling program, won an EPA Energy Star award, and led education efforts on materials reuse and the presence of toxics in food and the environment. Their good work continues.
- The Confederated Salish and Kootenai Tribes crafted their Climate Change Strategic Plan in 2013 and are actively engaged in implementation.
- The City of Missoula is presently addressing climate change, sustainability, and equity in their growth policy update process, Our Missoula.

These planning efforts and actions have cumulatively set the stage for dozens of local partners and hundreds of citizens to come together for *community scale* climate action and sustainability planning. This Climate Smart Action Plan v1.0 is the timely and very real result.

More on Climate Smart Missoula

Climate Smart Missoula acts as a hub to ensure that our community is planning and acting on climate change. In a nutshell, it's a group of dedicated leaders working to implement and support real-time projects that make measurable differences for our one-of-a-kind community and landscape. As a new initiative of the Missoula Community Foundation, we are working to raise funds for this work and increase our capacity in 2015 and beyond. Our efforts are featured on our website and on Facebook.

Our Goals:

- Measure, understand, and communicate greenhouse gas emissions for the Missoula area, with a goal of carbon neutrality by 2050.
- Serving as a hub, connect and support groups working on climate mitigation and adaptation.
- Prepare and respond to climate challenges by focusing on social equity and health, economic, and environmental vitality.
- Initiate strategic projects and actions that reduce our carbon footprint, build resiliency, and inspire further action.
- Help build and sustain a resilient community, able to adapt and respond to climate related challenges with hope, kindness, innovation, and well-being.

NEXT STEPS AND IMPLEMENTATION

Current State: We have a detailed plan, informed by a long history of comprehensive community members, and supported by Missoula's Mayor and other local elected officials. We have the group, Climate Smart Missoula, which will drive this plan through support, resources, and project work and will ensure this does not become, as they say, "shelf art". Climate Smart has a Home and a Director.

Our next major steps include:

- With the City of Missoula and two Energy Corp AmeriCorps Service Members, conduct a greenhouse gas inventory and resiliency metrics assessment for the Missoula area. When completed (summer 2016), this work will inform our priorities moving forward and we will update this plan accordingly.
- Initiate a "Summer Smart" project to better address heat and smoke in our community.
- Actively participate in events—from greening the River City Roots Festival to helping with the Montana Renewable Energy Association Clean Energy Fair.
- Engage in lively and creative education and awareness efforts.
- Build support, raise funds, and increase capacity.
- **Move the bucket strategies forward**!

Mountain Town News
News in brief & deep in resort valleys of the West

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http://mountaintownnews.net
December 1, 2015

With new tone, a more unified ski industry raises its profile on climate

by Allen Best

In September, as world leaders began preparing for the this week's climate change negotiations in Paris, the ski industry sent a letter of stern words to President Barack Obama. But it also mentioned a silver lining.

"Failure to act now on climate is unacceptable, and will result in damage to the environment, tourism and the economy," said the letter, which was endorsed by 13 trade groups and associations, including the National Ski Areas Association. "This is the greatest opportunity of our time."

The letter was indicative of a new, unified approach by the ski industry and its partners, one that emphasizes solutions, not the worrisome climate-change science.

Less gloom, more optimism about solutions

"We aren't calling people who don't believe in climate change stupid," says David Ingemie, president of the SnowSports Industries America, a trade association representing retailers and manufacturers. "More people are listening and it's less confrontational."

Some individuals point to the success of Protect Our Winters, a group of athletes, after it moderated its approach. Other say they have been persuaded by the market-based approach advocated by Bob Inglis, a former Republican congressman from South Carolina. But few talk about the science.

Geraldine Link

"When you talk doom-and-gloom, that turns more people into deniers. They think things are hopeless," says Geraldine Link director of public policy for the National Ski Areas Association, a trade association for ski area operators and suppliers in the United States.

"That has been a huge shift in the dialogue within the ski industry, that recognition that all of that doom-and-gloom is not having any effect on Washington decision-makers or on everyday people."

Solutions, she says, draw interest from conservative lawmakers. "When you're in Washington, the most productive conversation is about solutions, and that

occurs more frequently than you would expect," she explains. "Even the most conservative offices in Washington like to talk about solutions. They like to talk about efficiency. And so if we talk about U.S. independence and better energy security for the future, many, many offices in Washington are willing to engage in that conversation."

Unmistakable warming trends, however, have also given resort operators an incentive to speak up.

"Fifteen years ago, Jackson Hole Mountain Resort was called too high, too cold and too far," says Jerry Blann, president of the resort company. "I like to say that climate change is working on that middle one."

Mountain Town News

Edited & published by Allen Best

Subscriptions: $45/year.
Send checks to:
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Jackson Hole Mountain Resort had 20 record warm days last winter; records go back 40 years. In the nearby town of Jackson, the annual snowmobile hill climb in March was canceled for the first time ever, because of warm temperatures.

Jerry Blann

Blann says the ski industry always has had skeptics of climate change science. "But it's less and less so," he reports. "It's somewhat the result of younger people getting into our industry, and it's also a recognition that we're getting a lot more warmer days."

"A reasonable person has to wake up," he adds. "We have to lean in and do our part."

Multiple resorts—including Aspen Skiing and Vail Resorts—have also agreed to put their names on a full-page advertisement running Tuesday, Dec. 1, in the Wall Street Journal. More than 100 businesses signed onto the ad, including Coca-Cola Company, QualComm, Hilton WorldWide, but also DuPont, General Mills, and Ingersoll-Rand .The advertisement calls for an agreement that "provides long-term direction and periodic strengthening to keep global temperature rise below 2 degrees Centigrade."

The full-page ad also encourages the U.S. government to "support investment in the low-carbon economy at home and abroad, giving industry clarity and boosting the confidence of investors."

Aspen and Vail in the past have approached climate change very differently.

Vail has focused on cleaning its own house. Chief executive Rob Katz in 2008 announced a goal of achieving a 10 percent across-the-board reduction in energy use. The company succeeded in just three years. He then set a goal of another 10 percent reduction by 2020. The company has already achieved a 7 percent reduction, reports Kelly Ladyga, vice president of corporate communications.

But Katz disavowed using skiing as the axis for making a climate change argument.

"You can count me out of the group that says we need to address climate change to save skiing," he wrote in a December 2012 op/ed published in The Denver Post, then added: "But to the folks trying to alarm people with images of melting snow, here is the dirty little secret: When the effects of

climate change really show up, no one will care about skiing at Aspen and Vail."

Aspen, while reducing its carbon footprint, has robustly embraced advocacy. This winter, for example, cards are being given out to customers of the company's hotels and four ski areas. The card describes the shifting climate in Aspen, 2 degrees Fahrenheit warmer in the last 25 years, and correlates the shift to accumulating greenhouse gases. Aspen's card also urges customers to contact elected officials about climate change.

Company representatives, including chief executive Mike Kaplan, have lobbied and testified in Washington D.C. Aspen Skiing also filed an amicus brief in a major lawsuit before the U.S. Supreme Court in 2006. Massachusetts and other states and cities argued that the Environmental Protection Agency was obligated under the Clean Air Act to regulate greenhouse gas emissions. The court agreed in 2007, leading to the EPA's Clean Power Plan, which seeks to reduce greenhouse gas emissions from electrical production 30 percent by 2030 as compared to 2005 levels.

The Clean Power Plan has been a fulcrum for ski industry advocacy in Utah and in New Hampshire. (See related story on the next page).

Utah's Salt Lake Valley frequently suffers winter temperature inversions, creating a lid over the valley's air pollution. ***Photo/Jud Tibay***

Protect Our Winters has been active in coalescing support for the Clean Power Plan. The organization was formed in 2007 by pro snowboarder Jeremy Jones and grew to include other winter athletes. "Though we can dress up for meetings, in the end we are pro athletes, dirtbags and diehards; for us, winter is not just a passion, but a way of life," the organization's website explains.

Nathan Rafferty, chief executive of Ski Utah, a trade group, credits POW as the catalyst of change in his trade group. "I remember thinking it was the right fit," he says. "They are one of us." He says POW's message resonated with the directors of Ski Utah.

"They really focused on the good things, what can be done, as opposed to the sky is falling, which really doesn't leave a very good taste in our mouth," he says.

Ski Utah then began investing its political capital. "We have some serious political clout in this state," says Rafferty. "We are a $1.2 billion industry in the state,

and in a state of 3 million people, that's a big deal. We feel the time is right to use that influence to make us a better place."

Rafferty credits—as do others—the skills of Chris Steinkamp, the director of POW. "He has a real reasonable tone about him, and with him at the helm, it gave us a comfort level that this was a group we could engage in. Our goal is just to amplify POW's voice and craft it in a way to use it locally, different than in California or in Colorado."

Nathan Rafferty

A former marketer, Steinkamp says POW has been downplaying the gloomy science of climate change for a year and a half because the science was understood. Too, people in the ski business were seeing the climate change personally.

"Everything that was being predicted was coming true. There wasn't any real upside to talk about the dire consequences any more. I think everybody had kind of understood that, and it was basically shutting people down," says Steinkamp.

At the same time, renewable energy has become cheaper and more effective. "We had solutions," says Steinkamp. Instead of

How ski areas helped sell Utah on Clean Power Plan

Apart from liberal-tilting Park City and Salt Lake City, Utah is a deeply conservative state and reliably Republican. In 2009, in a brief interview with this writer at a conference in Park City, then Lt. Gov. Herbert refused to concede the science of climate change.

But there's no disputing the foul nature of the air during winter months, when temperature inversions can create a lid to contain pollutants. Heart attacks jump, and the fine particles in the air aggravate asthma and bronchitis. The pollution does not necessarily come from coal-fired power plants.

Ski areas, because of their higher elevations, are literally above this fray but not aloof from the damage. "From a tourism perspective, whether it's skiing or not, it's the first thing and the last thing people see when they fly in and out of the (Salt Lake) airport," says Nathan Rafferty, executive director of Ski Utah, the state-wide trade association.

Onno Wieringa, president and general manager of the Alta Ski Area, and Peter Metcalf, chief executive of Black Diamond, the manufacturer, made the case for the EPA's plan in a June op-ed published in the Salt Lake City Tribune.

"The reality is that the outdoor industry, particularly the ski industry, is feeling the impacts of climate change now, and Utah needs the Clean Power Plan to help protect a primary contributor to our economy," they wrote. "In fact, our industry has business imperative to advocate for it. It is not idealism or political motivation to see this. It is mathematics and economics…"

Hebert has "agreed to comply," in the words of Rafferty. "Agreeing to comply doesn't mean he loves the plan, but he has agreed to submit one (if the state won't submit a plan, the Feds will do it for them)."

Ski industry voices in New Hampshire may have also played a role in the decision of U.S. Sen. Kelly Ayotte to become the first Republican senator to support the Clean Power Plan. ClimateProgress, a website, suggested that Ayotte was driven to support Obama's plan because she is in a tight race against the state's Democratic governor, who supports the plan. In both 2008 and 2012, New Hampshire went for Obama.

the gloomy changes, POW could talk about solutions.

In Lake Tahoe, Squaw Valley chief executive Andy Wirth has cited both economic and environmental reasons to support the Clean Power Plan in a September op-ed in the Reno Gazette-Journal.

Wirth detected a shift in the ski industry about five years ago, but before that, the strongest voice came from the Aspen Skiing Co.'s Auden Schendler. His alarm-bell message wasn't particularly popular.

"Ten years ago Auden Schendler was considered a bit of a pariah," says Wirth. "There were folks in the industry who didn't think highly of him. He's now regarded as a pioneer, and he has the bumps and bruises and scars to prove that."

Schendler, now vice president of sustainability at the Aspen Skiing Co., acknowledges change. "I think I have evolved," he says. But the industry has also shifted toward his stance. NSAA's SustainableSlopes Program now requires advocacy, not just in-house energy reductions.

Even Wyoming listens to idea of a carbon tax

Jerry Blann went to Charleston, S.C., in May 2013 for an industry conference and returned to Wyoming with a message about climate change solutions he believes can resonate even in a state that produces nearly half of U.S. coal.

Former Republican congressman Bob Inglis spoke there. He was conservative enough to win the endorsement of the National Rifle Association, although not conservative enough to win re-election in 2008.

In Charleston, he spoke about his upbringing in South Carolina, according to the recollections of several people who were there. He had grown up near a paper mill. "That's the smell of money," his parents and other townspeople had said of the air pollution. Returning as an adult for a meeting, the out-of-town visitors commented on the smell and asked him why people had tolerated it.

That experience, along with comments from his own children, pushed him to accept the science of climate change.

Inglis concluded that greenhouse gases, as with pollution from the paper plant, shouldn't be allowed to pollute the atmosphere freely. After being defeated for re-election, Inglis founded the Energy and Enterprise Initiative, which advocates "conservative and free-enterprise solutions to energy and climate change." Among the market-based solutions is a tax or fee on carbon emissions, with the intent of stimulating innovation and change.

The proposal by Inglis—similar to that being pushed by the Citizens' Climate Lobby—would be revenue neutral, meaning taxes on carbon emissions would be returned to people through reduced income taxes or direct payments.

Blann returned to Wyoming, where he persuaded Gov. Matt Mead to have Inglis speak at an economic forum. He says that Wyoming's congressional delegation, although publicly protective of Wyoming's carbon-based sector (See Nov. 25 op/ed by Sen. John Barrasso in the Wall Street Journal), do understand the need for changes.

"They get this. They do," he says. He hopes a tax will stimulate innovation that allows Wyoming to continue to exploit its vast carbon resources through technology such as gasification and carbon capture and sequestration.

Aspen mayor to be at climate talks in Paris

ASPEN, Colo. – The mayor of Aspen is going to Paris for the climate change negotiations. One of the reason Steve Skadron plans to go to talks in early December is that he believes that local communities should act now instead of waiting for federal action to take place.

Skadron was invited by the mayor of Paris and the former mayor of New York City, Michael Bloomberg. Last summer, Skadron joined the Mayors' National Climate Action Agenda and the Compact of Mayors, which he said is the world's largest coalition of international leaders addressing climate change.

Steve Skadron

"I'm proud of Aspen because Aspen should lead. And part of that leadership is recognizing that resort communities are integral to state and national economies, and inherent to a resort community is reliance on the natural world," Skadron said.

Bloomberg, in an essay published in the September/October issue of Foreign Affairs, argued that municipalities are the key to fighting climate change.

"Although history is not usually taught this way, one could argue that cities have played a more important role in shaping the world than empires," he wrote. "They have been the drivers of progress throughout history, and now—as the knowledge economy takes full flight—they are poised to play a leading role in addressing the challenges of the twenty-first century."

Aspen is a place of 6,000 people, so it's not exactly a city, at least as most people imagine it. But it has its own electrical utility, which provides electricity for half to two-thirds of the town, and in August it became the third municipality in the country to be 100 percent renewable.

Banff starts talking about a goal of 100% fossil-free

BANFF, Alberta – Banff, the municipality in Banff National Park, has started talking about setting a goal of becoming totally reliant on non-fossil fuels by 2050.

Chad Townsend, the town's environmental coordinator, said the goal is doable, if still ambitious. This goal, if adopted by Banff's elected officials could also include transportation and heating, in addition to electricity.

No place in the modern world has achieved this goal so far, although many towns and cities have started embracing it. Vancouver, B.C., recently adopted a 100 percent renewable energy goal by 2050, and the college town of Fort Collins, Colo., adopted something similar.

Eliminating fossil fuels from the electrical mix remains challenging enough for most communities. Aspen joined two other smaller towns and cities in the United States this summer when it completed a 100 percent renewable portfolio. The utility, however, only services half to two-thirds of the load in the community of 6,000 and none to the ski area itself.

The Rocky Mountain Outlook reports that town officials remain non-committal, but are considering spending $40,000 on developing a path to define how to get there. Clearly controversial would be expansion of hydro-electricity, particularly if it requires dams. One dams has been removed within Banff National Park, and Councillor Stavros Karlos said he's ready to see more dams blown up after watching DamNation, a documentary that challenges the systems of large dams in the United States.

About half of Aspen Electric's renewable power comes form turbines installed on existing dams. A proposal to

recreate a hydroelectric generator on a local creek that had delivered electricity to Aspen from 1885 to 1962 failed because of community pushback. Instead, Aspen secured its remaining power from wind farms on the Great Plains, hundreds of miles away in Nebraska and South Dakota.

When terrorists try to assassinate billionaires

In the wake of the terrorist attacks in Paris, the New York Times examined the risk of such things to people of great wealth. For example, the terrorist group Al Quaeda in the Arabian Peninsula in September called for the assassination of various billionaires in the United States, including Bill Gates, Warren Buffet, and the Koch brothers, Charles and David.

"It's not an insignificant threat," Christopher Falkenberg, president of the security and risk management firm Insite Security, told the Times. "They're looking for the easiest target with the highest yield," he said.

That, of course, raises the question of how much security do billionaires think they need when visiting high-end mountain resorts. Aspen, for example, has dozens of billionaires among its full- and part-time residents, and many others fly in for conferences and so forth.

The newspaper didn't delve into mountain resorts, but it did cite some eyebrow-raising numbers. Falkenberg, of the security firm, said a security detail would start at $180,000 a year.

Whistler-based reality show hits higher mark

ASPEN, Colo. – Another ski town-based reality TV show has debuted, and Andrew Travers of The Aspen Times thinks it's pretty entertaining after watching the debut episode.

Whistler-based "Apres Ski" is "part workplace drama, part 'Real World'-esque strangers-in-a-house and hookups-in-the-hot-tub spectacle, and part 'Real Housewives' rich diva train-wreck, with lots of luxury and mountain scenery to ogle and a dash of ski town spirit."

The only previous reality show in a ski town setting was "Secrets of Aspen," which had a run five years ago – and was, he says, "inane and gross."

But "Après Ski," if it maintains its initial template leaves room for a different reality show.

"With its tourism industry focus, it's not looking to tell the story of a town or a mountain, though I think we'd all love to see somebody try that," writes Travers. "It appears instead to be combining a lot of what's worked in reality before — coupling up housemates, office battles, raging 1-percenters — and setting it against the colorful backdrop of a posh ski resort, where attractive people cater to the outrageous requests of attractive rich people. Rest assured, before the season's done, it's all going to go boom."

Buried to his waist, he still needed help

BRECKENRIDGE, Colo. – So, you're skiing the too-steep slopes of the backcountry or the sidecountry, and you get buried in an avalanche. Your buddy will dig you out, right?

DRAFT framework for a community climate solutions project

DRAFT Jan.25,2016: [This is a draft for purposes of discussion only. A one-page agreement would establish a project task force to develop a North Valley Climate Solutions Plan. A separate addendum details some of the ideas discussed thus far about scope, objectives and process, but these examples are illustrative, not prescriptive. It gives the task force discretion to determine its own procedures and direction.]

We, the undersigned, adopt the following Statement of Principles, Values and Action

Whereas we are proud residents of the North Flathead Valley and represent organizations, governments and businesses that are committed to supporting a strong economy, distinctive communities, and a healthy environment;

Whereas we understand that the valley's unique character, recreational opportunities, and world-class beauty are integral to our community's future economic vitality, quality of life, and attractiveness to residents and visitors;

Whereas our valley's character and beauty won't be maintained through benign neglect but rather requires shared commitment and continuous attention;

Whereas several other communities across Montana have developed climate action plans;

Whereas the Whitefish City Council set a goal to develop a "climate action plan" during an April 2014 planning retreat;

Whereas Flathead residents strongly embrace the values of independence, local self-reliance, cooperation, and resilience in the face of challenges;

And whereas efforts to minimize the causes of climate change and adapt to projected future changes will help sustain and enhance local economic and social values;

Therefore, we resolve to cooperate to understand and address challenges and economic opportunities associated with climate change in the North Flathead Valley. We agree to work together through a project task force to develop a North Valley Climate Solutions Plan, as described in Addendum A.

We understand that participation in this cooperative agreement does not oblige stakeholder groups, local governments or agencies in any way to adopt and implement recommendations. Public and private stakeholder groups' primary contribution to the project shall be in the form of the time and talents of their volunteers or staff. Participating organizations may, but are not required to, contribute funds to the project.

Signators ….

Addendum A

This addendum to the Cooperative Agreement provides general guidance to a project task force established to implement this agreement. Partners in this cooperative agreement are invited to participate in the project task force. This addendum identifies some of the suggested goals, objectives and procedures initially discussed by cooperators, but the task force shall be responsible for determining its own scope, process and recommendations.

Goal: Collaboratively develop a community climate solutions plan to inform community leaders, businesses and others about local climate change implications and identify strategies to sustain community and economic values.

Objectives: The project task force may include any or all of these objectives in a community climate solutions plan.

- Provide a forum to engage interested stakeholders in community conversations and solutions.
- Understand documented climate and weather trends for the past 100 years and projected changes into the future;
- Assess local vulnerability to the stresses of long-term climate change and exposure to extreme weather events;
- Identify existing public and private practices and initiatives that have strengthened the community's preparedness for anticipated climatic and weather changes;
- Develop and implement a community climate solutions plan to increase preparedness and reduce vulnerability to projected climate change impacts;
- Develop strategies as part of the climate solutions plan to increase energy conservation and expand local production of renewable energy;
- Identify and pursue local economic opportunities that support climate solutions.

Process: The task force shall determine a process for making decisions and engaging the public in a fair and transparent manner. The task force may take the following steps at its own discretion:

- Appoint a chair and vice-chair to lead the task force and a steering committee to direct the project.
- Post agendas and minutes for all meetings.
- Establish a timeline for project completion.
- Determine appropriate geographical scope for initial phase of project and any subsequent phases.
- Seek a suitable 501(c)3 charitable organization to provide administrative support and fiscal sponsorship for the project.
- Raise and expend funds for expenses that may be incurred, such as meeting costs, website development, facilitation and coordination, travel, and other reasonable expenditures approved by the task force.

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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, February 1, 2016, at **7:10 p.m.** at Interim City Hall, 1005 Baker Avenue.

Ordinance numbers start with 16-04. Resolution numbers start with 16-06.

1) CALL TO ORDER

2) PLEDGE OF ALLEGIANCE

3) PRESENTATION – City Hall/Parking Structure construction update – Owner's Representative Mike Cronquist (p. 58)

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

5) COMMUNICATIONS FROM VOLUNTEER BOARDS

6) CONSENT AGENDA
   a) Minutes from the January 19, 2016 Council regular meeting (p.66)
   b) Ordinance No. 16-03; An Ordinance amending Zoning Regulations in Whitefish City Code Title 11 to add micro-distilleries to the list of Conditional Uses in §11-2J-3, Limited Business District, §11-2K-3, Secondary Business District, §11-2L-3, General Business District, and §11-2R-3, Industrial District, amend the standards for accessory buildings in §11-3-2A, and amend the definition for a bar/lounge in §11-9-2 (Second Reading) (p. 80)
   c) Consideration of a revised Subdivision Improvement Agreement (SIA) with High Point on 2nd Street, LLC for High Point on 2nd Street, Phase 1 in order to reduce the amount of security required for the SIA as many of the improvements have been put in and accepted (p. 85)
   d) Consideration of approving final plat and documents for property exchange with John A. Hagg for Plat of Birch Point Landing No. 2 related to Birch Point Lift Station and Skye Park Bridge (p. 95)

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

a) Resolution No. 16-___; A Resolution approving the terms of a Municipal Water System Easement and Road Access Easement with F.H. Stoltze Land & Lumber Company (p.107)
b) Resolution No. 16-___; A Resolution authorizing the transfer of parcels of land in Haskill Basin totaling 2.569 acres of land to F.H. Stoltze Land & Lumber Company in exchange for 41.28 acres of perpetual easements allowing the City to access, maintain and use its municipal water system (p.155)
c) Consideration of an application from the Reisch Family Partnership for a Conditional Use Permit to operate a bar within an existing commercial building, zoned WB-1 at 845 Wisconsin Avenue (p. 165)
d) Ordinance No. 16-___; An Ordinance amending Zoning Regulations in Whitefish City Code Title 11, Chapter 2, Zoning District, Article S, WPUD Planned Unit Development District, Section 3, Standards of Development, and Section 5, Deviations from Standards, to clarify the maximum average density where a PUD overlays more than one underlying zone (First Reading) (p. 200)
e) Ordinance No. 16-___; An Ordinance amending Title 11, Zoning Regulations, Title 12, Subdivision Regulations, Title 13, Lake and Lakeshore Protection Regulations, and Title 14, Flood Control, in the Whitefish City (First Reading) (p. 314)
f) Resolution No. 16-___; A Resolution to revise fees currently charged and establish new fees for various services provided by the Whitefish Planning & Building Department (p. 361)

8) COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR
a) Presentation and review of design and cost estimates for the West 7th Street Reconstruction project, a 2016 Resort Tax road reconstruction project, and authorization to proceed to bidding (p. 367)
b) Consideration of Amendment #3 to the engineering consulting contract with Robert Peccia and Associates for the West 7th Street Reconstruction project for bidding, construction inspection, and post-construction services (p. 381)

9) COMMUNICATIONS FROM CITY MANAGER
a) Written report enclosed with the packet. Questions from Mayor or Council? (p.421)
b) Other items arising between January 27th and February 1st
c) Consideration of approving the sale of buildings from the James R. Bakke Reserve property (p. 424)
d) Resolution No. 16-06; A Resolution relating to up to $9,800,000 Tax Increment Urban Renewal Revenue Bonds, Series 2016; Authorizing the Issuance and Private Negotiated Sale Thereof (p. 436)
e) Resolution No. 16-07; A Resolution relating to $8,219,500 Water System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Taxable Series 2016; Authorizing The Issuance And Fixing The Terms And Conditions Thereof (p. 447)
f) Review of Mid-year financial report – City Finance Director (p. 506)

10) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

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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January 27, 2016

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

Mayor Muhlfeld and City Councilors:

Monday, February 1, 2016 City Council Agenda Report

There will be a work session at 5:00 p.m. for a presentation on a possible Local Climate Action Plan. Food will be provided.

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

CONSENT AGENDA

a) Minutes from the January 19, 2016 Council regular meeting (p.66)
b) Ordinance No. 16-03; An Ordinance amending Zoning Regulations in Whitefish City Code Title 11 to add micro-distilleries to the list of Conditional Uses in §11-2J-3, Limited Business District, §11-2K-3, Secondary Business District, §11-2L-3, General Business District, and §11-2R-3, Industrial District, amend the standards for accessory buildings in §11-3-2A, and amend the definition for a bar/lounge in §11-9-2 (Second Reading) (p.80)
c) Consideration of a revised Subdivision Improvement Agreement (SIA) with High Point on 2nd Street, LLC for High Point on 2nd Street, Phase 1 in order to reduce the amount of security required for the SIA as many of the improvements have been put in and accepted (p. 85)
d) Consideration of approving final plat and documents for property exchange with John A. Hagg for Plat of Birch Point Landing No. 2 related to Birch Point Lift Station and Skye Park Bridge (p. 95)

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

Items a and c are administrative matters; items b and d are legislative matters.

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

a) Resolution No. 16-___; A Resolution approving the terms of a Municipal Water System Easement and Road Access Easement with F.H. Stoltze Land & Lumber Company (p.107)

The City Council approved five Resolutions and two Letters of Intent at their meeting on January 19th to deal with the Conservation Easement, MRMP, trail easement, and acquisition of land via a Boundary Line Adjustment with the Murr Family.

There are two resolutions on the agenda on February 1st related to City Council action on the Water System and Road Access Easement and the transfer of the orphan parcels. Each Resolution will be described below.

Resolution No. 16-___; A Resolution- Water System Water and Road easement

This Resolution and the following Resolution effectuate the part of this transaction whereby the City will receive a permanent easement guarantying our right to access the lands via Stoltze roads to maintain our municipal water system. Prior to these transactions, the City operated only on the verbal approval of the F.H. Stoltze Land and Lumber Company for access to our water intakes and water source pipelines. However, we had that neighborly access for approximately 100 years and there was no threat to our access. The City Council reviewed these documents at the October 19, 2015 City Council meeting. This document is unchanged from that time.

One important aspect of this Water System and Road Access Easement is that, in exchange for receiving this easement, the City will transfer ownership of our two parcels of land in Haskill Basin totaling 2.569 acres of land which are near, but not on the water intakes of Second and Third Creeks. Getting the actual physical location of the water intakes onto land owned or in an easement was also another goal of the easement negotiations. In exchange for our two parcels of land (see attachments to this memo), the City will gain the following:

- a perpetual easement on three, one acre parcels of lands on the actual physical location of the headgates and screens for the intakes at First, Second, and Third (three acres of land – see Exhibit B in the easement);
- a perpetual easement on a 40 foot swath of land along our entire system of waterlines in the Stoltze lands in Haskill Basin which equals 7.69 acres of land (see Exhibit A of the Water System and Road Access Easement);
- a perpetual easement on a 30 foot swath of land along the entire roads which Stoltze owns in the 3,020 acres of Haskill Basin land and that is subject to the future Conservation Easement and which equals 30.99 acres of land (see Exhibit A of the Water System and Road Access Easement);

Thus, for giving up fee simple title to 2.569 acres of land in Haskill Basin, we are obtaining perpetual easements on 41.68 acres of land in Haskill Basin. Moreover, we do not want ownership of two, "orphan" parcels of land within the 3,020 acres of the

Conservation and transferring the title of our two parcels of land to Stoltze consolidates all of the ownership of land within the 3,020 acres of land. Therefore, all lands in the 3,022 acres of land will have the same restrictions contained within the future Conservation Easement and MRMP.

Resolution No. 16-___; A Resolution – Agreement for sale of orphan parcels to TPL

This resolution and agreement provides for the City to transfer our title of the two orphan parcels totaling 2.569 acres of land to Stoltze in exchange for the easement on 41.68 acres of land. An appraisal of these two orphan parcels is attached in this packet. As you can see from page 27 of the appraisal, the appraiser has us giving up a value of $30,000.00 for the two orphan parcels of 2.569 acres of land and receiving easements on 41.68 acres of land for the water lines, roads, and three 1 acre tracts of land around each water intake/headgate valued at $412,125. While the appraiser uses a different number for the acreage of our waterline, I am going to trust and use the acreage figures that the surveyors came up with. Regardless, and even if you want to argue with his values (which is not necessary in the current transaction), we are getting a lot more value than we are giving up for two, inaccessible, orphan parcels of land that are near, but not on two of the three the intakes/headgates. Even if you cut his values for the easement in half, we would still be receiving a lot more value than we are giving up.

There is no cost of these transactions to the City other than splitting the cost of recording the documents, which will probably be under $200.00. As shown above, the City is receiving a lot more value from this part of the transaction than we are giving, but for the Conservation Easement we are also providing $7,700,000.

RECOMMENDATION: Staff respectfully recommends that the City Council, after considering testimony at the public hearing, approve Resolution No. 16-___; A Resolution approving the terms of a Municipal Water System Easement and Road Access Easement with F.H. Stoltze Land & Lumber Company

a) Resolution No. 16-___; A Resolution authorizing the transfer of parcels of land in Haskill Basin totaling 2.569 acres of land to F.H. Stoltze Land & Lumber Company in exchange for 41.28 acres of perpetual easements allowing the City to access, maintain and use its municipal water system

This item is a legislative matter.

b) Resolution No. 16-___; A Resolution authorizing the transfer of parcels of land in Haskill Basin totaling 2.569 acres of land to F.H. Stoltze Land & Lumber Company in exchange for 41.28 acres of perpetual easements allowing the City to access, maintain and use its municipal water system (p.155)

RECOMMENDATION: Staff respectfully recommends that the City Council, after considering testimony at the public hearing, approve Resolution No. 16-___; A Resolution authorizing the transfer of parcels of land in Haskill Basin totaling 2.569 acres of land to F.H. Stoltze Land & Lumber Company in exchange for 41.28 acres of perpetual easements allowing the City to access, maintain and use its municipal water system

This item is a legislative matter.

c) Consideration of an application from the Reisch Family Partnership for a Conditional Use Permit to operate a bar within an existing commercial building, zoned WB-1 at 845 Wisconsin Avenue (p.165)

From Planner II Bailey Minnich's Transmittal memo:

Summary of Requested Action: The Reisch Family Partnership is requesting a Conditional Use Permit to operate a bar within an existing commercial building at 845 Wisconsin Avenue. The building has previously been an antique shop, as well as the location of the Dire Wolf bar/restaurant. The commercial building is approximately 6,150 square feet. No substantial exterior renovation or remodeling is proposed. The applicant is proposing to obtain a 'Montana Retail On-premises Consumption Beer and Wine License' from the State of Montana, which does not include the sale of liquor. The property 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 eleven (11) conditions set forth in the attached staff report.

Public Hearing: The applicant's representative spoke at the public hearing on January 21, 2016. The draft minutes for this item are attached as part of this packet.

Planning Board Action: The Whitefish Planning Board met on January 21, 2016 and considered the request. Following the hearing, the Planning Board unanimously recommended approval of the above referenced conditional use permit with eleven (11) conditions as contained in the staff report and adopted the staff report as findings of fact.

There are a full staff report, additional documents, and draft Planning Board minutes also in the packet for this item.

RECOMMENDATION: Staff respectfully recommends that the City Council, after considering testimony at the Public Hearing and the recommendations from the Planning Board and staff, approve an application from the Reisch Family Partnership for a Conditional Use Permit to operate a bar within an existing commercial building, zoned WB-1 at 845 Wisconsin Avenue.

This item is a quasi-judicial matter.

d) Ordinance No. 16-___; An Ordinance amending Zoning Regulations in Whitefish City Code Title 11, Chapter 2, Zoning District, Article S, WPUD Planned Unit Development District, Section 3, Standards of Development, and Section 5, Deviations from Standards, to clarify the maximum average density where a PUD overlays more than one underlying zone (First Reading) (p.200)

From Planning and Building Director Dave Taylor's transmittal memo:

Summary of Requested Action: This application is a request by the City of Whitefish to amend Section 11-2S-3, WPUD, Planned Unit Development District, Standards of Development, to clarify maximum average density where a PUD overlays more than one underlying zone.

Planning & Building Department Recommendation: Staff recommended approval of the draft text amendment attached to the staff report. Staff also recommends that the council provide direction on whether to pursue a major revision of the entire PUD chapter in the future.

Public Hearings: A public hearing on this item was first scheduled at the Whitefish Planning Board for January 15, 2015, but was postponed to the next meeting due to the lateness of the hour. On February 19, 2015, the public hearing to review the text amendment was held. After public comment by Don Spivey, Judy Spivey, Mayre Flowers, and Rhonda Fitzgerald opposing the proposed amendments to clarify density averaging and questioning the entire PUD chapter, the Planning Board made a motion to continue the item to a later meeting, and asked staff to look at amending the whole PUD chapter and review criteria, and to compare our PUD criteria with what Flathead County and Kalispell do (minutes attached). Staff then held a work session with the Whitefish Planning Board on June 18, 2015, and presented codes from Flathead County, Kalispell, Missoula and other jurisdictions to get direction on how the Planning Board would like to proceed with a PUD chapter revision. After much discussion of the various codes and the pros and cons of how each addressed density and underlying zones as well as current staff workload limits, the Planning Board's direction to staff was to not look at revising the whole PUD chapter, but pursue the simpler fix by adding a couple of things to the amendment that was presented on February 19th, and look at a possible major revision in the future when we have more time. Based on that, staff added some revisions to the draft from January 15, 2015, and scheduled another public hearing for an amendment to address the specific issue of density averaging in a PUD with multiple underlying zones for December 17, 2015. That hearing was later postponed to January 21, 2016.

Public Comment on January 21, 2016
At the January 21, 2016 public hearing, Attorney Tom Tornow spoke as a representative of Barbara Morris of River's Edge subdivision, and challenged the legality of density blending, saying it was not a clarification but a reversal of what the code says, and offered to be part of a revision steering committee. Mayre Flowers, Citizens for a Better Flathead, spoke and supported Mr. Tornow's comments, had other concerns and claimed PUD's may be considered spot zoning. Dave Hunt, 113 Park Knoll Lane, read a letter (attached) and supported a major PUD revision and not the proposed amendment. Wendy Coyne, 3 Rock Creek Court in Rivers Edge, said she opposed the zoning text change and the affordable housing project. Judy Spivey, 117 Park Knoll Lane, spoke in favor of updating the whole PUD chapter. Bob Horne, 151 Wedgewood Lane, spoke in support the changes to clarify density averaging, stated the city has always allowed blending in those situations, and it serves a useful purpose. He said would also support looking at a more comprehensive revision in the future. Rhonda Fitzgerald, 412 Lupfer, spoke in favor of neighborhoods and protecting them from people wanting to do things outside the lines. Don Spivey asked that the Planning Board recommend to the council to reject the amendment and to initiate the process of re-writing the PUD regulations and issue a moratorium on further PUD activity or blending until the re-write is complete, or else remove blending from the WPUD regulations entirely. Anne Moran, 432 W 3rd, agreed with Tom Tornow's points and brought up concerns with it creating spot zoning. The draft minutes of the January 21, 2016 Planning Board hearing are included. Staff also received two letters supporting the zoning text amendment as is, from Eric Mulcahy of Sands Surveying, and from design professionals Bruce Boody and Brian Wood (attached).

Planning Board Recommendation: The Whitefish Planning Board held a public hearing on January 21, 2016. Following this hearing, the Planning Board recommended denial (3-2, Ellis and Meckel opposed) of the proposed amendments. Additionally, a motion was made (Norton) to "forward to council a rewrite of the entire PUD chapter and a moratorium on blending until that is finished." That motion passed unanimously.

There are a full staff report, additional documents, and draft Planning Board minutes also in the packet for this item.

RECOMMENDATION: Staff respectfully recommends that the City Council, after considering testimony at the Public Hearing and the recommendations from the Planning Board and staff, confirm the Planning Board's recommendation to deny approval of An Ordinance amending Zoning Regulations in Whitefish City Code Title 11, Chapter 2, Zoning District, Article S, WPUD Planned Unit Development District, Section 3, Standards of Development, and Section 5, Deviations from Standards, to clarify the maximum average density where a PUD overlays more than one underlying zone (First Reading) or approve the ordinance based on the staff recommendation and staff report as findings of fact.

The City Council could also consider directing staff to pursue a more comprehensive re-write of the PUD chapter pursuant to the Planning Board's recommendation.

This item is a legislative matter.

e) Ordinance No. 16-___; An Ordinance amending Title 11, Zoning Regulations, Title 12, Subdivision Regulations, Title 13, Lake and Lakeshore Protection Regulations, and Title 14, Flood Control, in the Whitefish City (First Reading) (p.314)

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

Summary of Requested Action: This application is a request by the city of Whitefish to amend the zoning regulations for housekeeping items in Titles 11, 12, 13 and 14.

Specifically:

- Amend building height standards in §11-2-3B(5) & cross reference to §11-2L-4;
- Change the term 'servant' to 'domestic worker' in the list of Permitted Uses in §11-2A-2, Agricultural District, §11-2B-2, Country Residential District, §11-2C-2, Suburban Residential District, §11-2D-2, Estate Residential District, §11-2E-2, One-Family Limited Residential District, §11-2F-2, One-Family Residential District, §11-2G-2, Two-Family Residential District, §11-2H-2, Low-Density Multi-Family Residential District, §11-2I-2, High Density Multi-Family Residential District, §11-2L-2, General Business District, §11-2N-2, Low Density Resort Residential District, §11-2O-2, Medium Density Resort Residential District, §11-2P-2, Limited Resort Business District, §11-2Q-2, General Resort Business District; §11-9-2;
- Add new definitions: 'building footprint' and 'domestic worker';
- Add new subsections §11-1-4, General Zoning Provisions, §12-1-4, General Provisions, §13-1-6, General Lake and Lakeshore Protection Provisions, §14-1-7, General Floodplain Regulations to add a burden of proof standard; and
- New review criterion in §12-3-7A Preliminary Plat Review Process; Minor Subdivisions, Waiver of Preliminary Plat.

Planning & Building Department Recommendation: Staff recommended approval of the text amendment attached to the staff report.

Public Hearing: At the public hearing, two representatives spoke in favor of the text amendments and encouraged the Planning Board to remove outdated terms. The draft minutes of the Planning Board hearing are included.

Planning Board Recommendation: The Whitefish Planning Board held a public hearing on January 21, 2016. Following this hearing, the Planning Board recommended approval (5-1, Ellis voting in opposition) of the amendments and adopted the supporting findings of fact in the staff report.

As part of the recommendation, the Planning Board directed staff to provide definitions of the terms in §11-2-3B(5), as they felt some of the terms might be outdated. They requested the Council review these terms and, if appropriate, delete the ones that are outdated. This list of terms is located within Exhibit B.

There are a full staff report, additional documents, and draft Planning Board minutes also in the packet for this item.

RECOMMENDATION: Staff respectfully recommends that the City Council, after considering testimony at the Public Hearing and the recommendations from the Planning Board and staff, approve An Ordinance amending Title 11, Zoning Regulations, Title 12, Subdivision Regulations, Title 13, Lake and Lakeshore Protection Regulations, and Title 14, Flood Control, in the Whitefish City (First Reading).

This item is a legislative matter.

f) Resolution No. 16-___; A Resolution to revise fees currently charged and establish new fees for various services provided by the Whitefish Planning & Building Department (p. 361)

From Planning and Building Director Dave Taylor's staff report:

Flathead County notified us last month that State Law no longer allows them to provide "address lists" to the general public, but they will continue to provide them to public agencies. State Law also requires notification of adjacent property owners when the public applies for various land use permits such as Conditional Use Permits, Variances, Subdivisions, etc. In the past, applicants would pay the fee and get the adjacent property owner lists directly from the County. Now the City of Whitefish must pay the $75 fee and obtain the lists directly from the County. Because of that increased cost, staff is requesting to increase the required application fees for all items where property owner lists are required by $75 each.

The city proposes to amend several fees required for various services provided by the Planning and Building Department where property owner notifications are required. If not listed, then the current fees remain the same. Proposed new fees are as follows:

Fee	Current	Proposed
Major Subdivision (6 or more lots)	$2,970 + $200/lot	$3,045 + $200/lot
Minor Subdivision (5 or fewer lots)	$990 + $200/lot	$1065 + $200/lot
Minor Subdivision (Waiver)	$250	$325
Minor Subdivision (Waiver, referred to Council)	$740	$810
Request to Council to delete required condition	$500	$575
Request by council to extend Preliminary Plat	$750	$825
Growth Policy Plan Amendment	$5,940 +40/acre	$6,015 + $40/acre
Growth Policy Text Amendment	$3,300	$3,375

Zoning Map Amendment	$2,310	$2,385
Zoning Map Amendment county to city where formerly zoned with city zoning for annexation	$500	$575
PUD, Residential	$2,970 + $100/acre	$3,045 + $100/acre
PUD, Commercial	$3,300 + $200/acre	$3,375 + $200/acre
PUD, Mixed Use (including short term rental)	$3,300 + $130/acre	$3,375 + $130/acre
PUD Amendment (Major) Residential	$660	$735
PUD Amendment (Major) Commercial/Mixed Use	$1,980	$2,055
Variance, Residential	$660	$735
Variance, Multi-family/Commercial/Industrial	$1,980	$2,055
Sign Variance, Residential	$600	$675
Sign Variance, Churches/Schools/Nonprofit	$660	$735
Sign Variance, Commercial/Industrial	$660 + $200/sign (not to exceed $1,980)	$735 + $200/sign (not to exceed $2,055)
Conditional Use Permit, Single-family	$990	$1065
Conditional Use Permit, Minor Residential (2-4 units)	$1,056 + $65/unit	$1,131 + $65/unit
Conditional Use Permit, Major Residential (5+ units)	$1,980 + $65/unit	$2,055 + $65/unit
Conditional Use Permit, Churches/Schools/ Public/Quasi-public	$990	$1,065
Conditional Use Permit, Commercial/Industrial/Medical/golf courses, etc	$1,980	$2,055
Food Vendor Permit (30 day)	$150	$225
Food Vendor Permit, Commercial (365 days)	$300	$375
Food Vendor Permit, Non-profit (365 days)	$200	$275
Flood Plain Development Permit	$200	$275
Flood Plain Permit, After the Fact	$1,980	$2,055
Flood Plain Permit Appeal and Variance, Residential	$660	$735
Flood Plain Permit Appeal and Variance, Multi-family/Commercial	$1,980	$2,055

There are a full staff report and additional documents also in the packet for this item.

RECOMMENDATION: Staff respectfully recommends that the City Council, after considering testimony at the Public Hearing and the recommendations from the staff, approve a Resolution to revise fees currently charged and establish new fees for various services provided by the Whitefish Planning & Building Department.

This item is a legislative matter.

COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR

a) Presentation and review of design and cost estimates for the West 7th Street Reconstruction project, a 2016 Resort Tax road reconstruction project, and authorization to proceed to bidding (p. 367)

From Public Works Director Craig Workman's staff report:

The Public Works Staff has completed our review of the final designs for the West 7th Reconstruction Project. This important project will reconstruct West 7th Street from Baker Ave. to Fairway Dr. One of the highest priorities of this job is the enhancements to driver and pedestrian safety that will be realized through intersection improvements, roadway alignment changes, the addition of an off-street shared use path for a portion of the project, and an 8' sidewalk for the remainder.

Maintaining the culture of the four "neighborhoods" that exist within the project area was also paramount during the design of this job and the City has held a total of 3 Public Information Meetings thus far in the project. The first meeting was held on 12/10/2014 where local residents were essentially shown a "blank canvas" of the West 7th Street corridor. Time was spent during this meeting discussing the goals of the project with residents and how these objectives would mesh with past planning efforts which had been completed by the City.

These discussions carried into the second Public Information Meeting, which was held on 2/11/2015. During this meeting, residents were shown two options for each of the four neighborhoods. One option included sidewalks on each side of the road, and the second option included a larger pedestrian path on the north side of the road. Residents were encouraged to comment on the design options, weigh in on certain design alternatives, and give feedback on how the project would affect them directly.
As the plans developed, a third Public Information Meeting was held on 3/25/2015, where residents were presented with a refined set of conceptual options. Attendees of the meeting were asked to vote on their preference of the design options during this third meeting.

The votes were compiled, along with the myriad of comments that were made by the public, and the final conceptual designs were presented to City Council on 4/20/2015. Council was also presented with the option to complete a full underground conversion on the existing overhead utilities during the 4/20/2015 meeting. Based on the additional cost that would be incurred to bury utilities, and the extra year of construction it would create, Council authorized RPA to proceed with the final project designs without burying the existing overhead utilities.

Assuming staff is authorized to proceed with bidding, and the contract is awarded according to the proposed schedule discussed later in this memo, a final Public Information Meeting will be held in April, 2016. This meeting will bring residents up to speed on the final project designs, the proposed construction schedule, and what they can expect to happen as construction begins.

Current Report

Attached to this report are several figures which provide an overview of the final designs for the project. These designs incorporate the preferences of West 7th Street neighborhoods to the best of our ability. The following sections describe the highlights of the final designs which are depicted on the enclosed sheets.

Final Plan Profiles – It should be noted that reconstruction of existing roadways poses a number of difficulties that are not encountered during the construction of new roads. These types of projects often require additional excavation in order to accommodate existing features such as homes, landscaping, fencing, etc. Often times the conversion of a rural road section into an urban section with curb and gutter can serve as a means to mitigate some of these challenges. Although this requires lowering the roadway in most areas to collect water, and the added cost of storm sewer, this solution typically results in less overall disturbance to private property than the alternative of installing properly graded open ditches on either side of the road.

Based on community input, City goals, and project budget, the following chart describes the specific design elements to each segment of the project.

Road Segment	Curb/ Gutter & Storm	Asphalt Road Width	Off-Street Path	Water	Sewer
Fairway to Karrow	No	22'	None	Replace	Extension
Karrow to Geddes	Yes	25'	10' Asphalt-North	Existing	Extension
Geddes to O'Brien	Yes	25'	8' Concrete-North	Replace	Extension
O'Brien to Baker	Yes	25'	8' Concrete-North	Replace	Replace
Gully Path	--	--	10' Asphalt	None	Extension

Intersection Improvements – Specific attention was paid to the safety of each intersection throughout the project. Currently, vehicles traveling eastbound on West 7th (downhill) during the winter have difficulty stopping at each of the three stop signs. With this in mind, "Landing Areas" were created at each stop sign with the intent of reducing the grade just prior to the intersection. These areas are intended to improve stopping conditions and promote increased intersection safety. Another major change that is proposed is making O'Brien one-way northbound between 7th and 8th Streets. This change was incorporated partly at the request of the adjacent property owners, and also serves to mitigate difficulties with the vision triangle at this intersection. Police, Fire, and rescue have also endorsed this concept, and the intersection has been designed to accommodate the turning movement of the City's largest fire truck.

Easements & Property Acquisition – In order to reconstruct the roadway, and install new infrastructure along the gully, a number of easements and property acquisitions were required. The following is a brief summary of these negotiated transactions:

Location	Owner	Agreement Type	Other
O'Brien-South	Zampieri	Easement	O'Brien one-way requirement
O'Brien-North	Niles	Acquisition	Fencing & Retaining Wall
Gully Path	Thompson	Easement	Retaining Wall, sewer/septic work

Lighting – As with past road reconstruction projects, the City will be upgrading this corridor to include decorative lighting. The current design is depicted with the City's standard 50W High Pressure Sodium (HPS) luminaries. However, another lighting alternative that the City will be experimenting with on this project is the inclusion of Light Emitting Diode (LED) technology. The inclusion of some LED fixtures on West 7th Street will likely lead to significant energy savings as we design future projects. However, since the physics behind LED lighting technology differs from that of HPS technology, it will require some experimentation before finalizing it for a future design. With this in mind, staff is requesting some leeway to add a few LED fixtures on this project in order to pave the way for future LED lighting projects.
We are also planning to add some lighting along the gully path and would like to incorporate some pedestrian scale bollards. The design for these bollards has not been finalized with our lighting vendor, but we anticipate that we will have the fixtures finalized, ordered, and delivered to meet the installation schedule.

Traffic Control & Construction Routes – The City has experienced some issues with construction traffic patterns and traffic related control issues on past projects. With this in mind, the West 7th Project will be bid with specific traffic control plans which must be adhered to, as well as a few sheets depicting preferred construction traffic routing. West 7th Street will be open to local traffic throughout the project in order for residents living within the construction zone to access their homes. However, there will be a six-week period when the gully will be closed to any through traffic. This proposed road closure has been discussed in advance with the Fire Marshall and has been endorsed. During this period residents living west of the gully will have to travel west to Karrow, and residents living east of the gully will have to travel east to Baker. Prior notice will be given to emergency response staff and residents before the closure goes into place. It should also be anticipated that staff will be recommending Council approve a future resolution outlawing on-street parking on West 7th Street. This will be discussed at a future meeting during the recommendation of a contract award.

Schedule: The first phase of the project, which included relocation of the gas line by Northwestern Energy, began last fall. The second phase of the project, which includes the completion of the utility relocations, will take place this spring. The final phase of the project includes water and sewer work, reconstruction of the roadway, construction of a pedestrian path and sidewalk, and installation of boulevard lighting is proposed to take place as follows:

2/1/2016 - Council Authorization to Bid
3/10/2016 - Bid Opening
3/21/2016 - Council Contract Award
April 2016 - Final Public Information Meeting
5/2/2016 - Start Construction
September 2016 - Construction Completion

RPA Contract Amendment #3 - Now that the Design Phase for this project has concluded, we need to look at the remaining phases of engineering work to complete the reconstruction of W 7th Street. With that, RPA has prepared the attached Contract Amendment No. 3, which is intended to cover the remaining tasks required to complete the project. This contract amendment includes services for Advertising and Bidding, ¾ Time Construction Observation, and Post-Construction Services. The following is a breakdown of the anticipated total engineering costs for the project, including the proposed Amendment #3:

Document	Approved	Description of Work	Cost
Initial Agreement	7/22/2014	Surveying, Preliminary Engineering, Preliminary Public Outreach	$78,600
Amendment #1	5/3/2015	Land Acquisition, Final Design	$212,600
Amendment #2	9/21/2015	Utility Relocates	$23,200
Amendment #3	Pending	Bidding, Construction Administration	$122,700
Total Project Engineering Cost			$437,100

Financial Requirement

This project is slated to be paid by the Resort Tax Fund. The original overall project cost estimate, which was competed in 2014, was $2,436,200. The current overall project cost estimate is $2,817,620. A comparison of the changes are as follows:

Estimate #	Utility Relocation	Construction	Easements	Professional Fees	Total
Original	$25,000	$2,000,000	$0	$411,200	$2,436,200
March 2015	$25,000	$2,390,000	$0	$411,200	$2,826,200
January 2016	$29,420	$2,331,000	$20,100	$437,100	$2,817,620

As you can see from these numbers, the estimated construction costs have increased since the original estimate, which was put together in 2014. A significant portion of this increase can be attributed to cast iron water main that was discovered within the project limits. It should also be noted that the original $2M construction estimate was put together before any preliminary conceptual drawings were completed. That said, we are optimistic that the scale of the project along with the timing of the bid, will attract lots of competition.

RECOMMENDATION: Staff respectfully recommends the City Council approve the design for the West 7th Street Reconstruction project and authorize the bidding for the project.

This item is a legislative matter.

b) Consideration of Amendment #3 to the engineering consulting contract with Robert Peccia and Associates for the West 7th Street Reconstruction project for bidding, construction inspection, and post-construction services (p. 381)

See discussion above.

RECOMMENDATION: Staff respectfully recommends the City Council approve Amendment #3 to the engineering consulting contract with Robert Peccia and Associates for the West 7th Street Reconstruction project for bidding, construction inspection, and post-construction services.

This item is a legislative matter.

COMMUNICATIONS FROM CITY MANAGER

a) Written report enclosed with the packet. Questions from Mayor or Council? (p.421)
b) Other items arising between January 27th and February 1st
c) Consideration of approving the sale of buildings from the James R. Bakke Reserve property (p. 424)

The City of Whitefish received a very generous donation of a beautiful four acre parcel of land at 611 West 7th Street in 2015 from the estate of James R. Bakke. The deed was recorded on June 15, 2015 (see attached deed). Mr. Bakke, a local artist, lived on the property, I believe for his entire life, except at the very end of his life. The donation from the estate stipulated that the property would be used as a park or open space (and not as a cemetery).

The Park Board, after consulting with friends and associates of Mr. Bakke, has decided to leave the park as a natural park and name it the James R. Bakke Reserve. There are currently eight buildings on the property in various stages of functionality. The Park Board has decided to demolish six of the buildings, leave one building on site, and move one building to the Parks and Recreation Maintenance building on Monegan Road for use as a storage shed.

Rather than just demolish the buildings, we decided to see first if there was any public interest in buying any of the six buildings, either for moving the entire building or salvaging any of the materials from the buildings. To that end, we published the attached Invitation to Bid to see if any bidders would be interested in moving or salvaging any of the buildings.

We opened bids for the sale of any of the six buildings on Thursday, January 21st at 3:00 p.m. There was only one bid submitted for one building – building #6, a small shed, for $300.00. That bid was from Mark Duff of Whitefish. Please see the attached bid tabulation.

There is no financial cost to the City to award the sale of this building and the Park and Recreation Department will receive $300.00 for the sale of the building and they avoid demolition and landfill costs.

RECOMMENDATION: Staff respectfully recommends the City Council award the sale of building #6 on the James R. Bakke Reserve land to Mark Duff of Whitefish.

This item is a legislative matter.

d) Resolution No. 16-06; A Resolution relating to up to $9,800,000 Tax Increment Urban Renewal Revenue Bonds, Series 2016; Authorizing the Issuance and Private Negotiated Sale Thereof (p. 436)

On December 1, 2014, the City Council approved using David MacGillivray of Springsted, Inc. of St. Paul, MN as the city's independent financial advisor for a tax increment bond for the City Hall and Parking Structure and also to refund or refinance the existing tax increment bonds that were issued in 2009.

On April 20, 2015, the City Council approved proceeding to issue a Tax Increment refunding bond with First Interstate Bank and Glacier Bank to refinance the existing 2009 Tax Increment Bond that has interest rates between then and 2020 at 4% - 4.625% (refunding principal amount of bonds was $7,183,000.00). The City Council also approved that night to issue a new Tax Increment bond with First Interstate Bank and Glacier Bank later in 2015 or in early 2016 to provide new money and funding for the City Hall/Parking Structure.

The Tax Increment Refunding Bond Resolution, Resolution No. 15-14, was approved by the City Council on June 1, 2015 and we issued bonds at 2.62% average rate over the remaining five years of that existing TIF bond. That refunding saved $414,114.14 of interest costs over the last five years of the TIF bond ($386,134.45 in present value).

Our Bond Counsel of Dorsey and Whitney of Missoula, MT and Minneapolis, MN has prepared what is called a "parameters" resolution for City Council consideration for the second TIF Bond issue to provide what we are calling the "New Money" bond issue as compared to the refunding of the prior existing TIF Bond. This "parameters" resolution authorizes the Mayor and staff to execute Bond Purchase Agreements with First Interstate Bank and Glacier Bank for the Tax Increment Bond (New Money) within "parameters" or limits as established within the Resolution. Because tax-

exempt municipal bond pricing and rates change every day, we are planning to execute the Bond Purchase Agreement on February 8th and lock in the interest rate as of that date until we close on March 1st. The Mayor and staff cannot execute the Bond Purchase Agreement unless it is within the parameters which the City Council authorizes, so there is some cushion within the Resolution to allow for changing conditions. The most recent interest rate for the TIF Bond was 2..4% on January 22, 2016 as compared to the 3.25% maximum allowed in the Resolution. The amount of bonds issued will be $9,800,000.00 and debt service schedules and coverage calculations (at 3.25% interest rate) which Dave MacGillvray of Springsted, Inc. prepared are also provided in the packet with the report.

Even with the recent increased budget for the City Hall/Parking Structure project of $16,041,549.89 approved on January 19, 2016, we can leave the TIF bond issue at $9,800,000.00 thus staying below the $10,000,000.00 small issuer threshold in federal law. Staying below that threshold allows the bonds to be "bank qualified" meaning the banks can give us a lower interest rate by 0.15% than they otherwise would (see the banks' Term Sheet proposal from last year in the packet).

As approved on January 19th, we will defer the Depot Park Master Plan project Phase 2 for 2-3 years in order to pay for the increased City Hall/Parking Structure costs and use those TIF funds for the increased costs.

The TIF fund can pay for the increased costs of the project and this "New Money" Bond debt service payments. There is a revised TIF pro-forma schedule in the packet as well which demonstrates that the TIF fund can pay all the costs.

RECOMMENDATION: Staff Respectfully Recommends the City Council approve a Resolution relating to up to $9,800,000 Tax Increment Urban Renewal Revenue Bonds, Series 2016; Authorizing the Issuance and Private Negotiated Sale Thereof.

This item is a legislative matter.

e) Resolution No. 16-07; A Resolution relating to $8,219,500 Water System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Taxable Series 2016; Authorizing The Issuance And Fixing The Terms And Conditions Thereof (p. 447)

From Finance Director Dana Smith's staff report:

At January 19th meeting, the City Council approved the following resolutions related to the Haskill Basin Watershed Conservation Easement (Conservation Easement) with F.H. Stoltze Land and Lumber Company and Montana Fish Wildlife, and Parks:

- Resolution 16-01 – The Whitefish City Council's approval of the Deed of Conservation Easement and a purchase agreement with TPL to purchase their interest in the option/easement.

- Resolution 16-02 – The Whitefish City Council's approval of the MRMP.

- Resolution 16-03 – The Whitefish City Council approval of a new public recreational trail easement on the land with the F.H. Stoltze Land and Lumber Company, effective as all other documents when all documents are recorded.

In addition, the City Council will consider the water system and road access agreement and the City's exchange of the two orphan parcels for that easement. These items were postponed at the January 19th meeting due to the appraisal of those parcels of land not being available for the City Council's review.

Earlier on April 28, 2015, 83.71% of Whitefish voters approved increasing the Resort Tax rate from 2% up to 3% from July 1, 2015 until January 31, 2025 with 70% of the proceeds of this 1% increase to be used to pay the debt service on a $7,700,000 bond issue with financing from the State of Montana State Revolving Fund (SRF) loan program to fund the City's portion of the Conservation Easement purchase.

To provide the funding for the $7,700,000 that the City will contribute to the acquisition of the Conservation Easement, the total SRF loan will equal $8,219,500 in order to provide the necessary debt service reserves of $459,500 as security for our debt service payments and to pay issuance costs of $60,000 for bond counsel services. Taking into account the necessary debt service reserves, bond counsel costs, and updated appraisal value, the total project cost is now $20,499,500. Appendix A of Resolution 16-07 illustrates an overview of the costs and funding sources for the entire project.

There are two sections of the Resolution that should also be noted. Section 8.2 of Resolution 16-07 states that "the City Council has investigated the facts necessary and herby finds, determines, and declares it to be necessary and desirable for the Borrower to issue the Series 2016 Bond to evidence the 2016 Loan." Also, as with all water or wastewater revenue bonds of the City, as noted in 8.09 of Resolution 16-07, "no free service shall be provided to any person or corporation."

Dorsey & Whitney, the City's bond counsel, prepared Resolution 16-07. City Manager, Chuck Stearns, and I have both reviewed and revised the Resolution with Dorsey & Whitney.

The interest rate for the SRF loan is 2.5% with the final payment due on January 1, 2025, just before the Resort Tax is set to expire (January 31, 2025). The average annual payment is approximately $1,032,000. However, you will notice in the amortization schedule included in the packet that the principal payments have been scheduled to increase over the life of the loan. The increasing payment schedule

allows the Resort Tax revenue to grow over time to meet the increasing debt service requirements. Currently the closing date is anticipated to be February 11, 2016, but this is subject to change as there are many moving parts for the Conservation Easement acquisition.

Coverage requirements of a typical water revenue bond require that net revenues of the system total at least 110% of the maximum cumulative principal and interest due in any one fiscal year for all outstanding water system bonds. Resolution 16-07 amends the original bond resolution to include new terminology (Haskill Basin Net Revenues) relating to the use of Resort Tax revenues in the coverage calculation. It is important to note that the Resolution only permits Resort Tax revenues to be used for the Water System Revenue Bond incurred by the City to finance the purchase of the Conservation Easement. The coverage calculations by the DNRC are included in the packet. Due to adequate coverage, no water rate increase is required to issue this bond.

As a Water System Revenue Bond, the loan will be recorded in the accounting records of Water Fund. However, the loan will be secured and paid for using Resort Tax revenues resulting from a portion of the 1% increase. Monthly transfers of the allocated revenue for the month will be made from the Resort Tax Fund to the Water Fund to fund only the debt payments on this loan. If Resort Tax revenues in any given year are insufficient to pay the principal and interest when due, the Water Fund will temporarily make any debt service payments. When available, future Resort Tax revenues will the repay the Water Fund. Included in this packet is the updated projection worksheet for Resort Tax revenues and required loan payments through January 1, 2025. Although the projections indicate some years with deficiencies, a positive cash balance is expected when the bond is paid in full. At that time, any extra funds no longer needed for the repayment of the loan will be included in the next fiscal year's property tax relief.

The FY16 Budget provides for the purchase of the Conservation Easement in the Resort Tax Fund. However, after discussions with bond counsel and our auditor, a budget amendment will be necessary at year-end since the capital project and related asset should be recorded in the Water Fund, which is where the liability is required to be recorded.

RECOMMENDATION: Staff respectfully requests that the City Council approve Resolution 16-07 relating to the $8,219,500 Water System Revenue Bond (DNRC Pollution Control State Revolving Loan Program), Taxable Series 2015; Authorizing the Issuance and Fixing the Terms and Conditions Thereof.

This item is a legislative matter.

f) Review of Mid-year financial report – City Finance Director (p. 506)

Finance Director Dana Smith has a comprehensive review of the mid-year financial report for the City in the packet. She will review that report briefly on Monday night and we will be available to answer questions.

COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

ADJOURNMENT

Sincerely,

Chuck

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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PROJECT REVIEW

DATE: 26 January, 2016

NEW CITY HALL and PARKING STRUCTURE

CITY OF WHITEFISH

REPORT TO CITY COUNCIL and STAFF

ACTIVITIES COMPLETED – THIS PERIOD

- Rammed Aggregate Pier work was completed and Subcontractor and Equipment demobilized.
- The first concrete pour was completed on Wednesday, Jan 27. Approximately 55cy were placed for the footings in the SE corner of the City Hall.

ACTIVITIES IN PROGRESS

- Site prep is continuing in both the City Hall and the PS areas, with the emphasis shifting more to the PS.
- Concrete placement is now under way for footings in the City Hall area, and is expected to continue at the rate of one pour per week, of approximately 50 – 60cy, each.
- Planning for the placement of the first footings in the PS is moving ahead, as well.

ACTIVITIES PLANNED (3 WEEK LOOK AHEAD)

- Site backfill and grading will continue.
- The concrete foundation effort will also continue in the City Hall area, as noted above. The placement rate will increase as weather improves, and as the site prep subcontractor is able to make more areas available.
- Start of foundation work in the PS area is anticipated to start near the end of February.
- Mechanical and Electrical underground rough-in is scheduled to begin the first of March.

CONTRACT ACTIVITES

- All parties are still continuing to process and evaluate ways and means to save costs.
- The Concrete work was rebid, and bids were opened on Wed afternoon, 1/26.

FUTURE SCHEDULED ACTIVITIES

- Continue site prep work.
- Martel will continue to expand the concrete work, both in the City Hall and the PS areas. Concrete work will continue to be the primary onsite event for the next few months

- Rough in work for the mechanical and electrical efforts will proceed along with the concrete work.
- The first loads of structural steel are planned to arrive at the site in mid-April.

COMMUNICATIONS TO THE PUBLIC

- Foundation monitoring has been temporarily suspended since the RAP effort is now complete. Observations will be performed on an as-needed basis depending the types of work and equipment being employed.
- There were no press releases for the week of 1/25.
- Relations and communications with the local business owners, and the community in general, remains positive.

AREAS OF CONCERN

- None at this time.

Mike Cronquist
Owners Representative

SITE PHOTOS

FORMWORK ALONG SECOND STREET – SW CORNER OF THE CITY HALL 01-21-2016

FORMWORK – SE CORNER OF THE CITY HALL 010-21-2016

5

THESE FOOTINGS HAVE REBAR IN PLACE AND ARE READY FOR CONCRETE 01-26-2016

SE CORNER OF THE CITY HALL 01-26-2016

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WHITEFISH CITY COUNCIL
JANUARY 19, 2016
7:10 P.M.

1) CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Hildner, Feury, Barberis, Frandsen, Sweeney, and Williams. City Staff present were City Manager Stearns, City Clerk Lorang, City Attorney Jacobs, Finance Director Smith, Planning and Building Director Taylor, Public Works Director Workman, Parks and Recreation Director Butts, Senior Planner Compton-Ring, Assistant City Clerk Woodbeck, Customer Services Clerk Howke, Police Chief Dial and Fire Chief Page. Approximately 50 people were in the audience.

Councilor Feury gave a tribute to our Building Official Virgil Bench, a long-time employee of the City of Whitefish, who passed away last week. Councilor Feury said had he has been on City Boards for nearly two decades so had the opportunity to work with Virgil at this level as well as working with Virgil on a number of building projects and said the reason our Building Department is what it is today is because of Virgil. He thought that members of our building community would say the same thing. Councilor Feury attended Virgil's memorial service last Saturday, he said it was really well attended and a lot of great things were said about Virgil. Councilor Feury requested a moment of silence to think of Virgil and his family.

2) PLEDGE OF ALLEGIANCE

Councilor Hildner recognized the members of Boy Scout Troop #1917 who were in attendance tonight working on their Citizenship in the Community Merit Badge; and asked them to lead the audience in the 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)

Rhonda Fitzgerald, 412 Lupfer Avenue, spoke on the City Hall/Parking Structure project and said that the building itself should not be compromised in its functionality of pedestrian enhancement in the downtown. Council will be considering possible cuts to the project later on in tonight's meeting and one of those items is a portion of the awnings along the side of the building at Baker Avenue. This area will help knit the Railway District to the downtown; and a full-covered walkway along the whole block of Baker Avenue is an important element of the pedestrian function. The success of enhanced pedestrian elements was proven again when, during the Central Avenue improvement project the decision was made to improve all four corners at Central Avenue and East Third Street; now that is a very popular and active corner in town. Visitors are at that corner using the kiosks, the parking, they sit to relax on the benches; increased activity at that corner was immediate after the completion of the project. She thinks the same will happen on Baker Avenue and it would be important to make it desirable to walk down Baker. She encouraged the Council to keep awnings in for the full block. She said on packet page 400 the savings shown is $53,000, but through value engineering the cost has been reduced so the savings would now only be about $35,000.

Steve Thompson, 545 Ramsey Avenue, welcomed Katie Williams as a new Councilor. He said Council had originally approved the City Hall/Parking Structure project to be LEED Certified, but later withdrew that decision and instead voted to design to LEED standards but not to pursue certification. He requested the Council not cut corners that would affect energy efficiency in the final plan. Secondly, he said one of the Council's Goals approved in 2014 was to develop a climate action plan. He is part of a planning group called "Climate Solutions Project", a group of 12-16 people who have met several times and are interested in working with the Council towards their goal. A Council work session has been scheduled with that group on February 1, 2016. That group has also scheduled a community stakeholders meeting in the Council Chambers that same day at 3 in the afternoon. A couple people from Missoula will be coming up for these meetings that are involved with energy efficiency programs in Missoula, and know of activities happening in other Montana communities.

Jeff Raper, 719 Kalispell Avenue, said he is here tonight as a Chamber Board Member with some updates on projects that will include the City's participation down the road. He thanked the Council for their commitment of funds towards the study for the workforce housing project. The Chamber and its members have been discussing the challenge of parking needs this summer since the ongoing City Hall/Parking Structure construction took away parking that was there; and the City's property on Columbia and Somers Avenues, known as the 'snow lot', had come up as a possibility for overflow parking. They have also been talking with School Administrators about the teacher's parking on their grounds that aren't used by the school in the summer. Jeff encouraged the Council to not cut any parking spaces from the new parking structure. The Chamber has also been talking with Whitefish Mountain Resort about the utilization of the SNOW Bus during the summer to open possibilities of transportation between downtown and parking at the High School. Another item the Chamber has been discussing and might be coming to ask for Council's support is having some organized activities and downtown promotions with Canadian at par; possibly targeting Victoria Days to encourage more Canadian visitors to come back. It would also serve as a thank-you to our Canadian visitors for their support over the years. Lastly, he encouraged the Council to plan for a Highway 93 South corridor study, with Whitefish's continued growth it would be timely.

4) COMMUNICATIONS FROM VOLUNTEER BOARDS

Councilor Hildner reported he attended last week's Park Board meeting. There was continuing discussion on design and location of the gazebo in Depot Park. The Park Board gave unanimous agreement naming the 'James R. Bakke Reserve' on the land recently donated to the City from his estate. Today he attended, with others, a meeting with the Public Transportation Focus Group. Also in that meeting were other Council members and City Staff and people from Eagle Transportation. The discussion was around the convenience, accessibility and affordability of public transportation and how that can be improved, not only in Whitefish but around the valley.

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 January 4, 2016 Council executive session (p.21)

b) Minutes from the January 4, 2016 Council regular meeting (p.21)

c) Ordinance No. 16-01; An Ordinance rezoning approximately 1.177 acres of land located at 2422 and 2424 Carver Bay Road, in Section 14, Township31 North, Range 22 West, Whitefish, Montana, from County R-1 (Suburban Residential) to City WSR (Suburban Residential District) and adopting findings with respect to such rezone (Second Reading) (p.33)

d) Ordinance No. 16-02; An Ordinance rezoning approximately 1.391 acres of land located at 1750 and 1770 US Highway 93 West, in Section 35, Township 31 North, Range 22 West, Whitefish, Montana, from County R-1 (Suburban Residential) to City WSR (Suburban Residential District) and adopting findings with respect to such rezone (Second Reading) (p.36)

e) Confirm the appointment of Chase Garner as a police officer pursuant to Section 7-32-4113 Montana Code Annotated (p.39)

Councilor Hildner corrected the spelling of his daughter's name to Erika, on the second page of the minutes for January 4, 2016.

Councilor Sweeney made a motion, second by Councilor Frandsen, to approve the Consent Agenda as corrected. The motion passed unanimously.

6) PUBLIC HEARINGS (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30 minute time limit for applicant's land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)) (CD 13:58)

a) Seven Resolutions related to the purchase of a Conservation Easement on approximately 3,020 acres of land in Haskill Basin from the F.H. Stoltze Land and Lumber Company

Mayor Muhlfeld said there will be a staff report from City Manager Stearns followed by a public hearing that will encompass all of the nine sub-sections (items) that are related to the Conservation Easement in Haskill Basin and listed as agenda items i) through ix). Citizens can direct their comments to any one of the nine items during this public comment period. Following the public hearing the Council will take action on each of the nine items individually.

City Manager Stearns gave a brief overview of each of the items from his staff report that starts on page 115 in the packet where he reviews the history and background of this Conservation Easement. A review of recent developments starts on page 116 where it is explained that Council and the public has had the opportunity to review all the different moving parts of this Conservation Easement over the past months. The documents have also been reviewed and approved by the Montana Fish, Wildlife and Parks Officials and the State Land Board. Following he reviewed each item.

The first resolution authorizes the purchase of the Conservation Easement (CE) from F.H. Stoltze Land and Lumber Company (Stoltze) on their 3,020 acres. (Following the approval and execution of all the documents and after the transfer from the City of 2.569 acres – 'orphan parcels', the total CE will be 3,022 acres). The CE removes the development rights and Stoltze retains ownership of the land for continued timber management. The appraised value of the CE is $19,980,000; the agreed upon purchase price is $16,700,000, so the Stoltze donated value is $3,280,000. Exhibit B of this resolution is an Agreement to purchase the CE from Trust for Public Land (TPL), as intermediary, and is the holder and owner of the option to purchase the CE from Stoltze. Montana Fish, Wildlife and Parks (FWP) will be the steward of the CE.

The second resolution approves the Multi-Resource Management Plan (MRMP), which provides more detail and specificities on the uses and restriction on the land. There will be an annual public meeting held by the liaison team that consists of two representatives from Stoltze, one from FWP, and one from the City, per the MRMP.

The third resolution provides the City a permanent easement guarantying City right to access the lands via Stoltze roads to maintain the municipal water system. Historically, and over the last 100 years the City had a verbal agreement with Stoltze for this access and now it is beneficial to have this

permanent easement. As part of getting the permanent easement the City will transfer title of 2.569 acres of land known as the 'orphan parcels', which are near, but not on the water intakes of Second and Third Creeks. The exchange of these 2.569 acres of City Land is for a perpetual easement on 41.68 acres of land in Haskill Basin. The fourth resolution authorizes the transfer of those orphan parcels to Stoltze, after which they become part of all the lands controlled by the CE. The appraisal of the orphan parcels is currently underway and has had no staff review; so staff will likely ask the City Council to postpone action on this item until the February 1st meeting.

The fifth resolution provides for the terms and conditions of a trail easement on Stoltze land; which the City will hold the title, as we do with other Whitefish Trail easements, for a single track trail for non-motorized traffic. And, as in other Whitefish Trail management, the City works in partnership with Whitefish Legacy Partners who will fundraise and pay for the construction and maintenance of this extension of Whitefish Trail. In conjunction with the trail easement, the next two items on the agenda (vi and vii), are letters of intent from adjacent landowners; the Iron Horse Homeowners Association and Winter Sports, Inc., committing their approval of modification of existing trail easements on their properties to accommodate a new trail alignment for the Whitefish Trail. As we have talked about during previous meetings, modifications and new trail alignments results in a better trail more in line with the topography of the land.

The last two resolutions again pertain to the realignment of the trail along with the plans to construct a new trailhead on Reservoir Road on the southwest corner of the City's Water Treatment Plant land. From the new trailhead the trail travels north on City property, but to better follow the land's topography the new alignment took the trail across the northeast corner of the Murr property, adjacent and west of the City's land. This was discussed in detail at the Council's January 4, 2016 meeting. The sixth resolution approves an agreement with Whitefish Legacy Partners to provide funding for the purchase of the boundary adjusted land (the Murr property) and the City agrees to allow the trail and new trailhead on City property. The seventh resolution approves the buy-sell agreement for the Murr property, 0.54 acres, at $14,000.00 plus closing costs. Mayor Muhlfeld disclosed at the January 4th meeting that his firm, River Design Group, is providing the surveying of the boundary line adjustment at no cost as a contribution to the project.

Clarification was made that the correct owner's names of the Murr property are Harold A. and Bonnie Murr.

Mayor Muhlfeld opened the public hearing, this is one public hearing for all of the agenda items under 6a.

Erin Bodman, 269 Hare Trail, representing Flathead Fat Tires, a mountain bike advocacy group and she is their president. Their group is excited this project is moving forward and believe the Whitefish Trail will be a great asset for the city and recreational community; and fully support that aspect of the project. The group looks forward to working with the City and Stoltze if and when any recreational issues arise.

Heidi Van Everen, 4 Pine Avenue, is the executive director of Whitefish Legacy Partners (WLP). She said, like Erin, she is in full support of this project in its entirety and appreciates all the efforts and hard work that City staff, Mayor and Council are undertaking in the execution of all these documents to move the project forward. WLP is excited to have this whole new area opened up for the extension and someday a completion of a continuous Whitefish Trial in Whitefish and around Whitefish Lake, and is excited to continue their partnership in the Whitefish Trail. Mayor Muhlfeld thanked Heidi and their entire board for all their hard work, it is much appreciated.

Denny Gignoux, president of the Glacier Nordic Club, spoke for the club in support of this

project. And with better access points, their group will be working in partnership in the future to insure groomed cross country ski trails in Haskill Basin.

Steve Thompson, 545 Ramsey Avenue, said thank you and congratulations to WLP and the Stoltze family, Iron Horse and WSI; this is exciting and an impressive accomplishment and a moment for celebration. He said just today he was skiing on the trails, they are olympic-type world class trails, and this is going to make them better.

Rebecca Norton, 530 Scott Avenue, said this is great and thank-you to everybody who made it happen.

Diane Conradi, 115 Hummingbird Lane, said thanks to one and all for the years of dedication to see that the Whitefish Trail meets the dream of circling the lake. This new piece of the trail, through Haskill Basin, was never on the radar in the overall plan because Haskill Basin is privately owned; but though the knowledge, competence and passion, integrity and persistence of Alex Diekmann and his partners in Trust for Public Lands (TPL), this is becoming a reality. She said Alex is not here tonight due to ill health, but his presence will be felt in this community forever. Whitefish is extremely lucky to have the partnership with TPL. She said thank you to Whitefish, Alex and TPL, WLP, and all who have worked so hard together on this project.

As there was no further public comment, Mayor Muhlfeld closed the public hearing and turned the matter over to the Council for their consideration.

i) Resolution No. 16-01; A Resolution authorizing the purchase of a conservation easement in Haskill Basin (p. 42)

Councilor Frandsen made a motion, second by Councilor Hildner, to approve Resolution 16-01.

Manager Stearns noted that to fund the $16.7M purchase addressed in this resolution includes two federal grants obtained by Alex Diekmann and others; A Forest Legacy Grant for $7M, and a $2M Fish and Wildlife Service Habitat Conservation Program Grant. The City is providing $7.7M from the 1% increase in Resort Tax Revenue over a ten-year period through a bond and funding resolution that will be acted on by the Council at the February 1, 2016 Council Meeting. Councilor Hildner acknowledged the importance of preserving the City's water system, the importance of the efforts of people like Alex Diekmann and others, all with the cooperation of the Stoltze Company and family showing their community spirit. The result is a great symbol of when people come together and do good work for the present and future of this community.

The motion passed unanimously.

ii) Resolution No. 16-02; A Resolution approving the Multi-Resource Management Plan for the Haskill Basin Watershed Conservation Easement (p. 126)

Councilor Hildner made a motion, second by Councilor Sweeney, to approve Resolution 16-02. The motion passed unanimously.

iii) Resolution No. 16-___; A Resolution approving the terms of a Municipal Water System Easement and Road Access Easement with F.H. Stoltze Land & Lumber Company (p. 140)

Councilor Sweeney made a motion, second by Councilor Barberis, to approve this resolution. Manager Stearns said that he and City Attorney Jacobs agree that since this resolution has

ties to the next resolution on the agenda approving action on the exchange of the 2.569 orphan parcels for which an appraisal is not yet completed or submitted to the City, staff recommends that the Council postpones action on these two resolutions. State Law provides that in exchanges the Council must be aware of and comfortable with values of lands exchanged. We should have the appraisal for the next meeting.

Both the maker and the second agreed to withdraw the motion.

iv) Resolution No. 16-___; A Resolution authorizing the transfer of parcels of land in Haskill Basin totaling 2.569 acres of land to F.H. Stoltze Land & Lumber Company in exchange for 51.28 acres of perpetual easements allowing the City to access, maintain and use its municipal water system (p. 158)

Mayor Muhlfeld asked, and Council agreed, to postpone action on this resolution until the next meeting. Manager Stearns said that all seven resolutions are integral to the complete project and we don't anticipate and problems moving forward while postponing action on these two resolutions to the next meeting.

v) Resolution No. 16-03; A Resolution approving the terms of a public recreational trail easement with F.H. Stoltze Land & Lumber Company (p. 168)

Councilor Frandsen made a motion, second by Councilor Hildner, to approve Resolution 16-03. The motion passed unanimously.

vi) Consideration of approving a Letter of Intent to modify the trail easement on the Iron Horse Homeowners Association property to accommodate a new trail alignment for the Whitefish Trail (p. 184)

Councilor Hildner made a motion, second by Councilor Frandsen, to approve the Letter of Intent from Iron Horse Homeowners Association.

Councilor Sweeney said he supported the motion, but as long as the homeowners association is willing to have their easement modified, he would like to have a conversation sometime about the restriction to horse traffic. He said most of the Whitefish Trail is open to horse traffic.

The motion passed unanimously.

vii) Consideration of approving a Letter of Intent to modify the trail easement on the Winter Sports, Inc. property to accommodate a new trail alignment for the Whitefish Trail (p. 189)

Councilor Frandsen made a motion, second by Councilor Sweeney, to approve the letter of Intent from Winter Sport, Inc. The motion passed unanimously.

viii) Resolution No. 16-04; A Resolution approving the terms of an agreement with Whitefish Legacy Partners with respect to a Boundary Line Adjustment with Harold A. Murr and Bonnie Murr (p. 194)

Councilor Hildner made a motion, second by Councilor Sweeney, to approve Resolution 16-04, including the correction of Harold A. Murr's name in all documents. The motion passed unanimously.

ix) Resolution No. 16-05; A Resolution approving a Real Estate Buy-Sale Agreement with respect to a 0.54 acre of land as an addition to the Water Treatment Plant site from a Boundary Line Adjustment with Harold A. Murr and Bonnie Murr (p. 199)

Councilor Barberis made a motion, second by Councilor Williams, to approve Resolution 16-05.

Mayor Muhlfeld said he had a discussion with Alex Diekmann this morning who said he had worked on many conservation easements during his career and this one was one of a kind because of the wonderful community in Whitefish and because of the values this conservation easement preserves and protects in perpetuity. Mayor Muhlfeld acknowledged and thanked, on behalf of the City, Alex Diekmann, Stoltze Land and Lumber Company, Montana Fish, Wildlife and Parks, and Whitefish Legacy Partners for all the hard work and great effort on accomplishing this project.

The motion passed unanimously.

Councilor Sweeney said it deserves a round of applause.

b) Ordinance No. 16-03; An Ordinance amending Zoning Regulations in Whitefish City Code Title 11 to add micro-distilleries to the list of Conditional Uses in §11-2J-3, Limited Business District, §11-2K-3, Secondary Business District, §11-2L-3, General Business District, and §11-2R-3 Industrial District, amend the standards for accessory buildings in §11-3-2A, and amend the definition for a bar/lounge in §11-9-2 (First Reading) Staff Report #WZTA 15-04 (p. 212) (CD 51:07)

From the staff report, Senior Planner Compton-Ring reported from their Department's list of work items, from time to time some 'housekeeping' type updates come up and three are coming forward to the Council at this time. (1) Replace 'cabaret' licenses with 'Restaurant Beer Wine (RBW) licenses in the definitions of Bar/Lounge to comply with updated State Law. (2) The chapter for Accessory Buildings in the Code (referring to buildings not intended for human occupancy) currently reads that anything less than 120 square feet in floor area do not require building permits. The State and the City have both adopted updated 2012 Building Codes, so to be in compliance our zoning regulations should now read: "Accessory buildings less than two hundred (200) square feet and not intended for human occupancy do not require building permits. (3) Micro-distilleries is proposed to be added to Conditional Uses in the same line as microbreweries where they are allowed as conditional uses in the Industrial District, the General Business District, the Secondary Business District, and the Limited Business District. Planner Compton-Ring explained that recently the office has seen a couple requests for micro-distilleries, but as they were not specifically called out in the zoning regulations the Department processed them similarly to a microbrewery; so these amendments include the proposal to add micro-distilleries in Conditional Uses. At the Planning Board's public hearing on these amendments a public comment was given that standards for micro-distilleries should be added to the regulations as well; and that will be an agenda item at the next Planning Board meeting and will be coming back to Council with a staff and Planning Board recommendation. After the Planning Board's public hearing the Board approved the staff report and is forwarding a recommendation of approval for all three amendments.

Council had some questions for staff regarding retail items sold in a micro-distillery, the definition of micro-distilleries and conditions that will apply. Planning Director Taylor said these are details that can be looked at starting with the Planning Board's review at their next meeting.

Mayor Muhlfeld opened the public hearing.

Rhonda Fitzgerald, 412 Lupfer Avenue, said it is premature to add a use in the zoning regulations before defining it. She said both microbreweries and micro-distilleries are a popular trend; they are showing up everywhere and proliferating like crazy. She said they are food, beverage and retail services with manufacturing added to all these zones. The amount of product produced by brewers and distillers is key, and that group is in front of the legislature a lot trying to get those standards changes and they are pretty good at it. She felt the production part fit well in the Industrial Zones, but not the restaurant, bar and retail parts; she felt those should be in our core Commercial Zones and not in the neighborhoods.

There being no further public comment, Mayor Muhlfeld closed the public hearing and turned it over to the Council for their consideration.

Councilor Sweeney made a motion, second by Councilor Williams, to adopt the staff report, and findings of fact, and approve the first reading of Ordinance No. 16-03; An Ordinance amending Zoning Regulations in Whitefish City Code Title 11 to add micro-distilleries to the list of Conditional Uses in §11-2J-3, Limited Business District, §11-2K-3, Secondary Business District, §11-2L-3, General Business District, and §11-2R-3 Industrial District, amend the standards for accessory buildings in §11-3-2A, and amend the definition for a bar/lounge in §11-9-2 (First Reading). Councilor Frandsen corrected the typo on the last line on page 216 in the packet: it should be Restaurant Beer Wine (RBW) and not Restaurant Bear Wine.

More discussion followed between Council and staff before the vote on the motion along the line of items that will be discussed next at the Planning Board level and then brought forward to the Council for their consideration.

The motion, as corrected, passed on a five to one (1) vote with Councilor Hildner voting in the negative.

7) COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR (CD 1:08:05)

a) Consideration of approving a contract with WGM Group for a Pedestrian – Bicycle Master Plan update (p.368)

Public Works Director Workman said his report also addresses the City's Bike Paths in this recommendation to award a consultant contract to update the Whitefish Bicycle and Pedestrian Master Plan. The original plan was adopted in 1998 and has had a few amendments. The Council approved $40,000 Resort Tax Funds for the update in the FY16 budget. Late in 2015 the City issued a Request for Proposal and received and reviewed and interviewed all three firms that submitted proposals. The interview panel forwarded a recommendation to hire and have an agreement be executed with the WGM group; the panel's recommendation has been approved by the Bicycle & Pedestrian Path Advisory Committee; and that is the recommendation being brought forward to the Council tonight. It was also recommended by the Bicycle & Pedestrian Path Advisory Committee that, in order to allow time for public outreach for the updated plan, as well as incorporate engineering design services for a section of trail adjacent to the River Bend Condominiums (an ongoing project of the Committee's); an amendment to this contract, if approved by Council, will be forthcoming to the Council for their consideration. Members of Council and staff discussed some of the elements in the Scope of Work.

Councilor Hildner made a motion, second by Councilor Williams, to authorize the City Manager to execute a consultant agreement with WGM to carry out the scope of services as included in the packet, and with the understanding that the project may extend into the next fiscal year. The motion passed unanimously.

8) COMMUNICATIONS FROM CITY MANAGER (CD 1:21:34)

a) Written report enclosed with the packet. Questions from Mayor or Council? (p. 385)-None

b) Other items arising between January 13th and January 19th

City Manager Stearns reported he had heard from Lori Collins today, the Executive Director of the Whitefish Housing Authority, who reported that the applicant for tax credit for the affordable housing project on Highway 93 South did not get approval for the project. That same firm may still seek other funding to buy and hold the property and apply again next year for Housing Tax Credits. Secondly, during Public Comment Jeff Raper, representing the Chamber, mentioned the idea to use the City's snow lot for additional overflow parking this summer. He had also heard that suggestion at a meeting he attended last week. There are limitations to that; the property has already been identified as off-site staging for the City Hall/Parking Structure Construction. In addition, he has said to others before; as soon as all the street parking south and east of the depot is used on a daily basis (about 60 free parking spaces), additional parking at the snow lot could be considered.

Mayor Muhlfeld said in relation to those comments; at the last affordable housing committee meeting he attended the group thanked the City for their commitment to fund the workforce and affordable housing study; and the needs assessments will have a section in it addressing policies for Whitefish – not specific policies at that time but a section that calls out that policies should be developed as part of an implementation phase. Kellie Danielson from MWED said she thought there were funds available from the state, maybe up to $50-60,000 that could help with that part of the plan that is more policy related, and said she could write that grant on behalf of the City.

c) City Hall and Parking Structure Project: (p. 390) (CD 1:25:38)

i) revise total budget number for the City Hall/Parking Structure;

Manager Stearns referred to the Project Budget Summary on packet page 394; the Council approved a budget of $14,952,636 last June. From our architect the updated costs as shown on this same page is $15,965,259 which is a cost gap of $1,012,623; and if the Council approves capitalization of lease space for a 3-year period ($162,000), the cost gap becomes $850,623; a 5.69% increase over the June 2015 budget. Partially contributing to the cost increase is the addition of the impact fees; $83,744 as seen on packet page 393. It is fair that the city pays impact fees just as any other developer pays; and it reflects more of the true cost of the project. He noted (pg 393) that the City Hall Impact Fee of $36,709 will be paid within that building permit, then when those fees are distributed back to the funds for which they were paid, it goes back into the City Hall Building Fund. To answer a question from Councilor Frandsen; the costs on page 394 include the cuts recommended by the City Hall Steering Committee, Sub-Committee (Committee); and it also includes the cost of the 3rd elevator added back in per the motion approved by the Council on December 7, 2015. However, those recommendations from the Committee will be reviewed and acted on by the Council tonight, except for the elevator decision made in December. The Committee's design issue recommendations issues are listed on page 400 in the packet, items 1-6*; which the Council referred to at this time.

*1. Cut finishing the basement storage area and locker/bathrooms - $28,013
2. Cut skylight in City Council Chambers - $19,000
3. Cut some canopies on Baker Avenue; from retail space to City Hall - $53,000
4. Cut detail design on roof cornice - $32,030
5. Cut oversize brick on east side of building (alley side), replace with painted block - $7,085
~~6. Cut SW Elevator (leave shaft for future elevator $90,000~~ This item not deducted (12-7-15).

Councilor Frandsen made a motion to add #1, finishing the basement storage area, locker and bathrooms. The motion died for lack of a second.

Councilor Sweeney made a motion, second by Councilor Feury, to cut #1, finishing the basement storage area, locker and bathrooms.

Councilor Frandsen said if the basement isn't finished; when City Hall relocates back into the new building without a finished basement there will not be a place to store necessary items that are currently stored in the interim City Hall basement. She said the basement needs to be finished to move into and this shouldn't be a place where any corners are cut.

The motion failed on a five to one vote, Councilor Sweeney voting for the motion.

Councilor Frandsen made a motion, second by Councilor Feury, to add #1, finishing the basement storage area, locker and bathrooms at an approximate budget of $28,000. The motion passed on a five to one vote, Councilor Sweeney voting in the negative.

Councilor Frandsen made a motion, second by Councilor Hildner, to cut #2, the skylight in City Council Chambers to save $19,000. The motion was approved unanimously.

Councilor Barberis ask for clarification from Architect Ben Tintinger on a revised figure on #3 that Rhonda Fitzgerald had mentioned during her public comment earlier this evening. Architect Tintinger said that savings had been revised to $35,121.

Councilor Frandsen made a motion, second by Councilor Barberis, to keep all of the canopies on Baker Avenue from the retail space to City Hall for an approximate budget of $35,000. After some Council discussion the motion passed unanimously.

Councilor Hildner made a motion, second by Councilor Frandsen, to cut #4, the detail design on roof cornice for a savings of $32,030. Council discussion of pros and con; it was noted that the detail design can be added later at another time. **The vote on the motion was a tie vote with Councilors Hildner, Frandsen and Williams voting in favor and Councilors Barberis, Feury and Sweeney voting in opposition. Mayor Muhlfeld voted for the motion so the motion passed on a four to three vote to cut the detail design on roof cornice for a savings of $32,030.**

Prior to the next action Council asked Architect Tintinger if this item had been discussed during their review of the project with the Architectural Review Committee (ARC). Tintinger said ARC did approve this modification but he needed to make a clarification on the amount of savings for this item. There is a cost adjustment to add the cost of painting the block, but a reduction because of not needing the sealer for the brick, so the adjusted savings if this item is cut is closer to $4000 - $4500. Manager Stearns searched and found last week's memo from Tintinger with this adjusted amount and said the delta is only $4100.

Councilor Sweeney made a motion, second by Frandsen, to not cut #5; and keep the oversize brick on the east side (the alley side) of the building; adding back $4100.

Mayor Muhlfeld noted the 6th item had previously been included in the project by a vote at the December 7, 2016 meeting. He said from the decisions made above the subtotal of issues handed down from the Committee and approved by the Council now total $51,030 instead of $229,128 as shown on page 400.

In answer to the question regarding the capitalization of lease space for only three years, Manager Stearns said because the TIF fund expires in June 2020; the capitalization it is a loan from

TIF, to be paid back into TIF. There was other discussion about other possible lease payments of City property being treated the same way. The Mayor brought the Council's attention back to the next decision points 1-4* at the bottom of page 400.

*1. Add $162,000 to the budget by capitalizing three years of lease payments from the retail space and borrowing that money from the TIF.
2. Cut $229,128 as listed; (now $51,030 from decisions made in the previous five motions.)
3. Approve the value engineering changes of $181,194
4. Allocate $200,000 left over from the ancillary costs budget to the building design

Councilor Frandsen made a motion, second by Councilor Hildner, to add $162,000 to the budget by capitalizing three years of lease payments from the retail space and borrowing that money from the TIF (#1). The motion passed unanimously.

Mayor said #2 was done in the five earlier motions now saving $51,030.

Regarding #3: Manager Stearns referenced the Value Engineering (VE) tabs on pages 406-407 in the packet and said these items are internal construction and costs, just the opposite of the policy decisions just made by the Council on design and appearance of the building. Discussion followed on a couple of the line items and Architect Tintinger said there have even been some additional costs savings found and directed the Council to a new summary sheet on page 398 in the packet. Tintinger said on this page the VE items can even be further revised if additional savings are found as things are getting more refined. They are continuing to work on costs. Council followed up with more questions.

Councilor Frandsen made a motion, second by Councilor Hildner, to approve the Value Engineering changes as presented in the packet on page 398 with the direction to continue seeking more opportunity for additional value engineering. The motion passed unanimously.

Manager Stearns directed the Council to packet page 395 for their consideration of #4 of the above list. He said there are still more costs to come in and he thinks there is room for savings in the items on this page that aren't specifically determined. The policy decision to consider is whether or not to spend as much of the ancillary budget on building design and he will try to save as much where he can so that $200,000 comes back into building design; clarification – building costs.

Councilor Sweeney made a motion, second by Councilor Frandsen, to incorporate those costs back into the project. The motion passed unanimously.

Mayor Muhlfeld said the next decision points will be from page 409 in the packet that is information Manager Stearns gave the council in his December 29th, 2015 memo, with ten items to consider which will give staff direction on funding options for the budget gap – agenda item **iii) give staff direction on funding options for the budget gap**

1. Furniture – there is not a line item in the budget for new furniture; while some used furniture was always planned to be reused in the new facility; it was also planned new furniture would be purchased. So employees can reuse what they are currently using and more pieces of furniture are stored in the basement, we did inherit and are using some additional old furniture when we leased the interim space. Manager Stearns said if there is money left over at the end of the project we could use it for new furniture; and Departments can always budget in future years to buy new furniture as needed. There is still a contingency in the budget and new furniture probably should be purchased for the lobby and common or public areas; there may be some other apparent need for new furniture as the project

proceeds. He has heard requests to replace the green chairs used for audience seating in the Council Chambers, but that probably won't happen without a furniture line item in the budget. Without money in the budget (estimated at $320,000 – 400,000) we will just have to buy furniture when possible, but it should be realized that would shift the funding from TIF to the general fund, other tax supported funds and enterprise funds. In the memo the 2nd option is to consider leasing furniture; but Manager Stearns did not favor the option.

Councilor Hildner made a motion, second by Councilor Williams, to defer purchase of new furniture at this time. The motion passed unanimously.

3. Commissioning – current low quote from CTA in Kalispell is $28,861. Commissioning is the process to have an independent engineer double check and ensure that all the different systems work well and together after installation by separate sub-contractors. It is recommended by our Architect.

Councilor Hildner made a motion, second by Councilor Sweeney, to include Commissioning. The motion passed unanimously.

Mayor Muhlfeld said #4 (Reduce Owner's Representative's Hours) can be skipped as our Owner'' Representative Mike Cronquist has voluntarily cut his hours on the job each day resulting in about a 35% savings on his contract. Mayor Muhlfeld and the Council thanked Mike. #5 on the memo can be skipped because it is things already being done (like value engineering (VE)), with the possibility of more savings being found by VE. #6 has already been discussed; Martel has agreed to rebid the concrete and rebar and he thanked Martel. #7 includes some information from previous discussions regarding the option to use Resort Tax dollars on this project and it has been generally agreed upon that it would not be the best use of those funds at this time as there are street projects that currently have the priority for that fund. He asked if there was any on the Council that wanted to add anything for #7 and there were no comments. #8 – Impact Fees – Mayor Muhlfeld said this has also been discussed earlier and Manager Stearns said the staff would be getting an updated TIF proforma out in the next couple weeks updated with impact fee revenues.

9. Delay Depot Park. Mayor Muhlfeld and Parks and Recreation Director Butts said there are portions of both Phase 1 and Phase 2 of the Depot Park Improvement Projects that are undone that could be moved forward two to three years, with the exception of using TIF funds for constructing a gazebo next spring to utilize the $10,000 grant from Rotary that is contingent on that timing. Councilor Hildner said he thinks the Park Board is aware of the possibility of delays in moving forward with improvements in the Depot Park Master Plan with the exception of going forward with the gazebo.

Councilor Hildner made a motion, second by Councilor Frandsen, to fund the shortfall at Depot Park with TIF for the spring project and delay further work at Depot Park. The motion passed unanimously.

10. Mayor Muhlfeld said that earlier tonight he briefly touched on the building in Depot Park, ultimately that must go through the Depot Park Master Plan Steering Committee and the Park Board before more Council consideration; so that discussion will come back later.

ii) approve Amendment #4 with Martel Construction and set a Guaranteed Maximum Price;

Mayor Muhlfeld said the Contract Amendment #4 with Martel Construction, on page 413, is for $1,034,823.24 and includes the Guaranteed Maximum Price (GMP) at $13,611,290.00. Manager

Stearns said some of that has changed with Council's actions tonight. He referred the Council back to page 394. The Total Project Cost of $15,965,259 was amended three times tonight with the canopies, finishing the basement and keeping the oversize brick (alley side of project) instead of replacing with painted block; bringing the total project cost to $16,032,493 (that includes the $150,000 contingency). Following those numbers the Cost Gap on page 394 of $1,012,623 is now $1,790,853 less the capitalization of lease space ($162,000) for a new budget gap of $917,857. On a question from Council, Manager Stearns said with concrete and rebar rebidding, and expecting those new numbers later this week, gives us a hope that the total cost will be lowered which would add back into the contingency. The Council can decide later if they want to spend part of that contingency on items cut out tonight, or they could just stay with the reduced budget. A Council motion on the total project costs establishes an upper limit while component parts continue to move as savings are found.

Councilor Frandsen made a motion, second by Councilor Hildner, to increase the City Hall/Parking Structure project total budget to $16,032,493. Prior to the vote there was discussion and clarification regarding the contingency between Council, staff, and Architect Tintinger. **The motion passed on a five to one vote with Councilor Sweeney voting in the negative.**

Mayor Muhlfeld called for a break at 9:40 p.m. The Council reconvened at 9:55 p.m.

Manager Stearns said after going over the numbers, of the Council's last motion, with Mosaic and Martel during the break, actual costs were identified. The actual cost of the three items added tonight (canopies, basement finished and large brick on the alley side) is $76,290.89. That added to the $15,965,259 is now $16,041,549.89 Total Project Budget.

Councilor Hildner made a motion, second by Councilor Barberis, to reconsider the motion wherein the Council approved $16,032,493 total project budget. The motion passed on a vote of four to two with Councilors Sweeney and Frandsen voting in opposition.

Councilor Hildner made a motion, second by Councilor Barberis, to increase the City Hall/Parking Structure project total budget to $16,041,549.89. The motion passed on a vote of four to two with Councilors Sweeney and Frandsen voting in opposition.

Manager Stearns said, based on costs of items added back in by Council tonight, Amendment No. 4 to Agreement between Owner and Construction Manager (packet page 413) is now $1,111,114,13 (instead of $1,034,823.24 as printed in the packet on page 413).

Councilor Frandsen made a motion, second by Councilor Hildner, to approve Amendment #4 for $1,111,114.13 to the construction contract with Martel Construction as the General Contractor/Construction Manager for the future City Hall/Parking Structure project. The motion passed on a vote of five to one with Councilor Sweeney voting in opposition.

Councilor Frandsen made a motion, second by Councilor Feury, to approve $13,687,580.89 as the Guaranteed Maximum Price (GMP) and authorizing the City Manager to sign the Amendment. Councilor Sweeney made the clarification that he could not support this number because it includes a $150,000 contingency to be used as needed. **The motion passed on a vote of five to one with Councilor Sweeney voting in opposition.**

Mayor Muhlfeld said with that, it takes care of the City Hall/Parking Structure business for this meeting and he thanked Staff, Mosaic Architects and Martel Construction.

9) COMMUNICATIONS FROM MAYOR AND COUNCILORS (CD 2:40:09)

a) Mayor consideration of appointment of Jim Laidlaw as Flathead County Designee to Whitefish Planning Board as extra-territorial member pursuant to Ordinance No. 14-08 (p. 459)

Mayor Muhlfeld appointed Jim Laidlaw as the Flathead County Designee to the Whitefish Planning Board as the County Board of Commissioners' designee.

Councilor Frandsen made a motion, second by Councilor Sweeney, to ratify the Mayor's appointment. The motion passed unanimously.

COUNCIL COMMENTS:

Councilor Hildner said Dick Zoellner called him; he had attended the service for Virgil Bench. Dick Zoellner asked that Tyler Frank be recognized for his assistance to the Bench Family. Tyler Frank organized the construction and the volunteers who helped build the new home.

10) ADJOURNMENT (Resolution 08-10 establishes 11:00 p.m. as end of meeting unless extended to 11:30 by majority) (CD 2:41:48)

Mayor Muhlfeld adjourned the meeting 10:08 p.m.

_____
Mayor Muhlfeld

Attest:

_____
Necile Lorang, Whitefish City Clerk

ORDINANCE NO. 16-03

An Ordinance of the City Council of the City of Whitefish, Montana, amending Zoning Regulations in Whitefish City Code Title 11 to add microdistilleries to the list of Conditional Uses in §11-2J-3, Limited Business District, §11-2K-3, Secondary Business District, §11-2L-3, General Business District, and §11-2R-3, Industrial District, amend the standards for accessory buildings in §11-3-2A, and amend the definition for a bar/lounge in §11-9-2.

WHEREAS, the Whitefish Planning & Building Department initiated an effort to amend the Zoning Regulations to add microdistilleries to the list of Conditional Uses in §11-2J-3, Limited Business District, §11-2K-3, Secondary Business District, §11-2L-3, General Business District, and §11-2R-3, Industrial District, amend the standards for accessory buildings in §11-3-2A, and amend the definition of bar/lounge in §11-9-2; and

WHEREAS, in response to the proposal to amend Title 11, Chapters 2, 3, and 9 in the Whitefish City Code, the Planning and Building Department prepared Staff Report WZTA 15-04, dated December 10, 2015; and

WHEREAS, at a lawfully noticed public hearing on December 17, 2015, the Whitefish Planning Board received an oral report from Planning staff, reviewed Staff Report WZTA 15-04, invited public comment, and thereafter voted to recommend approval of the proposed text amendments; and

WHEREAS, at a lawfully noticed public hearing on January 19, 2016, the Whitefish City Council received an oral report and a written report from Planning staff, reviewed Staff Report WZTA 15-04, and letter of transmittal, invited public input, and approved the text amendments attached as Exhibit "A;" and

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

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

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

Section 2: Staff Report WZTA 15-04 dated December 10, 2015, together with the January 12, 2016 letter of transmittal from the Whitefish Planning & Building Department, are hereby adopted as Findings of Fact.

Section 3: Amendments to Whitefish City Code Sections 11-2J-3, 11-2K-3, 11-2L-3, 11-2R-3, 11-3-2A, and 11-9-2, amending the language as provided in the attached Exhibit "A", with insertions shown in red and underlined, and deletions shown in red with strikethrough, are hereby adopted.

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

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

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, THIS _____ DAY OF _____, 2016.

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

EXHIBIT "A"

Whitefish City Code Title 11 – Zoning Regulations

Chapter 2 – Zoning Districts

Article J. WB-1 Limited Business District

11-2J-3: CONDITIONAL USES:

- Accessory apartments.
- Automobile and boat repair, limited.
- Automotive service stations.
- Bars/lounges.
- Boarding houses.
- Boat and recreational vehicle storage (see special provisions in section 11-3-22 of this title).
- Churches or similar places of worship, including parish houses, parsonages, rectories, convents and dormitories.
- Clubs.
- Daycare centers (more than 12 individuals).
- Funeral homes and mortuaries.
- Microbreweries and microdistilleries (located on a parcel with frontage along an arterial).
- Ministorage.
- Schools (K-12).

Article K. WB-2 Secondary Business District

11-2K-3: CONDITIONAL USES:

- Accessory apartments.
- Bars/lounges.
- Boat and recreational vehicle storage (see special provisions in section 11-3-32 of this title).
- Casinos within a casino overlay zone.
- Colleges, business and trade schools.
- Light assembly and light manufacturing.
- Manufactured home subdivisions.
- Microbreweries and microdistilleries.
- Ministorage.
- Personal care facilities when not in association with a hospital in a campus setting.
- Recreational vehicle parks, campgrounds and amusement parks (2 acres minimum size).
- Truck stops.
- Veterinary hospital.

Article L. WB-3 General Business District

11-2L-3: CONDITIONAL USES:

- Automotive service stations, with the exception of the Old Town central district and the Old Town railway district.
- Bars/lounges.
- Churches or similar places of worship, including parish houses, parsonages, rectories, convents and dormitories, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Clubs.
- Daycare centers (more than 12 individuals), with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Dwelling groups or clusters, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Microbreweries and microdistilleries.
- Multi-family dwellings in excess of four (4) dwelling units, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Schools (K-12), with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Wholesale, light assembly and light manufacturing. Such uses must contain a retail component at ground level fronting a major street if located on Central Avenue between Third and Railway.

Article R. WI Industrial and Warehousing District

11-2R-3: CONDITIONAL USES:

- Automobile and boat sales.
- Automobile wrecking yards (requires state license).
- Heavy equipment sales and rental.
- Heavy industrial manufacturing, fabricating and processing.
- Junkyards (requires state license).
- Microbreweries and microdistilleries.
- Outdoor amusements.
- Petroleum products, wholesale.
- Sexually oriented businesses, as defined in section 11-9-2 of this title.
- Tire retreading and recapping.

Chapter 3 – Special Provisions

11-3-2: ACCESSORY BUILDINGS

A. Accessory buildings meeting the definition in section 11-9-2 of this title are allowed in all zoning districts. Accessory buildings less than ~~one hundred twenty (120)~~two hundred (200) square feet in floor area and not intended for human occupancy do not require building permits.

Chapter 9 – Definitions

11-9-2: DEFINITIONS:

BAR/LOUNGE: An establishment licensed by the state of Montana for on premises consumption of alcoholic beverages. This definition is specifically meant to exclude holders of ~~cabaret~~ Restaurant Beer Wine (RBW) licenses.

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

January 26, 2016

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

Re: Amendment of Subdivision Improvement Agreement for High Point on Second, Phase I (WFP 15-05)

Honorable Mayor and Council:

This office is in receipt of an updated Subdivision Improvement Agreement for Phase I of High Point on Second from Sean Averill, High Point on 2nd llc. The High Point on Second, Phase I received final plat approval from the Council on October 5, 2015. Phase I contains 36-lot subdivision on 16.077 acres located on E 2nd Street. Along with the final plat, the Council agreed to a Subdivision Improvements Agreement (SIA) in the amount of $203,355.73 for outstanding items still under construction expiring on November 30, 2016.

The applicant is requesting an amendment to the SIA to reduce the overall Subdivision Improvement Agreement to $57,061.75, as much of the work has been completed. The deadline will remain the same and the expiration date of the letter of credit will remain the same. The Public Works Department has inspected the work and has accepted the improvements. The Public Works Department also agrees with the engineer's estimate. The request does not have a letter of credit, but it will be obtained once the Council agrees to the amendment.

Staff recommends Council **approve** this request.

Sincerely,

Wendy Compton-Ring, AICP
Senior Planner

Att: Subdivision Improvement Agreement with Engineer's Estimate, 1-18-16
Final plat map, filed 10-7-15

C: w/ att: Necile Lorang, City Clerk

C: w/o att: High Point on 2nd llc PO Box 4600 Whitefish, MT 59937

APPENDIX E
SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT, made and entered into this 18th day of January, 20 16, by and between (High Point on 2nd, LLC), hereinafter called the Subdivider, and the City of Whitefish, State of Montana:

WHEREAS, subdivisions are subject to the provisions of Title 76, Chapter 3, Parts 1 through 6, M,C.A., said provisions being known as the "Montana Subdivision and Platting Act," hereinafter referred to as the Act: and,

WHEREAS, the Act requires that Governing Bodies adopt and provide for the enforcement of Subdivision Regulations; and,

WHEREAS, the Governing Body of Whitefish, being the Whitefish City Council, has adopted a body of ordinances entitled "Whitefish Subdivision Regulations" hereinafter referred to as the Regulations; and,

WHEREAS, the regulations provide that:

A. One of the conditions which must precede approval of the final plat of a subdivision by the Governing Body is an approved guarantee of completion of public improvements which are described and provided for in the subdivision plat.

B. The Regulations authorize various alternative methods of effecting the necessary and prerequisite guarantees and one such method is a written agreement between the Subdivider and the Governing Body; and,

WHEREAS, it is the intent and purpose of both Subdivider and Whitefish City Council to hereby enter into an agreement which will guarantee the full and satisfactory completion of all public improvements within the subdivision hereinafter described and by this agreement to satisfy the public improvement guarantee conditions for final plat approval.

THEREFORE, it is covenanted and agreed as follows:

This agreement pertains to and includes that proposed subdivision which is designated and identified as the High Point on Second Street Subdivision.

This agreement specifically includes those improvements described on Exhibit "A" attached hereto and incorporated herein by reference, their projected construction completion date and estimated construction costs. All such improvements shall be done in a workman-like manner and shall be completed by September 30, 2016, a date at least sixty (60) days prior to the expiration of the collateral held by the City of Whitefish. Exhibit A includes a certification by an engineer licensed in the state of Montana to the effect that it

represents a comprehensive and detailed list of all incomplete items and their actual cost, and that all information contained on it is true and accurate.

As a guarantee of performance to install the above designed improvements, the Subdivider hereby and concurrently with the subscription and execution of this agreement and the City's Subdivision Regulations which require that a subdivider shall provide a financial security of 125% of the estimated total cost of construction of said improvements, provides the City of Whitefish, Montana with a guarantee in collateral in the amount of $57,061.75 .

The Subdivider does hereby confirm that said guarantee is from a bank or other reputable institution or individual and acceptable to the Whitefish City Council. This guarantee shall be deposited with the City of Whitefish and certify to the following:

A. That the creditor guarantees funds in an amount equal to the cost, as estimated by the Subdividers, and approved by the governing body, of completing the required improvements.

B. That if the Subdividers fail to complete the specified improvements within the required time period, the creditor will pay to the City of Whitefish immediately, and without further action, such funds as are necessary to finance the completion of those improvements, up to the limit of credit given in the letter.

C. That this letter of credit may not be withdrawn, or reduced in any amount, until released by the City of Whitefish, Montana.

Performance by the Subdivider of the covenants set out in this agreement and in conformance with the time schedule set forth in this agreement is the essence; accordingly, the Subdivider expressly understands and agrees that failure to meet the time schedule to the specifications described herein shall be deemed to be a breach to this agreement. The Subdivider hereby waives any notice of breach.

Upon any breach of this agreement as herein defined, the Subdivider shall be subject to the penalties and enforcement outlined in the Regulations.

In consideration of the covenants and acts of the Subdivider, the Whitefish City Council does hereby agree that the public improvement guarantee provision has been satisfied for the Subdivision, which is the subject of this agreement, provided that nothing herein shall be construed to be final plat approval or assurance of final plat approval.

This agreement shall inure to the benefit of and be binding upon any successors in interest, heirs, or assignees.

IN WITNESS WHEREOF, the parties to this agreement have executed the same on the day and year first above written:

(Signature Subdivider / Developer)

State of MONTANA)
ss
County of FLATHEAD)

On this 20 day of JANUARY, 2016, before me, a Notary Public for the State of Montana, personally appeared (SEAN AVERILL), known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same.

Notary Public for the State of Montana

(Seal) Residing at WHITEFISH, Montana

My commission expires 11/3/19

CHERYL VONLINDERN NOTARIAL SEAL STATE OF MONTANA

CHERYL VONLINDERN
NOTARY PUBLIC for the
State of Montana
Residing at Whitefish, MT
My Commission Expires
November 3, 2019

This agreement is hereby approved and accepted by the City Council, City of Whitefish, Montana, this _____ day of _____, 20_____.

_____
MAYOR,
City of Whitefish, Montana

ATTEST:

_____
CITY CLERK, Whitefish, Montana
(Seal)

EXHIBIT "A"
CERTIFICATION OF WORK TO BE COMPLETED
HIGH POINT ON SECOND STREET PHASES 1 & 2

SCHEDULE 1 - SITE WORK

Completed To Date: 01/18/2016

Item No.	Description	Unit Measure	Estimated Quantity	Unit Price	Total Price	Quantity Completed	Total Cost Completed
1	Mobilization, Submittals & Permits	L.S.	1	$54,000.00	$54,000.00	1.00	$54,000.00
2	Erosion Control Measures	L.S.	1	$9,655.00	$9,655.00	1.00	$9,655.00
3	Traffic Control	L.S.	1	$5,750.00	$5,750.00	1.00	$5,750.00
4	Construction Survey	L.S.	1	$11,500.00	$11,500.00	1	$11,500.00
5	Exploratory Excavation	HR	0	$100.00	$0.00	0	$0.00
6	Site Work	L.S.	1	$208,000.50	$208,000.50	1.00	$208,000.50
6.1	WD6-3 - Clear and Grub for Elec. Vault in Phase 3	HR	3	$100.00	$300.00	3	$300.00
7	Seeding & Restoration	L.S.	1	$33,516.00	$33,516.00	1.00	$33,516.00
8	Street Signs	E.A.	7	$237.00	$1,659.00	7	$1,659.00
	SUBTOTAL SCHEDULE 1				*$324,380.50*		$324,380.50

SCHEDULE 2 - STORM SEWER IMPROVEMENTS

Completed To Date: 01/18/2016

Item No.	Description	Unit Measure	Estimated Quantity	Unit Price	Total Price	Quantity Completed	Total Cost Completed
9	30" I.D. Catch Basin / Cover & Apron	E.A.	5	$1,905.00	$9,525.00	5	$9,525.00
10	48" I.D. Catch Basin / Cover & Apron	E.A.	14	$2,693.00	$37,702.00	14	$37,702.00
11	Hydrodynamic Separator	E.A.	1	$25,356.00	$25,356.00	1	$25,356.00
12	Stormwater Outlet Complete Including Rip Rap & Pipe Flared End Sections	E.A.	6	$428.00	$2,568.00	6	$2,568.00
13	Stormwater Outlet Control Structure	E.A.	3	$5,087.00	$15,261.00	3	$15,261.00
14	12" HDPE Culvert	L.F.	20	$18.00	$360.00	20	$360.00
15	12" HDPE Culvert Flared End Sections	E.A.	2	$174.00	$348.00	2	$348.00
16	Rock lined Drop Pools complete including rip rap, fabric, and shaping	L.S.	1	$2,945.00	$2,945.00	1	$2,945.00
17	12" Storm Drain – SDR 35	L.F.	1397	$30.50	$42,608.50	1,397	$42,608.50
18	15" Storm Drain – SDR 35	L.F.	399	$36.00	$14,364.00	399	$14,364.00
19	18" Storm Drain – PS 46	L.F.	66	$52.50	$3,465.00	66	$3,465.00
20	Stormwater Ponds complete as shown on the plans, including rip rap, fabric, and shaping	L.S.	1	$19,733.00	$19,733.00	1	$19,733.00
	SUBTOTAL SCHEDULE 2				*$174,235.50*		$174,235.50

SCHEDULE 3 – WILD ROSE DEEP SANITARY SEWER IMPROVEMENTS

Completed To Date: 01/18/2016

Item No.	Description	Unit Measure	Estimated Quantity	Unit Price	Total Price	Quantity Completed	Total Cost Completed
21	12" SDR 35 Sanitary Sewer	L.F.	614	$90.00	$55,260.00	614	$55,260.00
22	48" Diameter Sanitary Sewer Manhole	E.A.	1	$3,280.00	$3,280.00	1	$3,280.00
23	60" Diameter Sanitary Sewer Drop Manhole	E.A.	1	$7,873.00	$7,873.00	1	$7,873.00
24	4" Sanitary Sewer Service (Deep)	E.A.	13	$2,138.00	$27,794.00	13	$27,794.00
	SUBTOTAL SCHEDULE 3				*$94,207.00*		$94,207.00

SCHEDULE 4 – SEWER INTERCEPTOR WILD ROSE TO RAILROAD RIGHT-OF-WAY

Completed To Date: 01/18/2016

Item No.	Description	Unit Measure	Estimated Quantity	Unit Price	Total Price	Quantity Completed	Total Cost Completed
25	12" SDR 35 Sanitary Sewer	L.F.	352	$63.50	$22,352.00	352	$22,352.00
26	48" Diameter Sanitary Sewer Manhole	E.A.	2	$3,320.00	$6,640.00	2	$6,640.00
27	Gravel Access Maintenance Road	C.Y.	163	$31.50	$5,134.50	163	$5,134.50
28	Site Grading	L.S.	1	$22,138.00	$22,138.00	1.00	$22,138.00
	SUBTOTAL SCHEDULE 4				*$56,264.50*		$56,264.50

SCHEDULE 5 – SANITARY SEWER IMPROVEMENTS

Completed To Date: 01/18/2016

Item No.	Description	Unit Measure	Estimated Quantity	Unit Price	Total Price	Quantity Completed	Total Cost Completed
29	8" SDR 35 Sanitary Sewer	L.F.	1048	$ 32.50	$34,060.00	1,048	$34,060.00
30	48" Diameter Sanitary Sewer Manhole	E.A.	8	$ 2,883.00	$23,064.00	8	$23,064.00
31	4" Sanitary Sewer Service	E.A.	24	$ 870.00	$20,880.00	24	$20,880.00
	SUBTOTAL SCHEDULE 5				*$78,004.00*		$78,004.00

SCHEDULE 6 – WATER SYSTEM IMPROVEMENTS

Completed To Date: 01/18/2016

Item No.	Description	Unit Measure	Estimated Quantity	Unit Price	Total Price	Quantity Completed	Total Cost Completed
32	8" C900 PVC Water Main	L.F.	1794	$30.50	$54,717.00	1,794	$54,717.00
33	8" 45 MJ Bend	E.A.	3	$628.00	$1,884.00	3	$1,884.00
34	8" 22.5 MJ Bend	E.A.	9	$558.00	$5,022.00	9	$5,022.00
35	8" 11.25 MJ Bend	E.A.	3	$618.00	$1,854.00	3	$1,854.00
36	8" x 8" x 8" MJ TEE	E.A.	1	$902.00	$902.00	1	$902.00
37	8" MJ Cap	E.A.	1	$530.00	$530.00	1	$530.00
38	Remove existing 8" Cap and connect to existing water main	E.A.	2	$2,174.00	$4,348.00	2	$4,348.00
39	6" Fire Hydrant incl. Tee, valve, valve stem and lead	E.A.	5	$5,009.00	$25,045.00	5	$25,045.00
39.1	WD1 - Eccentric Reducer on Hydrant Tee	E.A.	1	$409.97	$409.97	1	$409.97
40	8" Gate Valve	E.A.	6	$1,778.00	$10,668.00	6	$10,668.00
41	1" Domestic Water Service	E.A.	38	$1,236.00	$46,968.00	38	$46,968.00
41.1	WD2 - Lot 32, New Service, Meter Pit, Abandon Existing Service	E.A.	1	$1,461.13	$1,461.13	1	$1,461.13
	SUBTOTAL SCHEDULE 6				*$153,809.10*		$153,809.10

SCHEDULE 7 – ROAD IMPROVEMENTS

Completed To Date: 01/18/2016

Item No.	Description	Unit Measure	Estimated Quantity	Unit Price	Total Price	Quantity Completed	Total Cost Completed
42	Asphalt Concrete Pavement Including Sub-base & Base Courses Roads	S.F.	56513	$3.75	$211,923.75	56,513	$211,923.75
42.1	Chip Sealing	S.F.	56513	$0.40	$22,605.20	0	$0.00
43	Concrete Curb & Gutter	L.F.	4358	$15.00	$65,370.00	4,358	$65,370.00
44	Concrete Sidewalk	L.F.	3882	$25.00	$97,050.00	3,882	$97,050.00
45	ADA Ramp	E.A.	11	$559.00	$6,149.00	11	$6,149.00
46	Asphalt Concrete Pavement Including Sub-base & Base Courses Paths (ITEM REMOVED)	L.F.	0	$10.50	$0.00	0	$0.00
47	Striping	L.S.	1	$575.00	$575.00	1	$575.00
48	Concrete Valley Gutters	L.F.	60	$44.00	$2,640.00	60	$2,640.00
48.1	WD4 - Mail Delivery Slab & Mailboxes	L.S.	1	$3,317.00	$3,317.00	1	$1,658.50
48.2	WD5 - Concrete Jersey Barriers	L.S.	1	$1,928.00	$1,928.00	1	$1,928.00
	SUBTOTAL SCHEDULE 7				*$411,557.95*		$387,294.25

SCHEDULE 8 – STREET LIGHTING

Completed To Date: 01/18/2016

Item No.	Description	Unit Measure	Estimated Quantity	Unit Price	Total Price	Quantity Completed	Total Cost Completed
49	Street Lighting	L.S.	1	$71,142.00	$71,142.00	1.00	$71,142.00
	SUBTOTAL SCHEDULE 8				*$71,142.00*		$71,142.00

SCHEDULE 9 – DRY UTILITIES

Completed To Date: 01/18/2016

Item No.	Description	Unit Measure	Estimated Quantity	Unit Price	Total Price	Quantity Completed	Total Cost Completed
50	3" SCH 40 PVC Electrical Conduit Including Trench Excavation	L.F.	1736	$9.50	$16,492.00	1,736	$16,492.00
51	3" SCH 40 PVC Electrical Conduit Installed In common trench	L.F.	1490	$2.75	$4,097.50	1,490	$4,097.50
52	3" SCH 40 PVC Electrical Conduit Sweep	E.A.	25	$40.50	$1,012.50	25	$1,012.50
53	3" Fiberglass Electrical Conduit Sweep	E.A.	4	$122.00	$488.00	4	$488.00
53.1	WD3 - 3" SCH40 Irrigation Crossings	E.A.	38	$95.00	$3,610.00	38	$3,610.00
54	Single Phase Concrete Vault	E.A.	7	$739.00	$5,173.00	7	$5,173.00
55	Three Phase Concrete Vault	E.A.	1	$1,267.00	$1,267.00	1	$1,267.00
55.1	WD6-2 - Secondary Pedestals	E.A.	15	$100.00	$1,500.00	15	$1,500.00
56	4" SCH 40 PVC Electrical Conduit Including Trench Excavation	L.F.	732	$10.50	$7,686.00	732	$7,686.00
57	2" SCH 40 PVC Electrical Conduit Installed In common trench	L.F.	4910	$2.00	$9,820.00	4,910	$9,820.00
57.1	WD6-1 - 2" Express Pipe Installation	L.F.	732	$1.50	$1,098.00	732	$1,098.00
57.2	WD7 - 2" Conduit w/ Trenching	L.F.	466	$9.00	$4,194.00	466	$4,194.00
58	2" SCH 40 PVC Electrical Conduit Sweep	E.A.	124	$49.50	$6,138.00	124	$6,138.00
58.1	WD6-4 - 4" SCH40 Gas Crossing Sleeves	L.F.	256	$10.50	$2,688.00	256	$2,688.00
	SUBTOTAL SCHEDULE 9				*$65,264.00*		$65,264.00

SCHEDULE 10 – LANDSCAPING

Completed To Date: 01/18/2016

Item No.	Description	Unit Measure	Estimated Quantity	Unit Price	Total Price	Quantity Completed	Total Cost Completed
59	Public Creek/Wetland Trail	L.F.	1450	$9.42	$13,656.00	1,450	$13,656.00
60	Wetland Buffer Fence	L.F.	690	$8.53	$5,885.70	0	$0.00
61	Wetland Buffer Restoration	L.S.	1	$9,809.00	$9,809.00	0.83	$8,109.00
62	Open Space Planting, Mulch Trails, & Irrigation	L.S.	1	$23,031.00	$23,031.00	0.73	$16,731.00
63	Signage and Monument	L.S.	1	$2,500.00	$2,500.00	0	$0.00
64	Tot Lot Equipment and Sports Court	L.S.	1	$5,000.00	$5,000.00	0	$0.00
	SUBTOTAL SCHEDULE 10				*$59,881.70*		$38,496.00

Total Estimated Cost of Construction = $1,488,746.25

Total Construction Completed to Date = $1,443,096.85

SERVICE COSTS, FEES, ENGINEERING

Completed To Date: 01/18/2016

Item No.	Description	Unit Measure	Estimated Quantity	Unit Price	Total Price	QUANTITY COMPLETED	TOTAL COST COMPLETED
65	Flathead Electric - PH 1 & 2	L.S.	1	$75,619.00	$75,619.00	100%	$75,619.00
66	Northwestern Energy - PH 1 & 2	L.S.	1	$40,545.00	$40,545.00	100%	$40,545.00
67	Engineering, Construction - PH 1 & 2	L.S.	1	$30,500.00	$30,500.00	100%	$30,500.00
	SUBTOTAL ITEMS 65-67				*$146,664.00*		$146,664.00

TOTAL PROJECT AMOUNT	$1,635,410.25	$1,589,760.85

TOTAL ESTIMATED PROJECT AMOUNT		$1,635,410.25
AMOUNT COMPLETED PRIOR TO BONDING	$	1,589,760.85
AMOUNT OF REMAINING WORK PRIOR TO BONDING		$45,649.40
AMOUNT OF BOND (125% OF REMAINING WORK)	$	57,061.75
AMOUNT OF WORK COMPLETED TO DATE	$	1,589,760.85
PERCENTAGE OF WORK COMPLETED TO DATE		97%
AMOUNT OF WORK REMAINING	$	45,649.40

AS PROJECT ENGINEER FOR THE HIGH POINT ON SECOND STREET SUBDIVISION PHASES 1 & 2, I CERTIFY THAT THE WORK LISTED HEREIN IS CORRECT. IN ADDITION, I CERTIFY THAT THE ASSOCIATED COSTS ARE REASONABLY ACCURATE ESTIMATES OF THE RESPECTIVE COSTS OF THE WORK. THE

VALUE OF CONSTRUCTION AND OTHER WORK COMPLETED TO DATE IS ESTIMATED TO BE:	$	1,589,760.85
THE TOTAL VALUE OF REMAINING WORK, SERVICES AND FEES IS ESTIMATED TO BE:	$	45,649.40
SECURITY HELD AT 125% OF THE REMAINING COSTS SHOULD BE IN THE AMOUNT OF:	$	57,061.75

MONTANA BRETT W. WALCHECK No. 14872PE LICENSED PROFESSIONAL ENGINEER

1-18-2016

BRETT WALCHECK, P.E.

*ALL IMPROVEMENTS SHALL BE COMPLETED BY: 9/30/2016

TR 1K=0431051   TR IDA 0014713   10/7/15 Kylon

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

JOB NO: 392607 (in 392601.dwg)
DRAWING DATE: JULY 15, 2015
COMPLETED DATE: 9/16/15
FOR: WILL MacDONALD
SEAN AVERILL
OWNER: HIGH POINT ON 2ND, LLC

PLAT OF
HIGH POINT ON SECOND STREET, Phase 1

A Subdivision Located in the
NE1/4NW1/4 SEC.32, T.31N., R.21W., P.M.,M., FLATHEAD COUNTY, MT

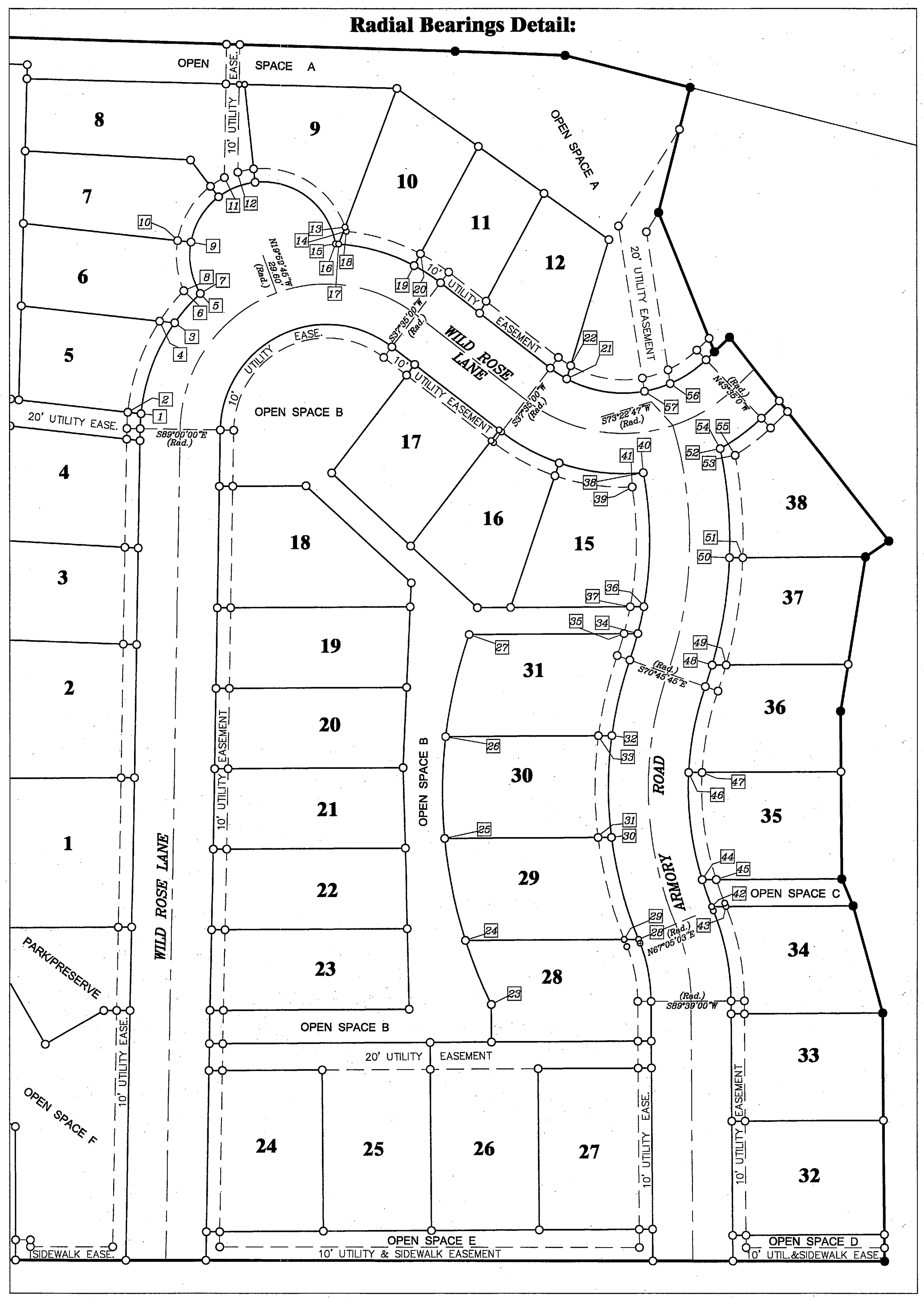
SCALE : 1" = 60'
60' 30' 0 60' 120'

Radial Bearing Table:

NUMBER	RADIAL BEARING IN	RADIUS
1	S84°25'18"E	140.00'
2	S84°22'17"E	150.00'
3	S54°33'24"E	140.00'
4	S56°40'15"E	150.00'
5	S42°41'05"E	140.00'
6	S45°36'49"E	150.00'
7	N59°04'11"E	55.00'
8	N66°10'20"E	65.00'
9	S79°30'52"E	55.00'
10	S80°09'45"E	65.00'
11	S26°28'06"E	65.00'
12	S16°54'11"E	65.00'
13	S71°01'28"W	65.00'
14	S73°50'10"W	65.00'
15	S80°56'19"W	55.00'
16	S02°41'34"W	140.00'
17	S03°40'34"W	140.00'
18	S05°37'18"W	150.00'
19	S27°55'28"W	140.00'
20	S27°57'46"W	150.00'
21	N28°11'35"E	90.00'
22	N29°36'46"E	80.00'
23	N63°36'50"E	355.00'
24	N71°56'38"E	355.00'
25	N84°29'03"E	355.00'
26	S83°13'28"E	355.00'
27	S70°35'16"E	355.00'
28	N67°08'13"E	290.00'
29	N67°55'37"E	300.00'
30	N82°42'41"E	290.00'
31	N82°56'39"E	300.00'
32	S82°13'45"E	290.00'
33	S82°30'04"E	300.00'
34	N75°09'10"W	270.00'
35	N74°33'15"W	260.00'
36	N79°30'35"W	270.00'
37	N79°05'17"W	260.00'
38	S79°11'15"W	270.00'
39	S81°08'24"W	260.00'
40	N05°42'06"W	150.00'
41	N02°21'42"W	160.00'
42	N67°26'13"E	230.00'
43	S67°54'30"W	190.00'
44	N72°43'37"E	230.00'
45	N71°55'55"E	220.00'
46	S87°05'48"E	230.00'
47	S86°57'52"E	220.00'
48	N73°40'30"W	330.00'
49	N74°10'43"W	340.00'
50	N87°47'52"W	330.00'
51	N87°51'45"W	340.00'
52	S78°00'15"W	330.00'
53	S79°13'38"W	340.00'
54	N28°53'55"W	150.00'
55	N31°32'37"W	160.00'
56	N22°59'41"W	90.00'
57	N10°07'25"W	90.00'

NOTE: Utilities may be placed in all Open Spaces

Radial Bearings Detail:



Note: Buyers of property should ensure that they have obtained and reviewed all sheets of the plat and all documents recorded and filed in conjunction with the plat and that buyers of property are strongly encouraged to contact the local planning department and become informed of any limitations on the use of the property prior to closing.

CERTIFICATE OF DEDICATION:

WE, THE UNDERSIGNED PROPERTY OWNERS, DO HEREBY CERTIFY THAT WE HAVE CAUSED TO BE SURVEYED AND PLATTED INTO LOTS ALL THE FOLLOWING DESCRIBED PROPERTY AS DESCRIBED IN THE CERTIFICATE OF DEDICATION, AND SHOWN BY THE ANNEXED PLAT OR MAP AND SITUATED IN FLATHEAD COUNTY, MONTANA:

A TRACT OF LAND, SITUATED, LYING AND BEING IN THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.,M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:

Commencing at the northeast corner of the Northeast Quarter of the Northwest Quarter of Section 32, Township 31 North, Range 21 West, P.M.,M, Flathead County, Montana, which is a found iron pin; Thence S00°21'00"W 609.39 feet to a found iron pin on the southerly R/W of the Burlington Northern Santa Fe Railroad; Thence along said R/W N75°42'52"W 658.05 feet to a found iron pin and THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED: Thence leaving said R/W S14°17'08"W 96.28 feet to a found iron pin; Thence S22°00'00"E 111.70 feet to a found iron pin; Thence N46°25'00"E 15.60 feet to a found iron pin; Thence S38°10'00"E 192.96 feet to a found iron pin; Thence S55°57'56"W 21.12 feet to a found iron pin; Thence S09°20'00"W 116.55 feet to a found iron pin; Thence S00°20'00"E 125.11 feet to a found iron pin; Thence S23°34'25"E 21.77 feet to a found iron pin; Thence S15°41'54"E 82.97 feet to a found iron pin; Thence S00°21'00"E 184.88 feet to a found iron pin on the north R/W of East Second Street; Thence along said R/W N89°56'05"W 830.66 feet to a found iron pin; Thence leaving said R/W N00°07'29"E 916.20 feet to a set iron pin on said southerly R/W of the Burlington Northern Santa Fe Railroad; Thence along said R/W the following three (3) courses: S88°13'48"E 507.28 feet to a found iron pin and the P.C. of a 5629.65 foot radius curve, concave southwesterly (radial bearing S01°46'12"W); southeasterly along said curve and along said R/W through a central angle of 00°50'31", for an arc length of 82.72 feet to a found iron pin; S75°42'52"E 96.73 feet to the point of beginning and containing 16.077 ACRES; Subject to and together with all appurtenant easements of record.

THE ABOVE DESCRIBED TRACT OF LAND SHALL HEREAFTER BE KNOWN AS:
HIGH POINT ON SECOND STREET, PHASE 1

The 60 foot road and utility easements known as WILD ROSE LANE and ARMORY ROAD comprising 2.542 acres, and the Park/Preserve comprising 3.230 acres, all as shown here on, are hereby granted and donated to the use of the public forever.

The PARK PRESERVE and Open Spaces A, B, C, D and E are excluded from sanitation review by the Department of Environmental Quality pursuant to ARM 17.36.605(2)(a), as a parcel that has no facilities for water supply, wastewater disposal, storm drainage or solid waste disposal, if no facilities will be constructed on the parcel.
ALSO,
Lots 1 through 12, and 15 through 38 are excluded from sanitation review by the Department of Environmental Quality pursuant to MCA 76-4-125 (2) (d) as the division is located within jurisdictional areas that have adopted growth policies pursuant to Title 76, Chapter 1 MCA or is within a first-class or second class municipalities for which the governing body certifies, pursuant to 76-4-127 MCA, that adequate storm water drainage and adequate municipal facilities will be provided. (Note Municipal Facilities Exclusion Checklist must be reviewed and approved by the Montana Department of Environmental Quality, and the original approval letter from MDEQ must be filed with the survey.)(This exemption is placed at the request of the Montana Department of Environmental Quality.)

UTILITY EASEMENT CERTIFICATE:

The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair, and removal of their lines and other facilities, in, over, under and across each area designated on this plat as "UTILITY EASEMENT" to have and to hold forever.

[signature] member
HIGH POINT ON 2ND, LLC

STATE OF MONTANA)
SS
COUNTY OF FLATHEAD)

On this 16th, day of Sept, 2015, before me a Notary Public for the State of Montana, personally appeared SEAN AVERILL of HIGH POINT ON 2ND, LLC, and known to me to be the person(s) whose name(s) are subscribed to the foregoing instrument and acknowledged to me that he/she/they executed the same.

[signature]
Notary Public for the State of Montana
Printed Name JERRY LIPP
Residing at KALISPELL
My commission expires 2/15/19

JERRY LIPP NOTARY PUBLIC for the State of Montana Residing at Kalispell, MT My Commission Expires Febuary 15, 2019 — NOTARIAL SEAL STATE OF MONTANA

CERTIFICATE OF CITY COUNCIL:

We, John M. Muhlfeld, Mayor for the City of Whitefish, and Necile Lorang, City Clerk of the City of Whitefish, Montana do hereby certify that the accompanying plat of HIGH POINT ON SECOND STREET, PHASE 1, was duly examined and approved by the City Council of the City of Whitefish at its regular meeting held on the 5th day of October, 2015. The roadways and Park/Preserve as shown here on are hereby accepted by the City of Whitefish.

[signature] Mayor of Whitefish, Montana
[signature] City Clerk of Whitefish, Montana

CITY OF WHITEFISH CORPORATE SEAL MONTANA

CERTIFICATE OF CITY ATTORNEY:

I, Angela Jacobs, City Attorney for the City of Whitefish, Montana, do hereby certify that I have examined the Certificate of Title by a licensed title company on the land described in the Certificate of Dedication on the annexed Plat of HIGH POINT ON SECOND STREET, PHASE 1, and find that High Point on 2nd, LLC are the owners in fee simple of the land so platted. Dated this 2nd day of October, 2015.

[signature]
City Attorney for the City of Whitefish

Conditions of Approval per the Whitefish City Council:

1. House numbers shall be located in a clearly visible location.
2. Per Ordinance 14-06 PUD Approval, the setbacks and lot coverage are as follows:
   WR-1 setbacks across the entire project
   WR-1 lot coverage of 35% across the entire project
3. Lots 1-7 & Lots 32-38 are subject to a geotechnical investigation prior to issuance of a building permit per CHP 12-4-10 of the Whitefish Subdivision Regulations.

THOMAS E. SANDS 7975 S REGISTERED LAND SURVEYOR

CERTIFICATE OF SURVEYOR

[signature]
THOMAS E. SANDS 7975S

APPROVED: 9/1, 2015
[signature]
EXAMINING LAND SURVEYOR
REG. No. 5428S

STATE OF MONTANA) SS
COUNTY OF FLATHEAD)
FILED ON THE 7 DAY OF Oct., 2015
AT 12:05 PM, PAID FEE 60.00
Debbie Pierson
CLERK & RECORDER
BY Nora Christensen
DEPUTY
INSTRUMENT REC. No 201500023595

SHEET 1 OF 2 SHEETS

FILE No. 20150052

Abst 2612

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

JOB NO: 392607 (in 392601.dwg)
DRAWING DATE: JULY 15, 2015
COMPLETED DATE: 9/16/15
FOR: WILL MacDONALD
SEAN AVERILL
OWNER: HIGH POINT ON 2ND, LLC

PLAT OF
HIGH POINT ON SECOND STREET, Phase 1

A Subdivision Located in the

NE1/4NW1/4 SEC.32, T.31N., R.21W., P.M.,M., FLATHEAD COUNTY, MT

SCALE: 1" = 60'

60' 30' 0 60' 120'

Acreage Table:

LOT	SQUARE FEET	ACRES	GROSS ACRES (Taxation Purposes)
1	15,630	0.359	0.434
2	11,469	0.263	0.338
3	8,621	0.198	0.273
4	8,747	0.201	0.276
5	7,039	0.162	0.237
6	7,730	0.177	0.252
7	7,739	0.178	0.253
8	10,200	0.234	0.309
9	8,049	0.185	0.260
10	7,261	0.167	0.242
11	6,029	0.138	0.213
12	7,202	0.165	0.240
15	8,686	0.199	0.274
16	8,146	0.187	0.262
17	8,441	0.194	0.269
18	10,226	0.235	0.310
19	8,629	0.198	0.273
20	8,528	0.196	0.271
21	8,558	0.196	0.271
22	8,721	0.200	0.275
23	8,884	0.204	0.279
24	10,373	0.238	0.313
25	13,036	0.299	0.374
26	13,040	0.299	0.374
27	10,200	0.234	0.309
28	9,470	0.217	0.292
29	9,668	0.222	0.297
30	9,480	0.218	0.293
31	9,576	0.220	0.295
32	9,648	0.221	0.296
33	9,080	0.208	0.283
34	8,532	0.196	0.271
35	8,927	0.205	0.280
36	8,663	0.199	0.274
37	8,013	0.184	0.259
38	9,046	0.208	0.283
Total Lots (36)	331,287	7.605	
Open Space A	48,150	1.105	
Open Space B	34,477	0.791	
Open Space C	2,106	0.048	
Open Space D	2,212	0.051	
Open Space E	7,508	0.172	
Open Space F	23,164	0.532	
Total Open Space	117,617	2.700	
PARK/PRESERVE	140,710	3.230	
ROADS (City)	110,717	2.542	
TOTAL	700,331 Sq.Ft.	16.077 Ac.	

Note: Total Open Space divided by 36 = 3,267 Sq.Ft. (0.075 Ac.) to be added to each lot for Taxation Purposes.

Curve Table:

CURVE	RADIUS	DELTA	LENGTH
1	140.00'	4°34'42"	11.19'
2	150.00'	4°37'43"	12.12'
3	140.00'	29°51'54"	72.97'
4	150.00'	27°42'01"	72.52'
5	140.00'	11°52'19"	29.01'
6	150.00'	11°03'26"	28.95'
7	55.00'	41°24'57"	39.76'
8	65.00'	33°39'55"	38.19'
9	55.00'	42°29'07"	40.46'
10	65.00'	42°48'00"	48.56'
11	55.00'	31°15'06"	30.00'
12	65.00'	10°53'40"	12.36'
13	65.00'	10°47'33"	12.24'
14	55.00'	87°02'58"	83.56'
15	65.00'	77°08'07"	87.51'
16	140.00'	0°59'00"	2.40'
17	65.00'	2°48'41"	3.19'
18	140.00'	24°14'54"	59.25'
19	150.00'	22°20'27"	58.49'
20	140.00'	9°39'32"	23.60'
21	150.00'	9°37'14"	25.19'
22	90.00'	9°23'25"	14.75'
23	80.00'	7°58'14"	11.13'
24	150.00'	24°27'58"	64.05'
25	160.00'	21°07'35"	59.00'
26	150.00'	18°49'07"	49.27'
27	160.00'	18°49'07"	52.55'
28	120.00'	22°33'57"	47.26'
29	110.00'	22°32'03"	43.26'
30	280.00'	0°03'10"	0.27'
31	300.00'	0°50'34"	4.41'
32	290.00'	15°34'28"	78.83'
33	300.00'	15°01'03"	78.63'
34	290.00'	15°03'34"	76.22'
35	300.00'	14°33'17"	76.21'
36	290.00'	11°28'00"	58.04'
37	300.00'	11°44'19"	61.46'
38	270.00'	4°23'25"	20.69'

Curve Table:

CURVE	RADIUS	DELTA	LENGTH
39	260.00'	3°47'30"	17.21'
40	270.00'	4°21'25"	20.53'
41	260.00'	4°32'02"	20.57'
42	270.00'	21°18'10"	100.39'
43	260.00'	19°46'19"	89.72'
44	180.00'	22°33'57"	70.89'
45	190.00'	21°44'30"	72.10'
46	230.00'	0°21'10"	1.42'
47	190.00'	0°49'27"	2.73'
48	230.00'	5°17'24"	21.24'
49	220.00'	4°50'52"	18.61'
50	230.00'	20°10'35"	80.99'
51	220.00'	21°06'12"	81.03'
52	230.00'	16°20'03"	65.57'
53	220.00'	16°12'08"	62.21'
54	330.00'	2°54'45"	16.78'
55	340.00'	3°24'58"	20.27'
56	330.00'	14°07'22"	81.34'
57	340.00'	13°41'02"	81.20'
58	330.00'	14°11'53"	81.77'
59	340.00'	12°54'36"	76.61'
60	150.00'	14°41'05"	38.44'
61	160.00'	12°02'23"	33.62'
62	110.00'	69°00'15"	132.48'
63	110.00'	57°34'47"	110.54'
64	120.00'	55°37'25"	116.50'
65	120.00'	25°32'35"	53.50'
66	300.00'	35°51'28"	187.75'
67	260.00'	42°09'12"	191.29'
68	150.00'	22°33'57"	59.06'
69	80.00'	39°52'37"	55.68'
70	80.00'	14°31'22"	20.28'
71	90.00'	18°47'47"	26.24'
72	90.00'	38°19'00"	60.19'
73	90.00'	12°52'16"	20.22'
74	90.00'	20°35'19"	32.34'
75	90.00'	71°46'35"	112.75'

NOTE: Utilities may be placed in all Open Spaces

LEGEND:

- 1/4 Corner (as noted)
- 1/16 Corner (as noted)
- Set 1/2"x24" Rebar & Cap (7975S)
- Found 1/2" Rebar & Cap (7975S)
- Found 5/8" Rebar & Cap (9344S)
- Found (as noted)
- Not Set
- (R) Record Information Per C.O.S. 19897
- POB Point of Beginning
- Street Address

SHEET 2 OF 2 SHEETS

Abst 2612 FILE No. 2015 0052

OWNERS: CITY OF WHITEFISH -
JOHN A. HAGG

BY: THOMAS, DEAN AND HOSKINS, INC.
450 CORPORATE DRIVE - SUITE #101
KALISPELL, MT. 59901

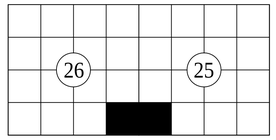
PHONE: (406) 751-5246

DATE: NOVEMBER, 2015

PLAT OF

BIRCH POINT LANDING NO. 2

AN AMENDED PLAT OF LOTS 1 AND 2 OF BIRCH POINT LANDING, AND A PORTION OF BIRCH POINT DRIVE, LOCATED IN THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 25, & SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 26, TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA.



BASIS OF BEARINGS:

THE SOUTH BOUNDARY OF LOTS 1 & 2, AS SHOWN ON THE PLAT OF BIRCH POINT LANDING. S88°30'00"E.

PURPOSE:

PURPOSE OF PLAT IS TO RELOCATE COMMON PROPERTY BOUNDARIES AND CREATE NEW ACCESS AND UTILITY EASEMENTS AS SHOWN. SEE PLAT OF BIRCH POINT LANDING FOR ORIGINAL EASEMENTS.

LEGEND

- ● FND. 5/8" REBAR W/CAP "13201 LS"
- ◐ FND. 5/8" REBAR W/CAP "4739S"
- ■ CALCULATED – NOT SET PER RECORD
- ○ SET 5/8" REBAR W/CAP "9525 LS"
- BOUNDARY – SUBJECT PARCELS
- ADJACENT PROPERTY BOUNDARY
- OLD PROPERTY BOUNDARY
- (M) MEASURED DISTANCE
- (R) RECORD DISTANCE
- NEW ACCESS & UTILITY EASEMENT, AS SHOWN
- EXISTING EASEMENT (UTILITY & STREET)

LINE LABEL		
LINE #	BEARING	DISTANCE
L1	S01°22'31"W	6.50'
L2	S53°11'02"W	5.22'
L3	S44°15'56"W	7.72'
L4	S11°08'00"W	3.28'

LINE LABEL		
LINE #	BEARING	DISTANCE
L5	S1°29'58"W	10.00'
L6	N88°29'58"W	21.63'
L7	S53°11'02"W	39.80'
L8	S28°45'29"E	10.10'

CURVE TABLE					
CURVE	RADIUS	DELTA	ARC LENGTH	CHORD BEARING	CHORD LENGTH
C1	33.50'	42°45'56"	25.00'	N67°07'02"W	24.43'
C2	33.50'	25°23'46"	14.85'	S78°48'07"W	14.73'

CERTIFICATE OF DEDICATION

I(we), the undersigned property owner(s), do hereby certify that I(we) have caused to be surveyed, subdivided, and platted into lots, as shown by the plat hereunto included, the following described tract of land, to wit:

All that portion of the southwest ¼ of the southwest ¼ of Section 25, and the southeast ¼ of the southeast ¼ of Section 26, Township 31 North, Range 22 West, P.M.M., Flathead County, more particularly described as follows:

Commencing at the northwest corner of Lot 1 of Birch Point Landing, records of Flathead County, and the POINT–OF–BEGINNING; thence N84°04'41"E along the northerly boundary of said Lot 1, 60.31 feet; thence continuing along said boundary and its extension thereof, S88°19'09"E 82.52 feet to a point on the northerly boundary of Lot 2 of said Birch Point Landing; thence N87°13'49"E along said boundary, 75.84 feet to the northernmost corner of said Lot 2; thence S53°24'49"E along the northeasterly boundary of said lot, 45.03 feet; thence S34°07'01"E along the easterly boundary of said lot, 125.03 feet to the southeast corner of said lot; thence N88°19'15"W along the southerly boundary of said lot, 105.77 feet; thence N00°33'14"E along said boundary, 14.90 feet; thence N88°30'00"W along said boundary, 95.30 feet; thence S53°11'02"W 5.22 feet; thence N88°30'02"W 107.63 feet; thence S44°15'56"W 7.72 feet; thence northwesterly along a non–tangent curve, concave to the southwest, having a radius of 33.50 feet, a central angle of 42°45'56", a chord bearing of N67°07'02"W and a chord distance of 24.43 feet, an arc length of 25.00 feet to the southwest corner of said Lot 1; thence N09°12'42"E along the westerly boundary of said lot, 100.02 feet to the POINT–OF–BEGINNING, containing 0.740 acres.

The above described tract of land is to be designated and known as Birch Point Landing No. 2, located in the southwest ¼ of the southwest ¼ of Section 25, and in the southeast ¼ of the southeast ¼ of Section 26, Township 31 North, Range 22 West, P.M.M., Flathead County.

We further certify that this division of land is exempt from review as a subdivision pursuant to Section 76–3–207(1)(d), MCA, which excludes "for five or fewer lots within a platted subdivision, the relocation of common boundaries lines".

We further certify that this division of land is exempt from sanitary review pursuant to Section 17.36.605(2)(b), ARM, which excludes "parcels that have no existing facilities for water supply, wastewater disposal, or solid waste disposal other than those that were previously approved by the reviewing authority under Title 76, chapter 4, part 1, MCA."

UTILITY EASEMENT

The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for construction, maintenance, repair and removal of their lines and other facilities, in, over, under, and across each area designated on this plat as "Utility Easement" to have and to hold forever.

CITY OF WHITEFISH

_____

BY: CHUCK STEARNS
TITLE: City Manager

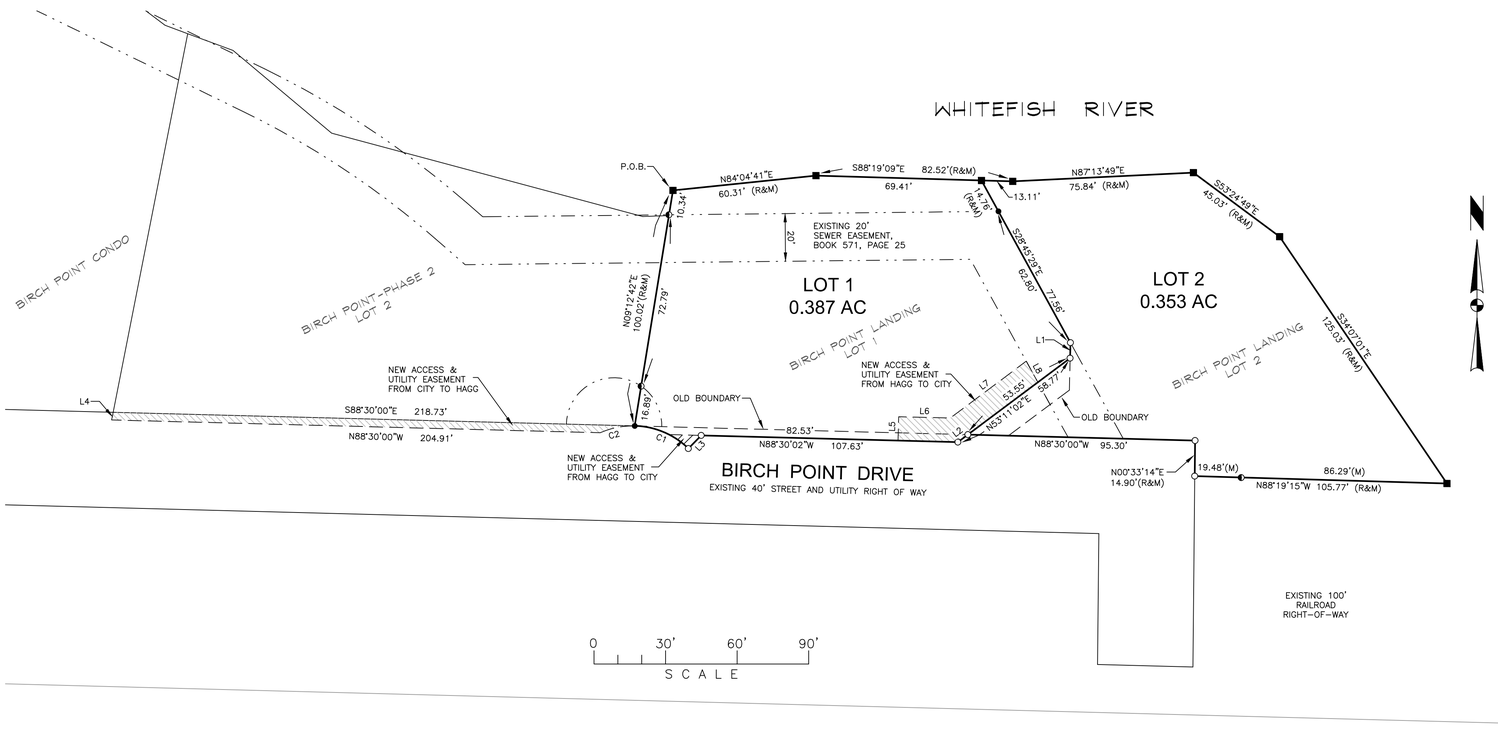
_____

JOHN A. HAGG

State of _____)
County of _____) ss.

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

_____
_____
Notary Public for the State of _____
Residing at _____
My commission expires _____



CERTIFICATE OF CITY ATTORNEY

This Plat has been examined by the office of the City Attorney according to Section 76–3–612(2), M.C.A. relying upon title report No._____, and approved based on information submitted by the developer and/or his agent. Office of the City Attorney of Whitefish, Montana.

Dated:_____ By:_____

CERTIFICATE OF MAYOR

The City Council of Whitefish, Montana does hereby certify that it has examined this subdivision plat and having found the same to conform to law, approves it, and hereby accepts the dedication to public use of any and all lands shown on this plat as being dedicated to such use, this_____day of_____, 20____.

Necile Lorang, City Clerk

John Muhlfeld, Mayor

CERTIFICATE OF SURVEYOR

REGISTRATION NO. 9525 LS

APPROVED _____ ,20____

EXAMINING LAND SURVEYOR REG. NO. _____

STATE OF MONTANA
COUNTY OF FLATHEAD SS

FILED ON THE _____ DAY OF_____,20____

TIME: _____

CLERK AND RECORDER

BY:_____
DEPUTY

RECEPTION NO._____

SHEET 1 OF 1

J:\2015\K15-034 Sandy - Birch Point Lift Station\011 - Amended Plat\CADD\CIVIL\Amended Plat\BIRCH POINT LANDING #2 Plat.dwg, 1/21/2016 3:53:22 PM, djk

CERTIFICATE OF PLAT
SCHEDULE A

Order No.: 299768
Guarantee No.:
Dated: January 13, 2016
Assured: TD & H Engineering

Liability: $1000.00
Fee: $75.00

The Assurances referred to on the face page hereof are:

That, according to the Company's property records relative to the following described real property (but without examination of those Company records maintained and indexed by name):

PARCEL 1:

Lot 1 of BIRCH POINT LANDING, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

PARCEL 2:

Lot 2 of BIRCH POINT LANDING, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

TO BE KNWN AS Birch Point Landing No. 2, an amended Plat of Lots 1 and 2 of Birch Point Landing, and a Portion of Birch Point Drive.

A. The last recorded instrument purporting to transfer title to said real property is:

Dated: September 10, 2012
Grantor: Glacier Bank, a Montana corporation
Grantee: John A. Hagg
Recorded: September 10, 2012
Instrument No.: 201200020890
(Parcel 1)

Dated: October 4, 2004
Grantor: Craig B. Drynan
Grantee: The City of Whitefish
Recorded: October 12, 2004
Instrument No.: 200428616120
(Parcel 2)

B. There are no mortgages or deeds of trust which purport to affect said real property, other than those shown below under exceptions.

Certificate of Plat

Order No: 299768
Policy No:

EXCEPTIONS

1. General Taxes for the year 2015, a Lien, the first half is paid and the second half is now due and payable.
   Parcel No. 74-0010543
   In the original amount of: $4,418.44
   (Affects Parcel 1)
2. Taxes, including any assessments collected therewith, for the year 2016 which are a lien not yet due and payable.
   ((Affects Parcels 1 and 2)
3. Rights of the State of Montana in and to that portion of said premises, if any, lying in the bed or former bed of the Whitefish River if it is navigable.
4. Any question of location, boundary or area related to the Whitefish River, including, but not limited to, any past or future changes in it.
5. The right of the Public to use, for recreational and navigational purposes, any portion of said premises lying below or beyond the high-water line of Whitefish River, or lying below or beyond the government meander line, together with the right to use any portions of said premises lying above the high-water line to portage around barriers.
6. An easement for the purpose shown below and rights incidental thereto as set forth in a document:
   Granted To: City of Whitefish
   Purpose: construction and maintenance for sewer line
   Recorded: July 09, 1974
   Instrument No.: 6517
   Book 571, Page 23
   And
   Recorded: July 9, 1974
   Instrument No.: 6518
   Book 571, Page 27
   And
   Recorded: July 9, 1974
   Instrument No.: 6519
   Book 571, Page 31
   And
   Recorded: July 9, 1974
   Instrument No.: 6520
   Book 571, Page 35

7. An easement for the purpose shown below and rights incidental thereto as set forth in document:
   Granted To: Pacific Power and Light Company
   Purpose: Public Utilities
   Recorded: September 01, 1982
   Instrument No.: 12864
   Book 748, Page 365

8. Agreement and the terms and conditions contained therein
   Between: J. Lee Zignego, etal
   Purpose: Water Line Agreement
   Recorded: September 23, 1982
   Instrument No.: 14112

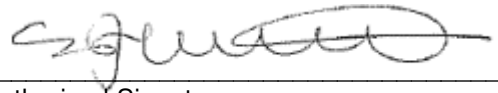
9. Easements, reservations, restrictions, notes and/or dedications as shown on the official plat of Resubdivision of Lot 18 of Birch Point and the proposed Plat of Birch Point Landing, records of Flathead County, Montana.

10. Any difference in the mean high water line of the Whitefish River and the meander line as shown by government survey.

11. Easements, reservations, restrictions, notes and/or dedications as shown on the Preliminary Plat of Birch Point Landing No. 2.

    NOTE: The above described Tract of Land lies within the Whitefish Fire District.

Countersigned:



Authorized Signature

Health Department Checklist for Survey Attachments

Owner City of Whitefish, Hagg

Surveyor T D + H

Legal description Birch Point Landing No. 2

The following document must accompany this survey as required by the Montana Sanitation in Subdivisions Act.

____ Parcels/Lots _____ subject to review. Montana Department of Environmental Quality (MDEQ) Certificate of Subdivision Approval is required.

____ Municipal Facilities Exclusion Certification from MDEQ indicating that this subdivision is in compliance with the requirements of the Sanitation in Subdivision Act is required.

____ County Health Department memorandum only required.

____ Agricultural Use Covenant Documentation from the owner and the County Commissioners indicating the covenant has been removed.

X No Health Department documents are required.

Signed Wendy Garcia RS. Date 11/6/15

Options | Inquiry | Overview | Unpaid Taxes | Pay Taxes | **Tax History** | Tax Bill | Disclaimer

Assr: 0010543

Year	SD	Inst	Taxbill	Date Due	Date Paid	Tax Amt	Void/Abate	Pen/Int	Total Pai
2015	74	2	201541969	5/31/16	01/27/16	2209.19			2209.1
2015	74	1	201541969	11/30/15	12/03/15	2209.25		62.94	2272.1
2014	74	2	201441847	5/31/15	05/07/15	2354.81			2354.8
2014	74	1	201441847	11/30/14	12/03/14	2354.88			2354.8
2013	74	2	201341795	5/31/14	05/15/14	2592.95			2592.9
2013	74	1	201341795	11/30/13	12/06/13	2593.00			2593.0
2012	74	2	201241746	5/31/13	05/20/13	2441.56			2441.5
2012	74	1	201241746	11/30/12	12/03/12	2441.62			2441.6
2011	74	2	201141619	5/31/12	05/01/12	2268.55			2268.5
2011	74	1	201141619	11/30/11	12/23/11	2268.60		64.63	2333.2
2010	74	2	201041542	5/31/11	05/24/11	2118.11			2118.1
2010	74	1	201041542	11/30/10	11/16/10	2118.17			2118.1
2009	74	2	200941237	5/31/10	05/12/10	1906.18			1906.1
2009	74	1	200941237	11/30/09	11/20/09	1906.23			1906.2
2008	74	2	200840429	5/31/09	10/28/08	1758.98			1758.9
2008	74	1	200840429	11/30/08	10/28/08	1759.02			1759.0
2007	74	2	200739150	5/31/08	05/27/08	1618.65			1618.6
2007	74	1	200739150	11/30/07	11/29/07	1618.70			1618.7
2006	74	2	200637750	5/31/07	05/25/07	1603.32			1603.3
2006	74	1	200637750	11/30/06	11/30/06	1603.37			1603.3

2015 Resolution authorizing the exchange and execution of documents

RESOLUTION NO. 15-45

A Resolution of the City Council of the City of Whitefish, Montana, authorizing the City transfer of a 3.24 foot-wide strip of right-of-way located along the southern edge of Lots 1 and 2, a 36-square foot right-of-way on the southwest edge of Lot 1, and its interest in a roadway cul-de-sac easement located on the southeast corner of Lot 1 and southwest corner of Lot 2, Birch Point, in order to assist reconstruction and future work on the Birch Point Sewer Pump Station.

WHEREAS, at the July 6, 2015 City Council meeting, the City Council awarded a contract to Dick Anderson Construction for the construction of the Skye Park Bridge and Bicycling-Pedestrian Path project to connect the City Beach with Birch Point, West Lakeshore and the Lion Mountain segment of the WhitefishTrail. The bicycle and pedestrian trail and bridge have been designed to the City Engineering Standards to support the travel of emergency vehicles on the trail bed and across Skye Park Bridge for access to the Birch Point neighborhood in the event the railroad crossing is blocked; and

WHEREAS, at the June 1, 2015 City Council meeting, the City Council awarded a contract to Sandry Construction for the construction of improvements to its Birch Point Sewer Pump Station to enable reconstruction and future work on the pump station located within its utility easement. The entire project and improvements will be referred to as the "Project" as depicted on the attached drawing as Exhibit A; and

WHEREAS, the City Public Works Department requested the adjacent property owner John A Hagg (Hagg), who owns Birch Point Landing, Lots 1 and 2, to grant the City construction easements to enable future maintenance work on the Birch Point lift station and to facilitate construction of the Skye Park Bridge project; and

WHEREAS, as a result of the Department of Public Works' negotiations with Hagg, Hagg proposed an exchange of right-of-way and roadway cul-de-sac easement for a parcel of Hagg's Property and utility easement on Hagg's Property, as depicted on the attached drawing, Exhibit A, described as follows:

1. The City transfer its interest, if any, in a 3.24-foot wide strip of right-of-way along the southern edge of Lots 1 and 2;

2. The City transfer its interest, if any, in a 36-square foot right-of-way on the southwest edge of Lot 1;

3. The City transfer its interest, if any, in the roadway cul-de-sac easement located on the southeast corner of Lot 1 and southwest corner of Lot 2;

4. Hagg transfer a 10.54-foot wide trapezoid parcel in Lot 1 to the City; and

5. Hagg transfer 10-foot and 6.76-foot utility easements in Lot 1 to the City;

and;

WHEREAS, Sandry Construction has agreed to pay for the necessary costs to complete the proposed transfers of property; and

WHEREAS, Dick Anderson Construction has agreed to deduct $3,000 from the contract price for the Skye Park Bridge and Bicycling Pedestrian Path project in order to facilitate the proposed transfers of property; and

WHEREAS, Montana has established a statutory process and procedure pursuant to MCA §7-8-4201 for the transfer of municipal property which requires a resolution of the City Council of the City of Whitefish passed by a two-thirds vote of all members of the Council; and

WHEREAS, it will be in the best interests of the City of Whitefish and its inhabitants for the City to acquire adjacent property interests to assist reconstruction and future maintenance work on the Birch Point Sewer Pump Station and to facilitate construction of the Skye Park Bridge and Bicycling Pedestrian Path and to transfer and exchange City interests in right-of-way and the roadway cul-de-sac easement to Hagg for Hagg's parcel of property and grant of easement, as provided in the attached proposed Agreement, Exhibit B.

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

Section 1: The City Council of the City of Whitefish, Montana, hereby approves the exchange of property as depicted on the drawing attached as Exhibit A and approves the terms and conditions of the draft Agreement attached as Exhibit B.

Section 2: The City Manager is authorized and directed to execute all documents necessary in connection with the proposed Agreement and transfer of the City's interest in right-of-way and the roadway cul-de-sac easement and Hagg's transfer of Hagg's property and utility easements.

Section 3: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, THIS 5TH DAY OF OCTOBER, 2015.

John M. Muhlfeld, Mayor

ATTEST:

Necile Lorang, City Clerk

WHITEFISH RIVER

LOT 1
0.36 ± AC

LOT 2
0.57 ± AC

LOT 1
0.39 ± AC

EXISTING SEWER EASEMENT

EXISTING SEWER

CUL-DE-SAC

CITY OF WHITEFISH TO HAGG 678 SF (3.24 FT WIDE)

CITY OF WHITEFISH TO HAGG 414 SF (3.24 FT WIDE)

HAGG TO CITY OF WHITEFISH 450 SF (10.54 FT WIDE)

HAGG TO CITY OF WHITEFISH 678 SF

CITY OF WHITEFISH TO HAGG W/ EASMENT TO CITY (36 SF)

15.00'

11.76'

2.00'

10.00'

10.54'

NEW LOT LINE

BNSF RIGHT-OF-WAY

R=51.5'
(MATCH EXIST. TBC)

EXISTING CURB & GUTTER

RECONSTRUCTED CUL-DE-SAC

APPROX. PROP LIFT STATION

N

0 20' 40' 60'
SCALE

LEGEND

EASEMENT TO HAGG (678 SF)

EASEMENT TO CITY (678 SF)

LAND TRANSFER TO HAGG (450 SF)

LAND TRANSFER TO CITY (450 SF)

CITY OF WHITEFISH - HAGG LAND EXCHANGE
EXHIBIT - DRAWING
05-29-14

BRUCE BOODY
Landscape Architect Inc.

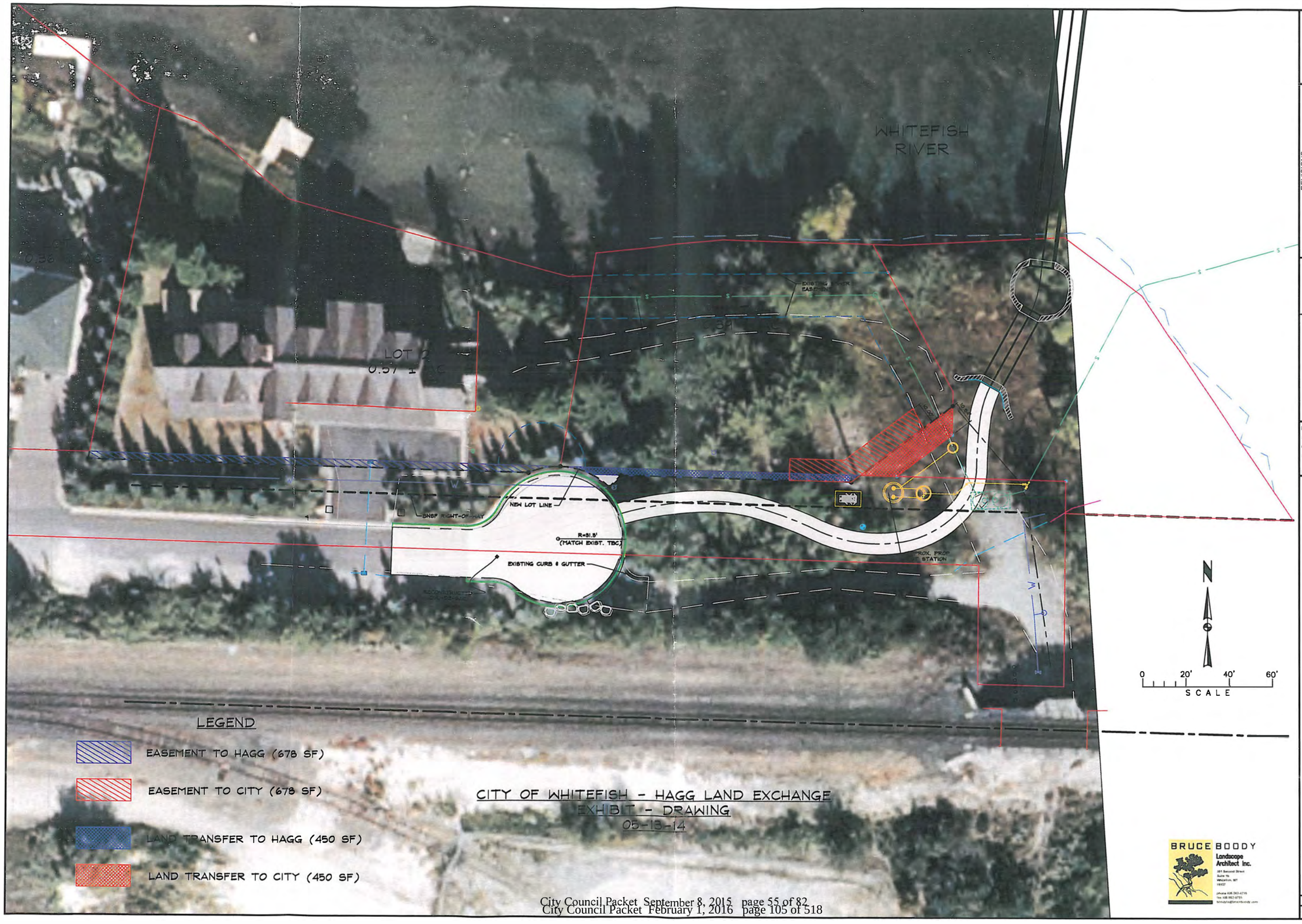
REVISIONS
BY DATE
DESCR
BY DATE
DESCR
BY DATE
DESCR

TD&H Engineering
tdhengineering.com
MONTANA
WASHINGTON
IDAHO
GREAT FALLS-BOZEMAN-KALISPELL
SPOKANE
LEWISTON

DRAWN BY:
DESIGNED BY:
QUALITY CHECK:
DATE: 5.12.2014
JOB NO.
FIELDBOOK

HAGG LAND EXCHANGE DRAWING
EXHIBIT 'A'

EXCHANGE FINAL .DWG
SHEET SHT 1/2



REVISIONS

BY	DATE	BY	DATE	BY	DATE
DESCR		DESCR		DESCR	

TD&H Engineering
tdhengineering.com
MONTANA
WASHINGTON
IDAHO
GREAT FALLS-BOZEMAN-KALISPELL
BOISE
LEWISTON

DRAWN BY:
DESIGNED BY:
QUALITY CHECK:
DATE: 5.12.2014
JOB NO.
FIELDBOOK

HAGG LAND EXCHANGE DRAWING

EXCHANGE FINAL .DWG

SHEET SHT #

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RESOLUTION NO. 16-___

A Resolution of the City Council of the City of Whitefish, Montana, approving the terms of a Municipal Water System Easement and Road Access Easement with F.H. Stoltze Land & Lumber Company.

WHEREAS, F.H. Stoltze Land & Lumber Company is the owner of approximately 3,020 acres of land located in Haskill Basin, Flathead County, Montana; and

WHEREAS, the Haskill Basin watershed currently comprises approximately ninety percent (90%) of the source drinking water for the City of Whitefish; and

WHEREAS, the City of Whitefish has an existing water system including pipelines, gates, head gates, gate valves, and other associated structures located in and on the land owned by F.H. Stoltze Land & Lumber Company in Haskill Basin; and

WHEREAS, the City of Whitefish has relied on F.H. Stoltze Land & Lumber Company to voluntarily provide access to its municipal water supply and to its water system for many years; and

WHEREAS, the City of Whitefish is authorized under Montana Code Annotated Title 7, Section 13, Parts 43 and 44 to own, operate and maintain a municipal water system and to acquire land or rights in land or water in connection with such undertaking; and

WHEREAS, the City of Whitefish has approved the purchase of a conservation easement over the approximately 3,020 acres of land in Haskill Basin owned by F.H. Stoltze Land & Lumber Company; and

WHEREAS, in conjunction with the purchase of the Haskill Basin conservation easement, the City and F.H. Stoltze Land & Lumber Company have negotiated the terms of the "Municipal Water System Easement and Road Access Easement," attached hereto as Exhibit A; and

WHEREAS, the easements granted to the City of Whitefish by the "Municipal Water System Easement and Road Access Easement" will preserve in perpetuity the City's right to access, use, inspect, construct, maintain, and repair its water system located on F.H. Stoltze Land & Lumber Company's land and will protect and preserve the City's water supply; and

WHEREAS, it is in the best interests of the City of Whitefish and its inhabitants for the City to accept the easements granted by the "Municipal Water System Easement and Road Access Easement."

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

Section 1: The City Council of the City of Whitefish, Montana, hereby approves the terms of the "Municipal Water System Easement and Road Access Easement" attached hereto as Exhibit A and accepts the easements granted therein by F.H. Stoltze Land & Lumber Company.

Section 2: The City Manager is authorized and directed to execute the "Municipal Water System Easement and Road Access Easement."

Section 3: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

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

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

Recording Requested By
F.H. Stoltze Land & Lumber Co.
And
City of Whitefish
When Recorded Mail To:
F.H. Stoltze Land & Lumber Co.
PO Box 1429
Columbia Falls, MT 59912

MUNICIPAL WATER SYSTEM EASEMENT AND ROAD ACCESS EASEMENT

THIS EASEMENT, dated this ____ day of _____, 2015, from F.H. STOLTZE LAND & LUMBER COMPANY, a Montana corporation, whose address is P.O. Box 1429, Columbia Falls, Montana 59912, hereinafter called "Grantor" or "Stoltze," to City of Whitefish, whose address is 418 E. 2nd Street, PO Box 158, Whitefish, MT 59937, hereinafter called "Grantee."

WITNESSETH:

I.

Grantor, for and in consideration of $1.00, and other valuable consideration received by Grantor, the receipt and sufficiency of which is hereby acknowledged, does hereby grant to Grantee and its respective successors and assigns, subject to existing easements and valid rights, a perpetual, non-exclusive easement and right-of-way for a municipal "Water System" and "Maintenance" thereof (see defined terms in Section II) forty (40) feet in width, twenty (20) feet either side of the centerline of the existing water line. In addition to the linear water line easement, this easement includes three approximately one (1) acre tracts, bounds described below, at each of the water intakes at First, Second and Third Creek to allow for "Water System" and "Maintenance". The easement is along and across lands located in Flathead County, Montana and described as follows:

A Water System and Maintenance easement, in Sections 7, 8, 9, 16, 17, 18, 19, 20, & 22, Township 31 North, Range 21 West and Section 12, Township 31 North, Range 22 West, P.M.M., Flathead County Montana, more particularly described as follows:

A 40 foot wide strip of land, 20 feet on either side of the center of the waterline in place, beginning at the 3rd creek intake; thence through the 2nd creek intake and the 1st creek screen, terminating at the boundary of the Grantors Real Property, with a length of 9,530 feet, more or less, containing 7.69 acres, more or less, as shown on Exhibit "A".

Tract 1 – First Creek "Water System": Refer to Exhibit B, Sheet B1-
Legal Description - Tract 1 Easement - F.H. Stoltze Land & Lumber Company
A portion of the Northeast Quarter of the Southeast Quarter, Section 12, Township 31 North, Range 22 West, P.M.M., being more particularly described as follows:

Commencing at the northeast corner of the Northeast Quarter of the Southeast Quarter, Section 12, Township 31 North, Range 22 West, P.M.M.; thence South 63°20'32" West 739.00 feet to the True Point of Beginning; thence South 76°31'01" West 155.00 feet; thence North 13°28'59" West 281.03 feet; thence North 76°31'01" East 155.00 feet; thence South 13°28'59" East 281.03 feet to the point of beginning, containing 1.000 acre of land, more or less.

Tract 2 - Second Creek "Water System": Refer to Exhibit B, Sheet B2
Legal Description - Tract 2 Easement - F.H. Stoltze Land & Lumber Company
A portion of the Southeast Quarter of the Northeast Quarter, Section 12, Township 31 North, Range 22 West and Government Lot 2, Section 7, Township 31 North, Range 21 West, P.M.M., being more particularly described as follows:

Commencing at the southeast corner of the Southeast Quarter of the Northeast Quarter, Section 12, Township 31 North, Range 22 West, P.M.M.; thence North 05°47'55" West 733.06 feet to the True Point of Beginning; thence North 11°21'30" East 264.00 feet; thence South 78°38'30" East 165.00 feet; thence South 11°21'30" West 264.00 feet; thence North 78°38'30" West 165.00 feet to the point of beginning, containing 1.000 acre of land, more or less.

Tract 3 – Third Creek "Water System": (-Refer to Exhibit B, Sheet B3
Legal Description - Tract 3 Easement - F.H. Stoltze Land & Lumber Company
A portion of the Northeast Quarter of the Northeast Quarter, Section 8, Township 31 North, Range 21 West, P.M.M., being more particularly described as follows:

Commencing at the southeast corner of the Northeast Quarter, Section 8, Township 31 North, Range 21 West, P.M.M.; thence North 31°54'09" West 1599.66 feet to the True Point of Beginning; thence North 76°58'11" West 165.00 feet; thence North 13°01'49" East 264.00 feet; thence South 76°58'11" East 165.00 feet; thence South 13°01'49" West 264.00 feet to the point of beginning, containing 1.000 acre of land, more or less.

The "Water System" described herein is located approximately as shown as the solid lines on **Exhibit "A"** attached hereto and incorporated herein by this reference (the Easement").

Additionally, Grantor, does hereby grant to Grantee and its respective successors and assigns, subject to existing easements and valid rights, a perpetual, non-exclusive easement and right-of-way for construction, reconstruction, use and maintenance of an existing road thirty (30) feet in width, fifteen(15) feet either side of the centerline of the existing road, along and across lands located in Flathead County, Montana and described as follows:

Access: Existing roads as depicted on Exhibit A and as described as:
An access and utility easement, in Sections 7, 8, 9, 16, 17, 18, 19, 20, & 22, Township 31 North, Range 21 West and Section 12, Township 31 North, Range 22 West, P.M.M., Flathead County Montana, more particularly described as follows:

A 30 foot wide strip of land, 15 feet on either side of the center of the road system in place, beginning on Haskill Basin Road and Northwoods Drive, and terminating at Private, United States Forest Service and State of Montana lands, with a length of about 45,000 feet, more or less, containing 30.99 acres, more or less, as shown on Exhibit "A".

The roads described herein is located approximately as shown as lines on **Exhibit "A"** attached hereto and incorporated herein by this reference (the Easement").

The above grant and conveyance is subject to all matters of public record as of the date of this Easement.

II.

The parties hereto agree that the rights hereinabove granted shall be subject to the following terms and conditions:

1. Definitions.

a. For the purposes of this Easement, the words and terms "center line," "portion," "right of way," "road", "roadway", "water line," "water line facility," "water line segment," and "water line structure," shall refer to the plural as well as the singular.

b. Maintenance – maintenance shall be construed to mean inspection, repair, construction, reconstruction, replacement, use and maintenance of the Water System.

c. Water System – is defined as the infrastructure, associated structures, pipelines, gates, head gates, gate valves, water rights, the City's water in 1st, 2nd, and 3rd Creeks, and other appurtenances located within this easement for the supply and delivery of water from Haskill Basin for the provision of municipal water services to the citizens of Whitefish.

2. Purpose. The municipal Water System easement and right-of-way granted herein is for ingress, egress, and utilities, and locating, occupying, and Maintenance for a water System for municipal water service purposes to supply water from Haskill Basin for use by the City of Whitefish in their provision of public municipal water services.

The road access easement and right-of-way granted herein is for ingress, egress, and Maintenance of the Water System and associated structures for municipal water service purposes to supply water from Haskill Basin for use by the City of Whitefish in their provision of public municipal water services.

3. Utilities and Water Lines. All utilities and water lines within said easement and right-of-way shall be buried so that it will at all points be at a minimum of three (3) feet below the surface of the ground, and shall be installed and maintained in a manner reasonably satisfactory to Grantor. The location of such utility line and waterline shall be clearly marked, including above ground markers and traceable tape or other traceable underground marking, and the markings shall be maintained to the reasonable satisfaction of the Grantor. Grantor shall have no liability or obligation of any kind to the Grantee or other parties for losses or damages due to the interruption of operation or use of said Water System by reason of the exercise by Grantor of its rights reserved herein, if the Grantee fails to meet the requirements of this paragraph.

4. Improvements. The parties acknowledge that Grantor has no obligation to construct any improvements of any type or kind to its lands or the Easement area or assist Grantee in the exercise of any rights granted hereunder, all such improvements desired by Grantee to be done by the Grantee at its sole cost and expense.

5. Relocation. Upon prior notice to Grantee, Grantor reserves unto itself, its successors and assigns, the right at its expense to relocate the easement and right-of-way granted herein subject to the condition that, except for distance and curvature, such relocated Water System or road provides the same type and quality of service as existed prior to such relocation and does not change the point of interconnection on the boundaries of the parties respective properties.

6. Relocation By Grantee. If the Grantee loses road or easement access from other private property owners for the roads shown in Exhibit A, Grantor and Grantee agree to work together to find or build an alternative or re-routed road and easement to provide the Grantee the same access that it enjoyed prior to such loss of road or easement access, with Grantee being responsible for the expenses of road relocation and reconstruction.

7. Right of Way Crossing. Grantor reserves for itself and its successors and assigns, the right to use, cross and recross, patrol and repair said right of way for any and all purposes, in any manner that will not unreasonably interfere with the rights granted to the other party hereunder.

8. Third Parties. Grantor may grant to third parties, upon such terms as it chooses, any or all of the rights reserved by it herein; provided, that use by such party shall be subject to the terms and conditions of this Easement and shall not unreasonably interfere with the rights granted hereunder.

9. Road Maintenance. Roadways shall be constructed and maintained at all times to be in compliance with State of Montana Best Management Practices for the Protection of Water Quality and the Streamside Management Zone law as may be effective at the time of use. Furthermore, Grantee agrees to acquire and comply with, at Grantee cost, all necessary permits, licenses, and authorizations that may be required for the construction, reconstruction, use and

maintenance of said right of way and associated facilities and structures. Noxious weeds in said right of way shall be managed to be in compliance with State of Montana law and statute.

The cost of right of way maintenance and noxious weed control shall be allocated on the basis of respective uses of said right of way. When any party uses said right of way, or a portion thereof, that party shall perform or cause to be performed, or contribute or cause to be contributed, that share of the maintenance and noxious weed control occasioned by such use as hereinafter provided. During periods when said right of way, or a portion thereof, is being used solely by one party, such party shall maintain that portion of said right of way so used to the standards existing at the time use is commenced.

During periods when more than one party is using said right of way, or a portion thereof, each party's share of maintenance and noxious weed control management shall be pro rata in proportion to its use thereof. The parties hereto shall meet on an annual basis and establish necessary maintenance provisions. Such provisions shall include, but shall not be limited to:

(a) The appointment of a maintainer, which may be one of the parties hereto or any third party as mutually agreed, who will perform or cause to be performed, at a reasonable and agreed upon rate, the maintenance and noxious weed control management of the right of way or the portion thereof being used;

(b) A method of payment by which each party using said right of way or a portion thereof shall pay its pro rata share of the cost incurred by said maintainer in maintaining, resurfacing or noxious weed control management of said right of way or portion thereof; and

For the purposes of this easement, maintenance is defined as the work normally necessary to preserve and keep the roadway, road structure, road facilities, Water System, waterline structures and Water System facilities as nearly as possible in their present condition or as hereafter improved.

Notwithstanding any provision of this Section Nine, Grantor shall have no obligation for any costs or expenses of maintaining, operating, or replacing the Water System.

10. Right of Way Damage. Each party using any portion of said right of way shall repair or cause to be repaired, at its sole cost and expense, that damage to said right of ways caused by the party which is in excess of that which it would cause through normal and prudent usage of said right of ways. Should inordinate damage to said right of ways occur which is not caused by an authorized user of said right of ways, the Grantor and Grantee shall meet and agree upon the proportionate share of the cost of repair or replacement for such damage.

11. Construction and Improvement. Unless the parties hereto agree in writing to share the cost of improvements to said right of ways in advance of such improvements being made, said improvements shall be solely for the account of the improver. Each party may maintain or improve the right of ways to a higher standard at its own cost, provided that such higher standard of maintenance or improvement accommodates all existing uses at no additional cost to the party whose purposes for use do not require the higher standard.

12. Right-of-Way Timber. Grantor reserves to itself all timber now on or hereafter growing within said easement and right-of-way. Grantee shall have the right to cut timber growing within the easement and right of way herein granted to the extent necessary for constructing, reconstructing, and maintaining the right of ways. Timber so cut shall, unless otherwise agreed, shall be cut into logs of lengths specified by Grantor and decked along the right of ways for disposal by Grantor.

13. Exercise of Rights. Grantee may permit its contractors, licensees, lessees, and their agents, hereinafter individually referred to as "Permittee" and collectively referred to as "Permittees," to exercise the rights granted to it herein provided that all conditions and requirements of this easement shall apply to all “Permittees” as well.

14. Insurance. Prior to any use right of way granted herein, Grantee, if available to Grantee, and each of its Permittees, which shall include employees, agents, contractors shall obtain and, during the term of such use, maintain a policy of liability insurance in a form and by an insurance company acceptable to Grantor and providing the coverages set forth hereinafter in this Section 14. Grantor acknowledges that some of the following coverages may not be available to Grantee as a public entity, and agrees that Grantee shall not be in breach or default of this Easement by virtue of such non-availability. However, the following coverages shall apply to all other contractors, subcontractors and others using the easement area.

A. Commercial General Liability Insurance to include minimum limits of $1,000,000 combined single limit Bodily Injury and Property Damage each occurrence. Extension of coverage to include, Products and Completed Operations, , Broad Form Property Damage, Cross Liability, and Pollution arising out of heat, smoke or fumes from a Hostile Fire. Additionally, the policy shall not exclude X,C.U (Explosion, Collapse, or Underground).

B. Comprehensive Automobile Liability insurance covering owned, non-owned, hired and other vehicles (only in excess of existing insurance for a non-owned, hired and other vehicles), with a combined single limit of $1,000,000 per occurrence Combined Single Limit Bodily Injury, Death and Property Damage.

C. Employer's Liability Insurance, for employee bodily injuries and death, with a minimum limit of $500,000 each occurrence. In the event the party obtaining the insurance has no employees, then such party shall not be required to carry Employer's Liability Insurance.

D. Contractors (or Loggers) Broad Form B Property Damage Liability Insurance with a limit of $2,000,000 per occurrence.

E. Worker's Compensation Insurance, with statutory limits as are required by the Workers' Compensation Law in the State in which work is being performed hereunder. No state exemption from workers' compensation insurance as an "owner/executive/partner" is allowed. Grantee shall obtain and maintain during the term and any extension hereof, workers' compensation insurance in an amount of not less than statutory limits for any and all of its employees. If the insuring party fails to comply with applicable workers' compensation law during the term of this agreement, then such party shall refrain from exercising its rights under this agreement until the required workers' compensation insurance is obtained. For Contractors and non-public entities, Workers Compensation and General Liability policy shall have a waiver of subrogation endorsement in favor of Grantor et al, and proof of such endorsement shall be provided to Grantor.

F. Grantor shall be named as an additional insured on all General Liability, Property Damage Liability and Comprehensive Automobile Liability policies both of Grantee and any and all contractors thereof. To the extent such coverage is available to Grantee as a public entity/municipality, the policies specified above shall include endorsements which shall name Grantor, as an additional insured for the duration of the Easement term. The additional insured endorsements must be ISO CG 20 10 07 04 and ISO CG 20 37 07 04 or other forms with like wording. Copy of such policies and all endorsements (Additionally Insured (2 forms)) shall be provided to Grantor prior to execution of any activities authorized under this easement. The endorsements shall be stapled to the Certificate of Insurance and shall be provided to Grantor.

G. The policies specified above shall include an endorsement which shall provide that Grantor, at the addresses above, will be given a 30 - day written notice prior to cancellation, coverage modification or other material change in the policy. No such cancellation, modification or change shall affect Grantee's obligation to maintain the insurance coverages required by this agreement.

H. All liability coverages must be on an "occurrence" basis as opposed to "claims made."

I. Prior to commencement of commercial operations, Grantee or its contractors or Permittees shall furnish to Grantor a certificate of insurance, dated and signed by the stated, authorized agent for the insuring company or companies, containing a representation that coverage of the types listed above is provided with the required limits and the stated endorsements.

J. In addition to the above requirement for commercial operations, all persons using said easement and right-of-way for any purpose shall obtain and maintain a policy of Automobile Liability Insurance in a form generally acceptable in the State of Montana and customary in the area of said right-of-way.

K. Any contractor working for Grantee shall be required to maintain the insurance coverages required of Grantee set forth in this Section 14. Any such contractor shall be required to provide Grantor with a Certificate of Insurance meeting the requirements of this Section 14 prior to commencing any work on or in the Easement area.

L. The parties agree to meet as needed to review and revise the limits of insurance coverage set forth in this Section 14.

15. Indemnification.

A. Grantee shall defend, indemnify and hold harmless Grantor, its officers, employees and agents from and against any claims, demands, or actions for damages to property or injury to persons or other damages to persons or entities arising out of or resulting from any intentionally wrongful or negligent act on the part of Grantee, its officers, employees and agents in the exercise of the rights granted herein.

B. Rights and Immunities. In consideration of the terms and conditions of this Easement, Grantor and Grantee rely upon all of the rights and immunities against liability to the full extent of applicable state law, and any other applicable provisions of law, including but not limited to Montana Code Annotated Title 2, Chapter 9.

16. Liens. Grantee shall keep Grantor's property free from liens arising out of the activities of Grantee and shall promptly discharge any such liens that are asserted.

17. Taxes. Grantee shall pay all taxes and/or assessments that may become chargeable against the easement granted herein, arising from Grantee's activities, use, and improvements, if separately assessed by statute.

18. Spill Prevention. Grantee further agrees to adhere to all state and federal laws governing the reporting and cleanup of fuel, oil, and hazardous waste spill. Additionally, the Grantee is required to report all spills to Grantor and is required to have spill kits on site and available for clean-up. Spill kits shall be of size and scope to be sufficient to handle all types and volumes of fuel, oil or hazardous waste as may be present on the site during operations. Spill kits must be maintained in a functional state at all times. The Grantee shall be trained in fuel spill clean-up and reporting requirements of Montana.

19. Fire Suppression/Control. Each time it enters upon the easement area for such purposes as allowed under this Easement, Grantee agrees to prevent and suppress fires on or in the vicinity of the easement area and agrees to immediately notify Grantor of any fires occurring on or near the easement area. Grantee further agrees to comply with all state and federal fire laws and restrictions. Grantee agrees to maintain adequate fire suppression equipment and personnel on site to control fires resulting from Grantee activities. Grantee further agrees to indemnify and hold Grantor harmless from any damages, costs, expenses, claims or causes of action, including attorney's fees and costs, which result from fires caused by the activities of Grantee. Grantor shall have the right at any time and, in its sole discretion, to suspend or condition certain access by Grantee or close its lands to all use by Grantee and others because of fire, fire risk or other emergency reasons.

20. Public Use. Nothing herein shall be construed as a grant of easement or right of way to the public or for public use or use by Grantee in a manner other than specifically identified and readily apparent as associated with the operation of the municipal water supply.

21. Compliance with Applicable Laws and Regulations. Grantee agrees to comply with all applicable laws, regulations, rules and secure such permits, license or authorizations which now exist or hereafter may be required as a result of exercise of any or all rights granted herein.

22. Termination. If Grantee decides this Easement or a portion thereof, is no longer needed to supply water to the Water System of the Grantee, Grantee shall furnish a release in recordable form to Grantor evidencing termination of Grantee's rights to utilize such right of ways or right of way segments.

23. Default. If Grantor determines Grantee has violated the terms of this Easement, Grantor shall give written notice to Grantee of the specific violation and demand corrective action sufficient to cure the violation. If Grantee fails to cure the violation within thirty (30) days after receipt of notice from Grantor, or under circumstances where the violation cannot reasonably be cured within a thirty (30) period, fails to begin curing the violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally corrected, Grantor may bring an action in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, by temporary or permanent injunction, and for any other relief to which Grantor may be entitled, including monetary damages.

24. Rights and Obligations. This grant of Easement shall be recorded at the Flathead County Clerk and Recorder's office, is binding upon the heirs, executors, personal representatives, assigns and successors of the parties hereto and shall run with the land.

25. Governing Law. This Agreement shall be interpreted, construed and enforced according to the laws of the State of Montana. Venue shall be Flathead County, Montana.

26. Integration. Old Easement (First Creek) – The terms of this easement supersede the 1912 Easement between the parties.

27. Acknowledgement of Conservation Easement. The parties acknowledge that this Easement has been entered into pursuant to the Haskill Basin Watershed Deed of Conservation Easement between Grantor, Grantee, and the Montana Department of Fish, Wildlife and Parks (the "Conservation Easement"); and in the event of any inconsistency between the Conservation Easement and this Easement, the Conservation Easement shall control.

IN WITNESS WHEREOF, the parties hereto have executed this instrument, as of the day and year first above written.

GRANTOR:
F.H. STOLTZE LAND & LUMBER COMPANY

By: _____

Name: _____

Title: _____

GRANTEE:
CITY OF WHITEFISH

By: _____

Name: John M. Muhlfeld

Title: Mayor

ACKNOWLEDGMENT

STATE OF)
)ss
COUNTY OF)

On this ____ day of _____, 2015, before me personally appeared John M. Muhlfeld and to me known to be the Mayor of the City of Whitefish that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of the limited partnership and that the seal affixed is the seal of said limited partnership.

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

_____
Notary Public in and for the
State of
Residing in
My Commission Expires:
Printed Name:

ACKNOWLEDGMENT

STATE OF MONTANA)
)ss
COUNTY OF FLATHEAD)

On this ____ day of _____, 2010, before me personally appeared _____, to me known to be the _____ of F.H. Stoltze Land & Lumber Company, the Montana corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of the corporation and that the seal affixed is the seal of said corporation.

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

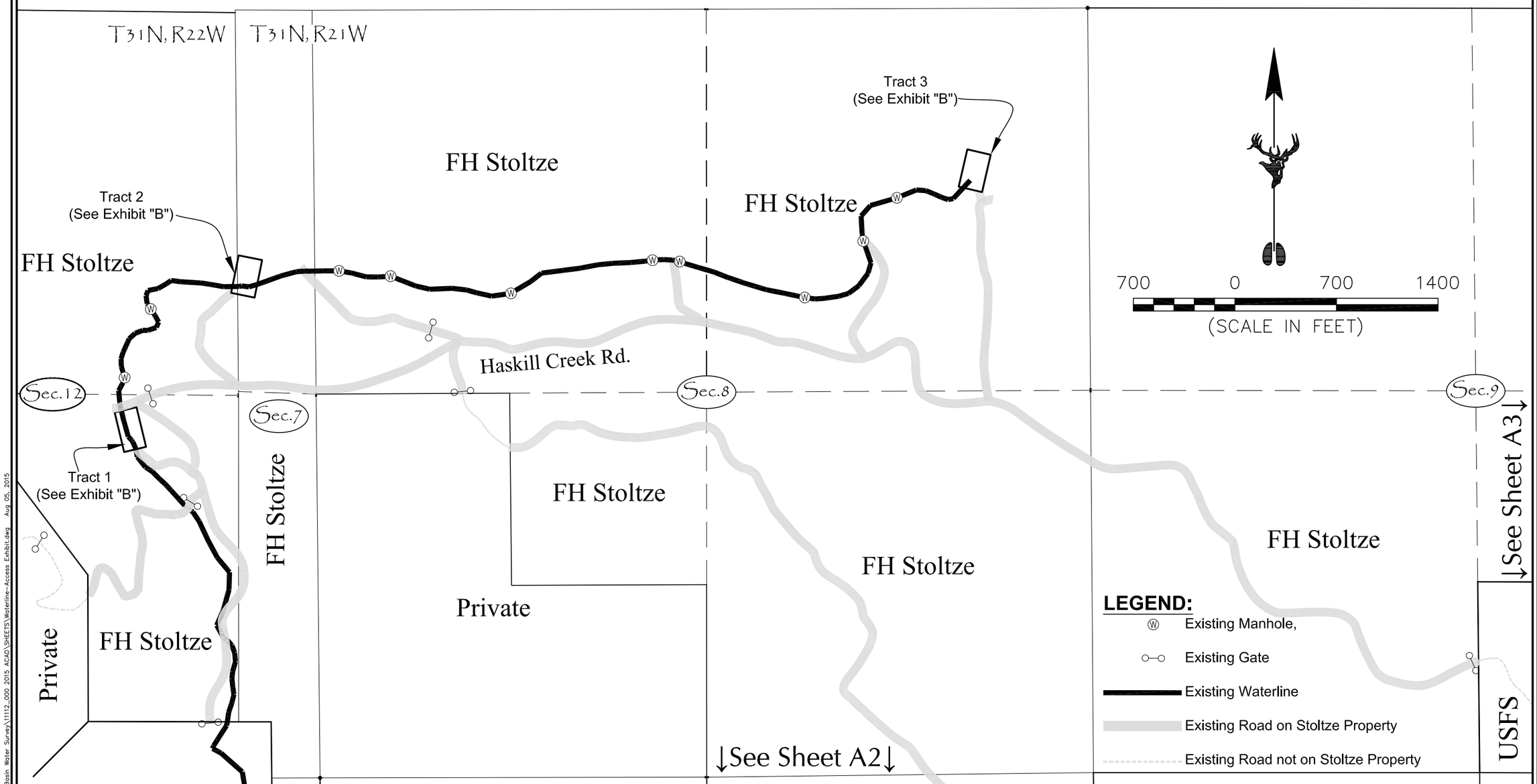
_____
Notary Public in and for the
State of Montana
Residing in _____
My Commission Expires: _____
Printed Name: _____

EXHIBIT "A"

LOCATED IN SECTIONS 7, 8, 9, 16, 17, 19, 20, & 22, T31N, R21W AND SECTION 12, T31N, R22W, P.M.,M.

FLATHEAD COUNTY, MONTANA

THE PURPOSE OF THIS EASEMENT EXHIBIT IS TO SHOW PROPERTIES OWNED BY F.H. STOLTZE LUMBER COMPANY AND TO REPRESENT WATERLINE AND ACCESS EASEMENTS ASSOCIATED WITH THE HASKILL BASIN WATER SUPPLY PROJECT FOR THE CITY OF WHITEFISH, WHITEFISH, MONTANA.



Legal Description - Access & Utility Easement - F.H. Stoltze Land & Lumber Company

An access and utility easement, in Sections 7, 8, 9, 16, 17, 18, 19, 20, & 22, Township 31 North, Range 21 West and Section 12, Township 31 North, Range 22 West, P.M.M., Flathead County Montana, more particularly described as follows:

A 40 foot wide strip of land, 20 feet on either side of the center of the waterline in place, beginning at the 3rd creek intake; thence through the 2nd creek intake and the 1st creek screen, terminating at the boundary of the Grantors Real Property, with a length of 9,530 feet, more or less, containing 7.69 acres, more or less.

Together with a 30 foot wide strip of land, 15 feet on either side of the center of the road system in place, beginning on Haskill Basin Road and Northwoods Drive, and terminating at Private, United States Forest Service and State of Montana lands, with a length of about 45,000 feet, more or less, containing 30.99 acres, more or less.

SYM	REVISION	BY	APPR.	DATE

J. Smith — DESIGNED BY
J. Smith — DRAWN BY
R. Mitchell — CHECKED BY
August 2015 — DATE
11112.000 — PROJECT NO.
Waterline-Access Exhibit — FILE

PROJECT TITLE
City of Whitefish
Haskill Basin Water Supply
Whitefish, Montana

SHEET TITLE
Waterline & Access Easement Exhibit on FH Stoltze Land

SHEET
A1

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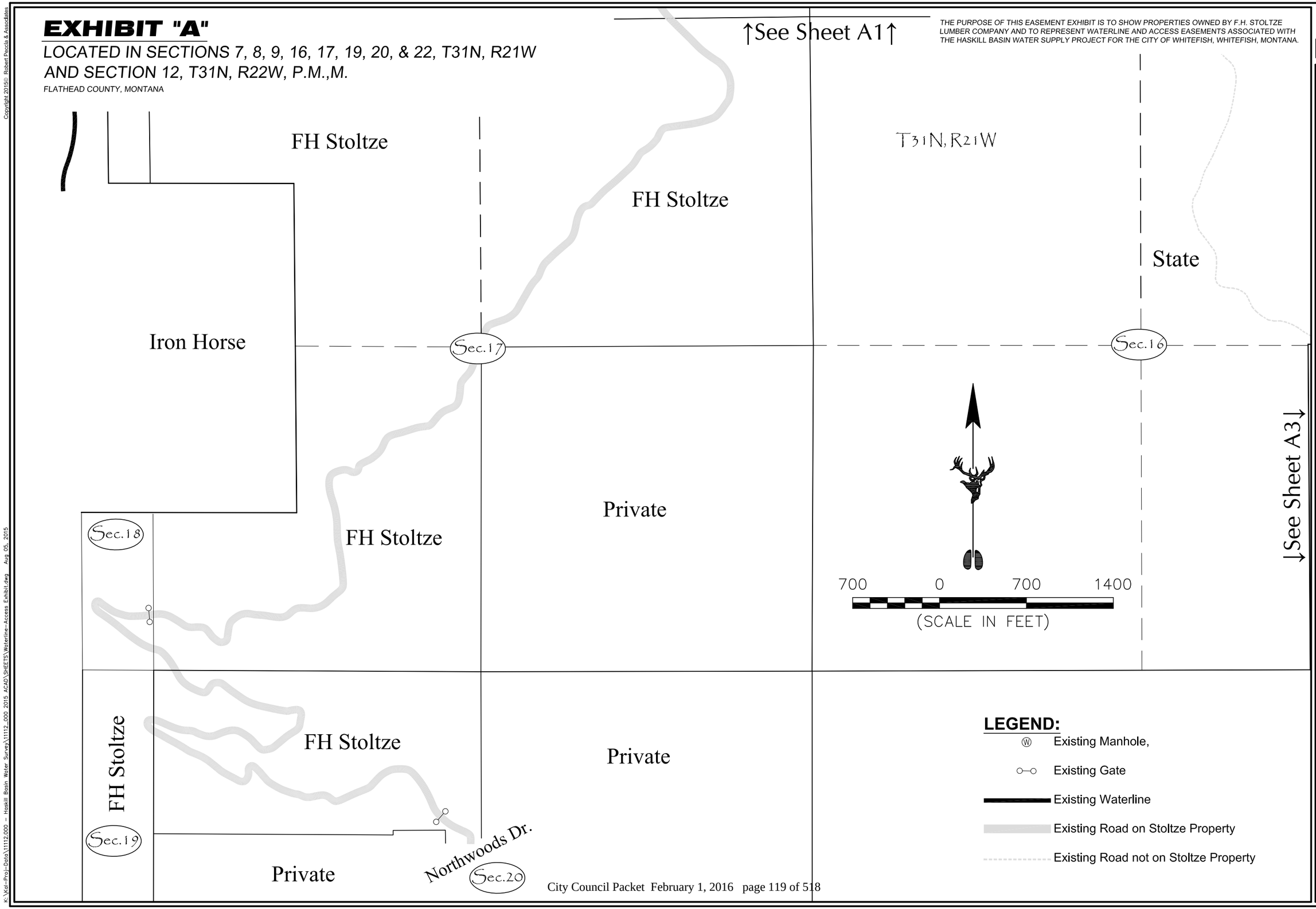
Copyright 2015©: Robert Peccia & Associates

EXHIBIT "A"

LOCATED IN SECTIONS 7, 8, 9, 16, 17, 19, 20, & 22, T31N, R21W AND SECTION 12, T31N, R22W, P.M.,M.

FLATHEAD COUNTY, MONTANA

THE PURPOSE OF THIS EASEMENT EXHIBIT IS TO SHOW PROPERTIES OWNED BY F.H. STOLTZE LUMBER COMPANY AND TO REPRESENT WATERLINE AND ACCESS EASEMENTS ASSOCIATED WITH THE HASKILL BASIN WATER SUPPLY PROJECT FOR THE CITY OF WHITEFISH, WHITEFISH, MONTANA.



SYM	REVISION	BY	APPR.	DATE

J. Smith — DESIGNED BY
J. Smith — DRAWN BY
R. Mitchell — CHECKED BY
August 2015 — DATE
11112.000 — PROJECT NO.
Waterline-Access Exhibit — FILE

PROJECT TITLE
City of Whitefish Haskill Basin Water Supply
Whitefish, Montana

SHEET TITLE
Waterline & Access Easement Exhibit on FH Stoltze Land

SHEET
A2

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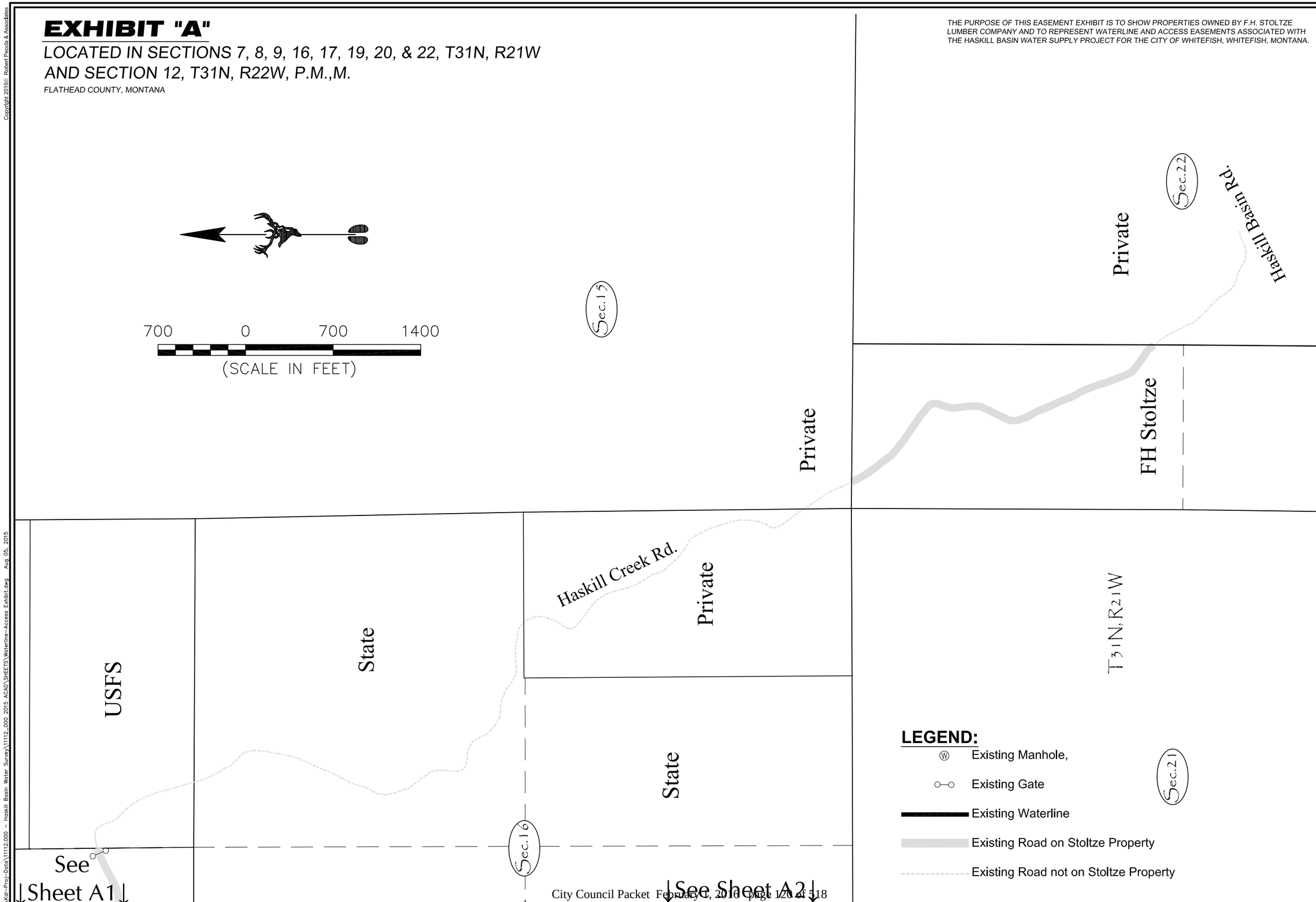
EXHIBIT "A"

LOCATED IN SECTIONS 7, 8, 9, 16, 17, 19, 20, & 22, T31N, R21W AND SECTION 12, T31N, R22W, P.M.,M.

FLATHEAD COUNTY, MONTANA

THE PURPOSE OF THIS EASEMENT EXHIBIT IS TO SHOW PROPERTIES OWNED BY F.H. STOLTZE LUMBER COMPANY AND TO REPRESENT WATERLINE AND ACCESS EASEMENTS ASSOCIATED WITH THE HASKILL BASIN WATER SUPPLY PROJECT FOR THE CITY OF WHITEFISH, WHITEFISH, MONTANA.



SYM	REVISION	BY	APPR.	DATE

RPA

J. Smith — DESIGNED BY
J. Smith — DRAWN BY
R. Mitchell — CHECKED BY
August 2015 — DATE
11112.000 — PROJECT NO.
Waterline-Access Exhibit — FILE

PROJECT TITLE
City of Whitefish
Haskill Basin Water Supply
Whitefish, Montana

SHEET TITLE
Waterline & Access Easement Exhibit on FH Stoltze Land

SHEET
A3

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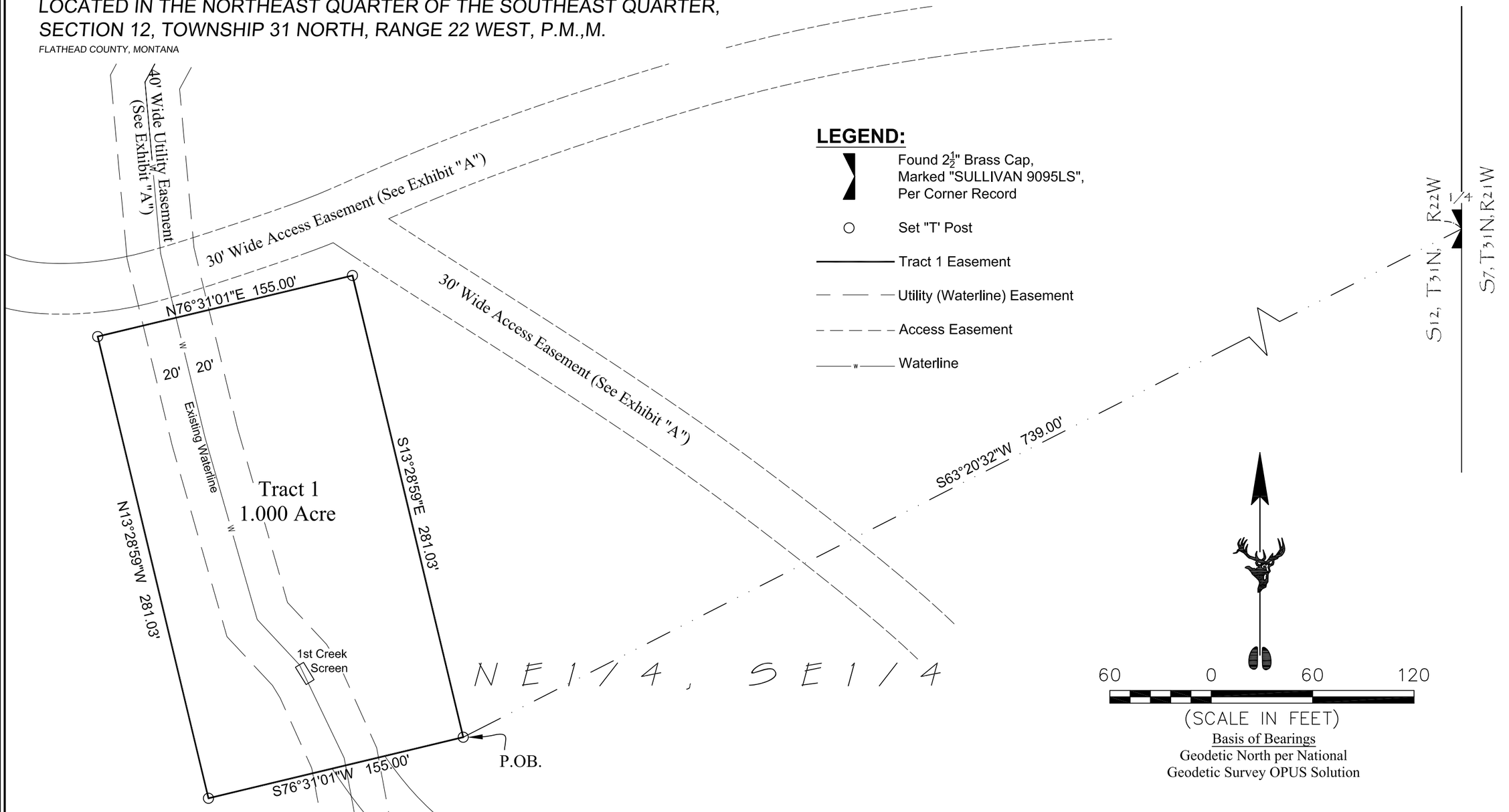
EXHIBIT "B"

LOCATED IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER, SECTION 12, TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M.,M.

FLATHEAD COUNTY, MONTANA

THE PURPOSE OF THIS EASEMENT EXHIBIT IS TO SHOW PROPERTIES OWNED BY F.H. STOLTZE LUMBER COMPANY AND TO REPRESENT UTILITY EASEMENTS ASSOCIATED WITH THE HASKILL BASIN WATER SUPPLY PROJECT FOR THE CITY OF WHITEFISH, WHITEFISH, MONTANA.



Legal Description - Tract 1 Easement - F.H. Stoltze Land & Lumber Company

A portion of the Northeast Quarter of the Southeast Quarter, Section 12, Township 31 North, Range 22 West, P.M.M., being more particularly described as follows:

Commencing at the northeast corner of the Northeast Quarter of the Southeast Quarter, Section 12, Township 31 North, Range 22 West, P.M.M.; thence South 63°20'32" West 739.00 feet to the True Point of Beginning; thence South 76°31'01" West 155.00 feet; thence North 13°28'59" West 281.03 feet; thence North 76°31'01" East 155.00 feet; thence South 13°28'59" East 281.03 feet to the point of beginning, containing 1.000 acre of land, more or less.

SYM	REVISION	BY	APPR.	DATE

J. Smith — DESIGNED BY
J. Smith — DRAWN BY
R. Mitchell — CHECKED BY
August 2015 — DATE
11112.000 — PROJECT NO.
1st-Creek-Easement — FILE

PROJECT TITLE: **City of Whitefish Haskill Basin Water Supply** *Whitefish, Montana*

SHEET TITLE: **Utility (Water) Easement on FH Stoltze Land**

SHEET **B1**

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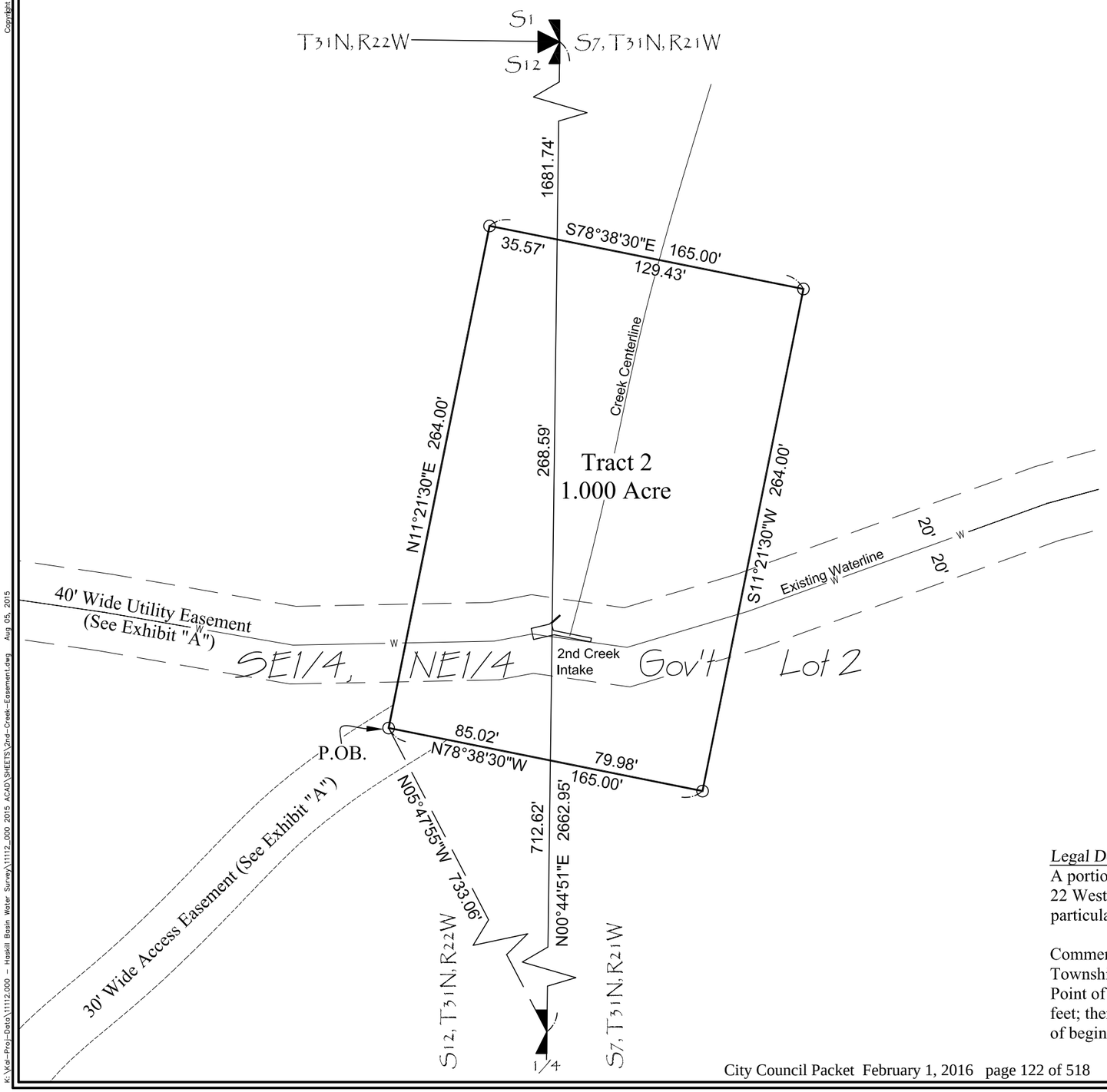
EXHIBIT "B"

LOCATED IN THE SE1/4 NE1/4, SECTION 12, TOWNSHIP 31 NORTH, RANGE 22 WEST & GOV'T LOT 2, SECTION 7, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.,M.

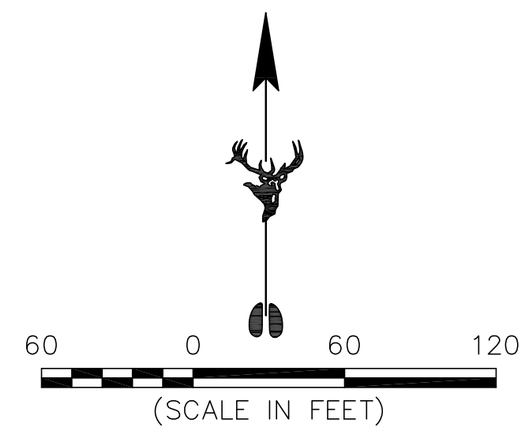
FLATHEAD COUNTY, MONTANA

THE PURPOSE OF THIS EASEMENT EXHIBIT IS TO SHOW PROPERTIES OWNED BY F.H. STOLTZE LUMBER COMPANY AND TO REPRESENT UTILITY EASEMENTS ASSOCIATED WITH THE HASKILL BASIN WATER SUPPLY PROJECT FOR THE CITY OF WHITEFISH, WHITEFISH, MONTANA.



LEGEND:

- Found $2\frac{1}{2}$" Brass Cap, Marked "SULLIVAN 9095LS" as Section Corner to Sections 1 & 12, Per Corner Record.
- Found $2\frac{1}{2}$" Brass Cap, Marked "SULLIVAN 9095LS" as Quarter Corner to Section 12, Per Corner Record.
- Set "T' Post
- Tract 1 Easement
- Utility (Waterline) Easement
- Access Easement
- Waterline



Basis of Bearings
Geodetic North per National
Geodetic Survey OPUS Solution

Legal Description - Tract 2 Easement - F.H. Stoltze Land & Lumber Company

A portion of the Southeast Quarter of the Northeast Quarter, Section 12, Township 31 North, Range 22 West and Government Lot 2, Section 7, Township 31 North, Range 21 West, P.M.M., being more particularly described as follows:

Commencing at the southeast corner of the Southeast Quarter of the Northeast Quarter, Section 12, Township 31 North, Range 22 West, P.M.M.; thence North 05°47'55" West 733.06 feet to the True Point of Beginning; thence North 11°21'30" East 264.00 feet; thence South 78°38'30" East 165.00 feet; thence South 11°21'30" West 264.00 feet; thence North 78°38'30" West 165.00 feet to the point of beginning, containing 1.000 acre of land, more or less.

SYM	REVISION	BY	APPR.	DATE

J. Smith — DESIGNED BY
J. Smith — DRAWN BY
R. Mitchell — CHECKED BY
August 2015 — DATE
11112.000 — PROJECT NO.
2nd-Creek-Easement — FILE

PROJECT TITLE: **City of Whitefish Haskill Basin Water Supply** *Whitefish, Montana*

SHEET TITLE: **Utility (Water) Easement on FH Stoltze Land**

SHEET: **B2**

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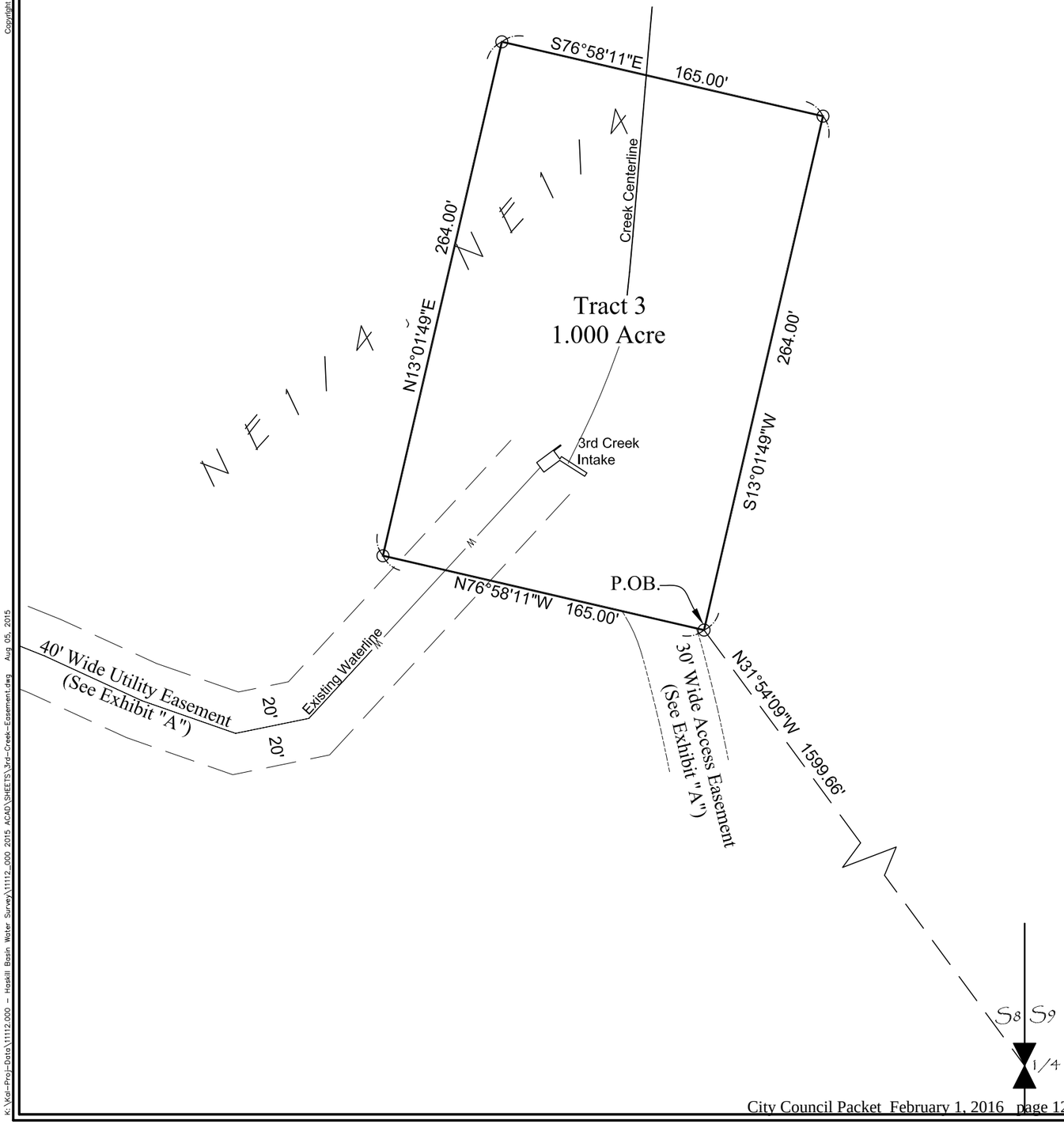
EXHIBIT "B"

LOCATED IN THE SORTHEAST QUARTER OF THE NORTHEAST QUARTER, SECTION 8, TOWNSHIP 31 NORTH, RANGE 21 WEST, P.M.,M.

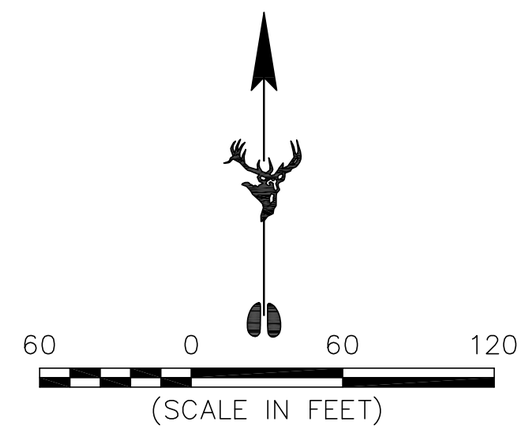
FLATHEAD COUNTY, MONTANA

THE PURPOSE OF THIS EASEMENT EXHIBIT IS TO SHOW PROPERTIES OWNED BY F.H. STOLTZE LUMBER COMPANY AND TO REPRESENT UTILITY EASEMENTS ASSOCIATED WITH THE HASKILL BASIN WATER SUPPLY PROJECT FOR THE CITY OF WHITEFISH, WHITEFISH, MONTANA.



LEGEND:

- Found $2\frac{1}{2}$" Diameter Iron Pipe with a $3\frac{1}{4}$" Diameter B.L.M. "1979"
- Set "T' Post
- Tract 1 Easement
- Utility (Waterline) Easement
- Access Easement
- Waterline



Basis of Bearings
Geodetic North per National
Geodetic Survey OPUS Solution

Legal Description - Tract 3 Easement - F.H. Stoltze Land & Lumber Company

A portion of the Northeast Quarter of the Northeast Quarter, Section 8, Township 31 North, Range 21 West, P.M.M., being more particularly described as follows:

Commencing at the southeast corner of the Northeast Quarter, Section 8, Township 31 North, Range 21 West, P.M.M.; thence North 31°54'09" West 1599.66 feet to the True Point of Beginning; thence North 76°58'11" West 165.00 feet; thence North 13°01'49" East 264.00 feet; thence South 76°58'11" East 165.00 feet; thence South 13°01'49" West 264.00 feet to the point of beginning, containing 1.000 acre of land, more or less.

SYM.	REVISION	BY	APPR.	DATE

J. Smith	DESIGNED BY
J. Smith	DRAWN BY
R. Mitchell	CHECKED BY
August 2015	DATE
11112.000	PROJECT NO.
3rd-Creek-Easement	FILE

PROJECT TITLE
City of Whitefish Haskill Basin Water Supply
Whitefish, Montana

SHEET TITLE
Utility (Water) Easement on FH Stoltze Land

SHEET
B3

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k:\Kal-Proj-Data\11112.000 - Haskill Basin Water Survey\11112_000 2015 ACAD\SHEETS\3rd-Creek-Easement.dwg Aug 05, 2015

MEMORANDUM
#2016-007

To: Mayor John Muhlfeld
City Councilors

From: Chuck Stearns, City Manager

Re: Staff Report – Consideration of Two Resolutions related to the acquisition of a water system and road access easement from the F.H. Stoltze Land and Lumber Company in exchange for our two "orphan" parcels of land in the Haskill Basin Conservation Easement

Date: January 26, 2016

Introduction/History

City officials have had discussions back to at least 2009 and likely before then with the F.H. Stoltze Land and Lumber Company regarding ways to preserve their timberlands in the Haskill Basin watershed for our water supply and for their timber management purposes. Some of their timberlands were sold and developed into subdivisions in the past. Development could increase sedimentation for our municipal water supply and if such development was not on a public sewer system, our water supply could be threatened as occurred when we had to shut down the water intake on 1st Creek in the past. However, the cost for the City to purchase a conservation easement on as much as 3,020 acres of land in the past was too high for us to afford.

The Trust for Public Land (TPL) became interested in this project in 2013 given their recent, successful efforts at protecting timberlands in the Swan/Blackfoot area and in Lincoln County. They entered into negotiations with the F.H. Stoltze Land and Lumber Company and negotiated an option for the purchase of a Conservation Easement for a net estimated cost of $16,700,000.00, for 3,020 acres. The option for the Conservation Easement expires on December 31, 2015. The F.H. Stoltze Land and Lumber Company will also donate the difference between the value of the Conservation Easement appraisal (estimated at $22,000,000) and the estimated $16,700,000 cost.

Since that time, TPL, assisted by the Montana Department of Fish, Wildlife, and Parks, has secured a $7,000,000.00 federal Forest Legacy grant and a $2,000,000.00 Cooperative Endangered Species Conservation Fund Grant. That leaves $7,700,000.00 of the estimated $16,700,000.00 cost remaining to be funded in the local area of Whitefish.

At the request of the City for technical assistance, The Trust for Public Land presented a Financial Feasibility Study for local funding options at the September 15, 2014 City Council meeting and a copy of that report and presentation is in the packet with this report. At a work session on February 2, 2015, TPL also presented the results of a statistically valid telephone survey of randomly selected Whitefish registered voters on various funding options for raising this $8,000,000. At the end of the February 2, 2015 City Council meeting, the City Council directed staff to bring forward for consideration at the February 17th City Council meeting, a Resolution calling for a special election on April 28th to ask the voters to increase the Resort Tax by one percentage point, up to 3% (the maximum allowed under the Montana Code and the same exacted by the other seven resort communities in Montana), for the purposes of funding $7,700,000 of the proposed Stoltze Conservation Easement to preserve water quality and water supply in the Haskill Basin watershed.

On April 28th, the Whitefish voters passed the referendum with an approval rate of 83.71% to increase the Resort Tax up to 3% until January 31, 2025 with 70% of the proceeds of this increase to be used to pay the debt service on a $7,700,000 bond issue with financing from the State of Montana State Revolving Fund (SRF) loan program.

To provide the funding for the $7,700,000, the total SRF bond will equal $8,219,500 in order to provide the necessary debt service reserve as security for our debt service payments and to pay issuance costs. The Bond Resolution for this issuance will be on the February 1st agenda. The interest rate will be at 2.5%.

The Conservation Easement and other documents below were negotiated during 2015 between City officials, Montana FWP officials, F.H. Stoltze Land and Lumber Company officials, and staff from the Trust For Public Land (TPL). The City Council reviewed the Conservation Easement and Multi-Resource Management Plan (MRMP) documents at a work session on November 2, 2015. The Montana FWP held a scoping public hearing on the Conservation Easement and MRMP on November 9, 2015 and the FWP approved the Environmental Assessment on November 24, 2015. The Montana Fish and Wildlife Commissioner approved the Conservation Easement and MRMP on December 20, 2015 and the State Land Board approved the documents and the transaction on December 21, 2015.

The City Council approved five Resolutions and two Letters of Intent at their meeting on January 19th to deal with the Conservation Easement, MRMP, trail easement, and acquisition of land via a Boundary Line Adjustment with the Murr Family.

Current Report

There are two resolutions on the agenda on February 1st related to City Council action on the Water System and Road Access Easement and the transfer of the orphan parcels. Each Resolution will be described below.

a) Resolution No. 16-___; A Resolution- Water System Water and Road easement

This Resolution and the following Resolution effectuate the part of this transaction whereby the City will receive a permanent easement guarantying our right to access the lands via Stoltze roads to maintain our municipal water system. Prior to these transactions, the City operated only on the verbal approval of the F.H. Stoltze Land and Lumber Company for access to our water intakes and water source pipelines. However, we had that neighborly access for approximately 100 years and there was no threat to our access. The City Council reviewed these documents at the October 19, 2015 City Council meeting. This document is unchanged from that time.

One important aspect of this Water System and Road Access Easement is that, in exchange for receiving this easement, the City will transfer ownership of our two parcels of land in Haskill Basin totaling 2.569 acres of land which are near, but not on the water intakes of Second and Third Creeks. Getting the actual physical location of the water intakes onto land owned or in an easement was also another goal of the easement negotiations. In exchange for our two parcels of land (see attachments to this memo), the City will gain the following:

- a perpetual easement on three, one acre parcels of lands on the actual physical location of the headgates and screens for the intakes at First, Second, and Third (three acres of land – see Exhibit B in the easement);
- a perpetual easement on a 40 foot swath of land along our entire system of waterlines in the Stoltze lands in Haskill Basin which equals 7.69 acres of land (see Exhibit A of the Water System and Road Access Easement);
- a perpetual easement on a 30 foot swath of land along the entire roads which Stoltze owns in the 3,020 acres of Haskill Basin land and that is subject to the future Conservation Easement and which equals 30.99 acres of land (see Exhibit A of the Water System and Road Access Easement);

Thus, for giving up fee simple title to 2.569 acres of land in Haskill Basin, we are obtaining perpetual easements on 41.68 acres of land in Haskill Basin. Moreover, we do not want ownership of two, "orphan" parcels of land within the 3,020 acres of the Conservation and transferring the title of our two parcels of land to Stoltze consolidates all of the ownership of land within the 3,020 acres of land. Therefore, all lands in the 3,022 acres of land will have the same restrictions contained within the future Conservation Easement and MRMP.

b) Resolution No. 16-___; A Resolution – Agreement for sale of orphan parcels to TPL

This resolution and agreement provides for the City to transfer our title of the two orphan parcels totaling 2.569 acres of land to Stoltze in exchange for the easement on 41.68 acres of land. An appraisal of these two orphan parcels is attached in this packet. As you can see from page 27 of the appraisal, the appraiser has us giving up a value of $30,000.00 for the two orphan parcels of 2.569 acres of land and receiving easements on 41.68 acres of land for the water lines, roads, and three 1 acre tracts of land around each water intake/headgate valued at $412,125. While the appraiser uses a different number

for the acreage of our waterline, I am going to trust and use the acreage figures that the surveyors came up with. Regardless, and even if you want to argue with his values (which is not necessary in the current transaction), we are getting a lot more value than we are giving up for two, inaccessible, orphan parcels of land that are near, but not on two of the three the intakes/headgates. Even if you cut his values for the easement in half, we would still be receiving a lot more value than we are giving up.

Financial Requirement

There is no cost of these transactions to the City other than splitting the cost of recording the documents, which will probably be under $200.00. As shown above, the City is receiving a lot more value from this part of the transaction than we are giving, but for the Conservation Easement we are also providing $7,700,000.

Recommendation

Staff respectfully recommends that the City Council, after considering testimony at the public hearing, approve two resolutions:

a) Resolution No. 16-___; A Resolution approving the terms of a Municipal Water System Easement and Road Access Easement with F.H. Stoltze Land & Lumber Company
b) Resolution No. 16-___; A Resolution authorizing the transfer of parcels of land in Haskill Basin totaling 2.569 acres of land to F.H. Stoltze Land & Lumber Company in exchange for 41.28 acres of perpetual easements allowing the City to access, maintain and use its municipal water system

January 20, 2016

Chuck Sterns, City Manager
City of Whitefish

Chuck Roady, Vice President
F. H. Stoltze Land and Lumber Company

Dick Dolan, Northern Director
The Trust for Public Land

Gentlemen:

In accordance with the request of Alex Diekmann and Dick Dolan of The Trust for Public Land, I have prepared a brief appraisal of five parcels of fee land, a road easement and a water transmission pipeline easement in the Haskill Basin. Some of the market data for this appraisal will be taken from my recent Haskill Basin appraisal of a 3,022.06 acre conservation easement covering forest land owned by F.H. Stotlze Land and Lumber Company (Stoltze), which borders these subject parcels of land. That appraisal has been reviewed and approved by a certified Federal Review Appraiser. That appraisal is attached to this appraisal by reference.

There are various surveys of the subject parcels, so for clarification, this appraisal will refer to the two subject parcels, owned by the City of Whitefish, as Subject Fee Parcels 1 and 2, similar to their identification in the title report. The three new Stoltze lots will be referred to as Subject Tracts 1, 2 and 3, similar to their identification on the draft survey plats. Subject Tract 1 is on 1st Creek, Subject Tract 2 is on 2nd Creek and Subject Tract 3 is on Third Creek.

Subject Fee Parcels 1 and 2 in this appraisal are small parcels of undeveloped forest land owned by the City of Whitefish which will be conveyed to Stoltze. These parcels were acquired many decades ago to be the sites of water intake structures for the city's water system. But the current water intake structures are not located on either of these parcels, So these two parcels will be conveyed to Stoltze Land and Lumber, the surrounding landowner.

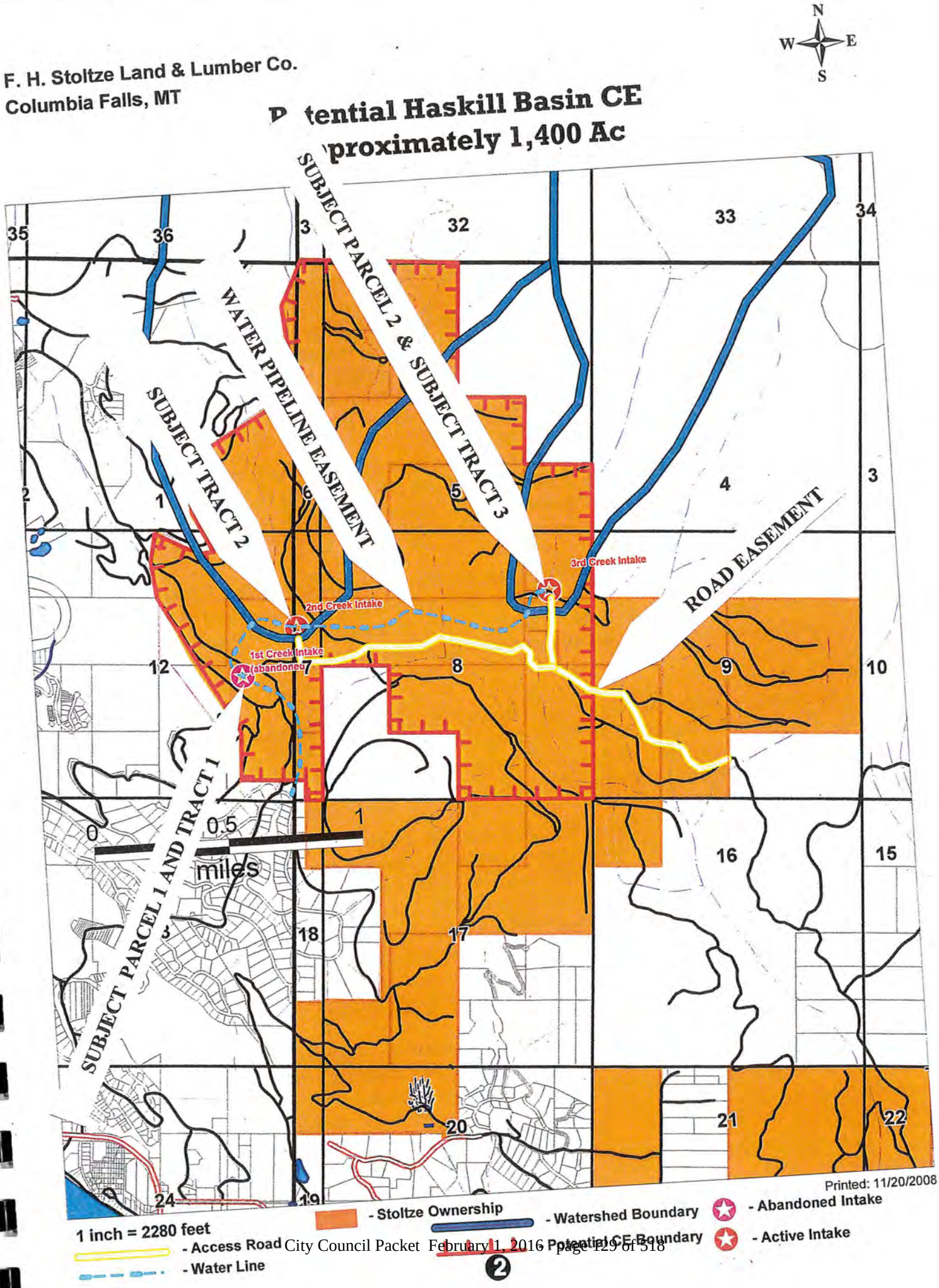
Subject Fee Tracts 1, 2 and 3 are three new one-acre water intake structure sites currently owned by Stoltze. They will be conveyed to the City of Whitefish. The current city water intake structures on 2nd Creek and 3rd Creek are located on two of these tracts, Tracts 2 and 3. Tract 1 is on 1st Creek and that site will be a possible new water intake structure site on 1st Creek

The proposed road and water transmission pipeline easements currently cross land owned by Stoltze and an easement for those uses and areas will be conveyed to the City of Whitefish for access to and maintenance of their water system on Stoltze land. Water pipelines are present on the proposed pipeline easement and roads exist on the proposed road easement. The City of Whitefish uses the Stoltze land for the existing water pipeline and access roads based on a "handshake" agreement.

All of these subject parcels, subject tracts and easements are graphically shown on the following page 2.

F. H. Stoltze Land & Lumber Co.
Columbia Falls, MT

P tential Haskill Basin CE
'proximately 1,400 Ac



The two small fee parcels owned by the city of Whitefish land are legally described as Parcels 1 and 2 in the attached Title Report included as Exhibit A of this appraisal.

Parcel 1 is described as Tract 2A on Certificate of Survey No, 16877 included as Exhibit A of this appraisal. Parcel 1 is located in Section 12, T31N, R22W. Parcel 1 contains .569 acres. The deed of conveyance indicates this parcel as having 1.1 acres. But the actual boundaries of this rectangular shaped parcel are listed as 248 feet by 100 feet by 248 feet by 100 feet which equals .569 acres. Parcel 1 is shown on the plat maps on pages 4 and 5 of this appraisal.

Parcel 2 is described as a parcel of land particularly described as follows: Beginning at the Southwest corner of the Northeast Quarter of the Northeast Quarter of Section 8, Township 31 North, Range 21 West, PMM, Flathead County, Montana, thence running East 40 rods; thence North 8 rods, thence West 40 rods, and thence South 8 rods to the point of beginning. Parcel 2 includes 2 acres. This parcel is shown on the plat on page 6 of this appraisal.

These two parcels were acquired as sites for construction of water intake facilities for the Whitefish water system on First Creek and Third Creek. Both of these water intake facilities have been constructed, but not on these parcels. These parcels are owned by the City of Whitefish.

As the appraiser, I have been on or very near these two parcels. No one apparently knows the exact corners or location of these parcels. The 2nd Creek and 3rd Creek water intake structures are currently being used, but not located on either of these parcels. The 1st Creek intake structure exists, but is not currently being used by the city and apparently not located on either of these parcels.

Fee Tracts 1, 2 and 3 are the proposed three new one-acre sites for the City's water intake facilities. Two of these sites, Tracts 2 and 3, on 2nd and 3rd Creeks, are currently encumbered with water intake facilities. The proposed Tract 1, on 1st Creek, may or may not have a water intake facility on it. These three one-acre tracts are shown on pages 10, 11 and 12.

Road Easement The proposed road easement is 30 feet wide or 15 feet of width from the center line of the existing roads. Actual roads exist on all of these road easements. The road easements will serve as legal road access for maintenance of the City's water system including water intake sites and pipelines. The City currently uses these roads based on a verbal agreement with Stoltze. These roads were built and have been maintained by Stoltze at no cost to the city. So Stotlze owns the underlying and road facilities. The location of these roads and easements are generally shown on the maps on pages 7, 8 and 9. Both Stoltze and the City of Whitefish will have mutual responsibilities for use and maintenance.

Water Pipeline Easement The proposed water pipeline easements exist on the ground. The location of the pipeline is generally shown on the map on page 2. The pipeline easement is 40 feet wide and is currently in place and being used to transport water. This use is based on a verbal agreement with Stoltze.

The map on page 13 shows the relative location of Parcel 2 and Tract 3. The map on page 14 shows the relative location of Parcel 1 and Tract 1.

The client for this report is The Trust for Public Land which is facilitating this transaction as well as a much larger, 3022 acre, Conservation Easement which will protect the Haskill Basin watershed for the City of Whitefish.

Intended users are The Trust For Public Land, the City of Whitefish and F.H. Stoltze Land and Lumber Company and their advisors.

The purpose of this appraisal is to estimate the value of the lands being exchanged in this transaction.

This appraisal report conforms to Standards 1 and 2 of the 2014-2015 Uniform Standards of Professional Appraisal Practice.

The date of this value estimate is October 24, 2015, the date I last viewed and examined the subject properties.

Subject Descriptions

All of the five subject fee parcels or tracts of land and the two easements are located adjoining each other or are in close proximity of each other. So physically, their locations are virtually identical.

All of these parcels, tracts or easements are accessible via an existing system of logging and land access roads. These access roads are essentially single lane roads with occasional turnouts. These are generally native soil roads with some spot graveling. The access roads cross several creeks, so these creeks are bridged with bridges sufficient to carry loaded logging trucks. Overall, these roads are very adequate to serve the existing and intended uses.

Terrain varies from level to gently sloping for the five fee parcels and water line easements. The access road easement crosses occasional short stretches of moderately sloping terrain. All of this terrain is upland terrain, with occasional small wetlands.

All of the subject property is forested property with all-aged stands of mixed conifers including Douglas-fir, western larch, lodgepole pine, ponderosa pine, western cedar and true firs. Trees are of all sizes and ages, with some merchantable timber. The easement rights-of-way are have been mostly cleared of large timber.

The water facility in-take sites are located on creeks and the road and waterline easements cross several creeks and small wetlands.

There is no electrical or telephone service to any of the subject fee sites and most of the easement land.

Subject Parcels 1 and 2 are vacant parcels of forested land. Subject Tracts 1, 2 and 3 are currently improved with water intake facilities. The subject water line easement is currently being used for water transmission via pipelines. The subject road easements are currently encumbered with land access and logging roads.

Subject Photos All the intended users of this appraisal report have copies of the recently completed conservation easement appraisal of the subject lands.

In that conservation easement appraisal Subject Photos 7, 9 and 26 are photos of the subject roads and road easement areas. Subject Photos 11, 12 and 25 are photos of the water intake facilities and typical land around those sites.

Additional subject photos are found on the next two pages.

SUBJECT PHOTOS

1. Subject Tract 3. Existing water intake facility is on the left.

2. Viewing down stream from water intake facility on 3rd Creek. This is also the location of the water transmission pipeline easement.

SUBJECT PHOTOS

3. View of Subject Tract 1 on 1st Creek.

4. View of existing water transmission pipeline easement running south from 1st Creek water intake.

HIGHEST AND BEST USES

Highest and Best Use as defined in the Dictionary of Real Estate Appraisal, published by the Appraisal Institute is:

> The reasonably probable and legal use of vacant land or an improved property which is physically possible, appropriately supported, financially feasible, and that results in the highest land value.

In determining the highest and best use of vacant land, a use must meet four criteria:

1. Physically possible
2. Legally permissible
3. Financially feasible
4. Maximum productive

Common potential highest and best uses include rural residential, recreational, agricultural, commercial and industrial uses to which the above four criteria apply. Highest and best use is also determined assuming the land is vacant and unimproved.

The five subject fee parcels and tracts, and two easements have no history of agricultural use nor are they economically suitable for agricultural use due to shallow rocky soils and a short growing season. The small size of the fee parcels and the long linear nature of the easements make them unsuitable for sustained yield timber management. So any type of agricultural or timber production use is unlikely.

The subject property is located in a remote rural area well off of any heavily traveled public road, not near any railroad line and not close to any large population center. There are no nearby mineral deposits. Therefore, the subject is not well suited for any commercial or industrial uses.

The subject properties are located near the very popular Whitefish Mountain Ski and Summer Resort and the upscale town of Whitefish. There has been lots of subdivision and development of small rural recreational lots around the ski area and the City of Whitefish. Physically the subject lots suitable for such use except for the problem of road access and availability of utility services.

The five subject fee lots, Parcels 1 and 2 owned by the City of Whitefish and Subject Tracts 1, 2 and 3, owned by Stoltze, are physically large enough to be suitable for use as recreation cabin sites.

They all have mostly upland topography and nice forest cover. Subject Parcel 2 and Subject Tracts 1, 2 and 3 have nice creek frontage. Mountain views are limited due to generally level terrain and forest cover. Subject Parcel 2 is large enough to allow installation of a septic system. Subject Parcel 1 at .569 acres is clearly not large enough for both a septic system and cabin. Subject Tracts 1, 2 and 3 are one acre in size and very marginal with respect to meeting septic system standards. None of these sites currently have access to any utility services. And given their remote and isolated location, it is unlikely that utility services could be economically extended to them.

After reviewing the title report, and discussions with Paul McKenzie of Stoltze and Angela Jacobs, the City Attorney for the city of Whitefish, I have reached the conclusion, which is similar to their opinion that Subject Parcels 1 and 2, while having physical road access, have no legal road access. But historically and currently they have trail access. Stoltze, the owner of the surrounding forest land, allows free public use for hiking and cross country skiing on a year-long basis. This is at the tolerance of the landowner, Stoltze. But as of the date of appraisal, October 28, 2015, it is well known in the Whitefish community that Stoltze is selling a conservation easement to the City of Whitefish and the Montana Department of Fish, Wildlife and Parks that will allow permanent public recreation use, including hiking and cross country skiing.

This seems likely to ensure the Subject Parcels 1 and 2 will have legal trail access, but not road access. If these lots were owned by private citizens, it seems reasonable that Stoltze would allow the lots owners to at least occasionally use the road system to haul in building materials. Stoltze currently allows public 4-wheeler use behind their locked gates.

Overall, I believe the highest and best use for Subject Parcels 1 and 2, owned by the City of Whitefish, is for use as private recreational cabin sites, with very restricted access and no utility services.

This is a legal use and there is a limited demand in the local market for this type of use, even with just trail access.

Subject Tracts 1, 2 and 3 are situated similar to Subject Parcels 1 and 2. There are two primary differences. These three subject tracts are one acre in size and all three have extensive creek frontage. All three have current physical road access. Since Stoltze owns the road system, it seems apparent that if they sold these lots, they would grant road access rights to the buyers in order to increase the value of these lots.

Overall, I believe the highest and best use for Subject Tracts 1, 2 and 3, owned by the Stoltze, is for use as private recreational cabin sites, with probable road access.

This is a legal use and there is demand in the local market for this type of use, even with little likelihood of the availability of normal utility services.

The subject easements, both the road and water pipeline easements and are long narrow linear rights-of-way. There is no evidence in the private market that there is any demand in the market for long linear rights-of-way except to serve the specialized needs of a particular landowner for access or a company/government entity to transport water. In almost all cases the value of linear rights-of-ways are tied to the value of adjacent lands which the rights-of-way is passing through.

So from the standpoint of the current landowner, Stoltze, the current purpose of the road easements is to allow land management and extraction of forest products. This is similar to the pipeline easement which serves the purpose of transporting water to the City of Whitefish. The city also currently uses the road system to moniter and maintain their water system.

Overall, I believe the Highest and Best Use of the water transmission pipeline easement and road easement is for continued road and water transmission purposes, its current use.

APPRAISAL OF SUBJECT PARCELS 1 & 2

I have completed extensive real estate appraisal work in Northwest Montana during the last forty years. These appraisals include lakefront, river front, creek front and rural forest land similar to the subject property. During these appraisals, I located and examined hundreds of comparable sale properties. This Appraisal Report is too brief to include detailed data, photos and maps of these comparable sales which are in my files.

Especially rare are sales of small recreation cabin sites with trail access only. So most of these sales are very old. The following is a list of some comparable sales of recreation lots with trail or limited road access.

COMPARABLE SALE DATA SUMMARY

SALE	DATE OF SALE	ACREAGE	TOTAL SALE PRICE	SITE VALUE	LOCATION and COMMENTS
		acres			
1.	June 1995	.22	$12,000	$12,000	In Glacier Park, trail access, 5 mile hike to property, forested, level terrain, no mountain views, no creek, no utilities.
2.	Dec. 1998	.114	$7,500	$7,500	In Glacier Park, dirt road access, only seasonally maintained, no motorized winter access, mostly meadow, level terrain, good mountain views, no creek, no utilities
3.	Dec. 2001	.23	$12,000	$12,000	In Glacier Park, trail access, 5 mile hike to property, forested, level terrain, no mountain views, no creek, no utilities
4.	Oct. 2008	.11	$15,000	$15,000	In Glacier Park, trail access, 5 mile hike to property, forested, level terrain, no mountain views, no creek, no utilities
5.	2001	.23	$72,000	$72,000	In Glacier Park, seasonal road access, meadow, good mountain views, level terrain, no creek, no utilities. Offer contingent on approval to build a cabin.

Valuation and Correlation of Subject Parcels 1 and 2

Subject Parcels 1 and 2 are very unique because they are small parcels of land with mostly trail access only. This area has hundreds if not thousands of small recreation lots near the City of Whitefish and the ski resort. This is a ski town enhanced by a large lake. Small lots can easily run as high as hundreds of thousands of dollars. But those lots usually have paved road access, all utility services and are fully usable for year-round recreation.

The subject parcels are located only a mile or two from some of these high-end subdivisions, but lack road access and any utility services. They do have the advantage of being surrounded by land that is being encumbered by a conservation easement that will ensure all the surrounding land will remain undeveloped, but open to free year-round recreation use. Whitefish is a youthful town that is into hiking, camping, mountain biking and cross country skiing.

So I believe the subject lots are very salable as a "back country" campsite for either a tent camp or modest structure. What a great place to ski into during the winter and have an overnight shelter! The cost of these lots is also very modest.

While the demand for such sites is limited, the availability of this type of site is also very limited. The preceding page lists five sales of small back country sites.

All of these sites are located in Glacier National Park, so these sites are located in an area with similar well known recreation attractions similar to the Greater Whitefish area. Sales 1, 3 and 4 are located in a very remote area that requires a long five mile hike to reach.

Sales 2 and 5 are located in the North Fork, north of Polebridge. These two lots have dirt road access in the summer and only snowshoe or ski access in the winter. The availability of road access and a septic system added considerably to the value of Comparable Sale 5. This pair of small lots had a septic left from a cabin that burned down in a forest fire. This would allow the rebuilding of a cabin with indoor sanitary facilities. Hence the note that this offer was contingent on the Park Service allowing the cabin to be rebuilt. The Park Service does everything possible to discourage new private structures in the park. The Park Service really doesn't have much control on private development in the park, but in this case they assert control through park road management.

Sales 1-4 show a relatively tight range of back country site values ranging from $7,500 to $15,000 per site. I believe Sales 1-4 best illustrate probable subject lot value. I believe the subject sites are more valuable because they only require a 1-2 mile hike into the subject parcels from the nearest public road. The subject lots also have an advantage of possibly being allowed to use 4-wheelers for easier access. The subject sites also include lots of creek frontage. Size of these private sites is not overly important because the real value of these sites is the vast area of undeveloped land around them.

Overall, I believe the two subject parcels, Parcels 1 and 2 have a market value of $15,000 per parcel or $30,000 total.

Valuation and Correlation of Subject Tracts 1, 2 and 3

Subject Tracts 1, 2 and 3 are very similar to Subject Parcels 1 and 2 except that Subject Tracts 1, 2 and 3 all have creek frontage and these three tracts have a much higher probability of road access. One of the problems with Subject Tracts 1, 2 and 3 is the narrow width between the lot boundaries and the creeks. These three lots are only 165 feet wide, with only 80 feet of distance between the creeks and the lot boundaries. A recent newspaper article indicated a zoning dispute, with the city demanding a 200 foot setback from any creek in this watershed. This would be especially important to the Subject Tracts 1, 2 and 3 which border creeks which feed directly into the city water supply.

Due to this zoning and land use position of the city, any substantial development on these lots that would be enhanced by having road access, would likely be challenged by the city. So this may negate some of the advantages of road access.

Subject Parcels 1 and 2 have some upland terrain more than 200 feet from the closest creek, so they may actually be more suitable for septic systems than Subject Tracts 1, 2 and 3.

Nevertheless, in my opinion, Subject Tracts 1, 2 and 3 with their higher probability of road access or limited road access, are probably more valuable than Subject Parcels 1 and 2.

Subject Parcels 1 and 2 and Subject Tracts 1, 2 and 3 are located in very close proximity to each other and are physically very similar except for the probability of road access and probability of getting a septic approval. In fact, Subject Parcel 2 and Subject Tract 1 have overlapping boundaries.

With these similarities, it is logical and consistent with the real estate market that Subject Tracts 1, 2 and 3 have values somewhat similar, but a little higher than Subject Parcels 1 and 2.

Overall, in my opinion, Subject Tracts 1, 2 and 3, each have a current market value of $20,000 or $60,000 total.

Valuation and Correlation of the Subject Water Line Easement

According to the survey data, the existing water lines have a lineal distance of 9,530 feet and are 40 feet in width. These water lines exist with the verbal approval of Stoltze. At least in theory, that verbal permission could be revoked. That seems to be the reason for the proposal to formally document this easement in writing and record the easement deed.

The plats included in this appraisal indicate a water line easement acreage of 7.69 acres. My calculator indicates a lineal distance of 9,530 feet times a 40 foot width equals 381,200 square feet divided by 43,560 square feet in an acre, equals 8.75 acres. I will use 8.75 acres in this appraisal.

The common way to value lineal rights-of-way is to value them similar to the value of the land the easement is passing through. The water line easement and domestic water passing through the pipeline provides no special hazards or benefits to the bordering forest land.

Tiered to this brief appraisal is my recent appraisal of the forest land which this water line passes through. That appraisal concluded with an estimate of $7,500 per acre.

This waterline easement area is devoted to water transmission. Stoltze cannot grow timber crops on this easement area. So there are no supplemental or residual benefits to the adjoining landowner. Overall, it is my opinion the water line easement is the dominant and only use of the right-of-way area.

Typically, lineal easements are valued using a before and after approach to value. A before appraisal of the land being crossed by the easement would be $7,500 per acre. An after appraisal of this land would indicate 8.75 acres of less area for growing trees or subdividing into recreational home sites.

Therefore the loss in subject property value would be:

8.75 acres x $7,500 per acre = $65,625

I know of no special benefits or liabilities from this water line. The current and planned use of this water line easement area is exclusive for water transmission.

Overall, it is my opinion the market value of the 8.75 acre water line easement is worth $65,625.

Valuation and Correlation of the Subject Road Easement

According to the survey data, the proposed road easement has a lineal distance of 45,000 feet and 30 feet in width. These roads and road easements are in place and are being used by the city to monitor and maintain the city water system. This use is with verbal approval of Stoltze. At least in theory, that verbal permission could be revoked. That seems to be the reason for the proposal to formally document this easement in writing and record the easement deed.

The plats included in this appraisal indicate a road easement acreage of 30.99 acres. My calculations confirm this acreage.

The common way to value lineal rights-of-way is to value them similar to the value of the land the easement is passing through. This road and road easement is necessary for water system maintenance as well as for managing the adjacent forest land. So the roads provide benefits to both City and Stoltze. The road provides no special hazards or benefits to the bordering forest land.

Tiered to this brief appraisal is my recent appraisal of the forest land which this water line passes through. That appraisal concluded with an estimate of $7,500 per acre.

This road easement area is devoted to road use and is a necessary part of land management.

Overall, it is my opinion the road and road easement is the dominant and only practical use of the right-of-way area.

Typically, lineal easements are valued using a before and after approach to value. A recent before appraisal of the land being crossed by the easement is $7,500 per acre. An after appraisal of this land would indicate 30.99 acres of less area for growing trees or subdividing into recreational home sites. So the value of the easement is about $232,425.

Therefore the change in subject property productivity value would be:

30.99 acres x $7,500 per acre = $232,425

I know of no special benefits or liabilities from road easement for either Stoltze or the City of Whitefish. The road easement area is necessary for both Stoltze and the City of Whitefish.

In addition to the value of the road easement, is the value of the existing roads. The road easements cover about 8.53 linear miles of roads (45,000 feet ÷ 5,280/mile = 8.523 miles). Paul McKenzie estimates the average value of the roads at $40,000 per mile.

8.523 miles x $40,000 per mile is $340,920 total

So the overall value of the roads and road easement is $573,000 ($232,425 plus $340,920 = $573,345, rounded to $573,000).

This road system is equally beneficial to both Stoltze and the City of Whitefish. The roads have been built and maintained by Stoltze.

The granting of the road easement provides equal rights to the City of Whitefish (50%) and to Stoltze (50%) to use these roads. Each party is responsible to bear their share of maintenance.

Overall, I believe the value of the road easement and road use rights being granted to the City of Whitefish has a market value of $286,500 or about half the value of the road easement and road facility.

<u>Estimated Total Values Being Exchanged</u>

From the City of Whitefish to Stoltze:	Subject Parcels 1 and 2 with total value of	**$30,000**
From Stoltze to City of Whitefish:	Subject Tracts 1, 2 and 3 have a total value of	$60,000
	Water pipeline easement has a value of	$65,625
	Roads and road easement-half interest	$286,500
	Total value of Stoltze interest being conveyed	**$412,125**

CERTIFICATE OF APPRAISAL - I certify that to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct. No important facts have been excluded.

2. The reported analyzes, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and legal instructions, and are the personal, impartial, and unbiased professional analyzes, opinions and conclusions of the appraiser.

3. The appraiser has no present or prospective interest in the property appraised and no personal interest or bias with respect to the parties involved.

4. The compensation received by the appraiser for the appraisal is not contingent on the analyses, opinions, or conclusions reached or reported.

5. The appraisal was made and appraisal report prepared in conformity with the Uniform Appraisal Standards for Federal Land Acquisitions.

6. The appraisal was made and the appraisal report prepared in conformity with the Appraisal Foundation's Uniform Standards of Professional Appraisal Practice.

7. The appraiser has made a personal inspection of the property appraised. The property owner or their designated representative was given the opportunity to accompany the appraiser on the property inspection. The date of valuation or the effective date of the appraisal is October 28, 2015, the date I last inspected the property. Mr. Paul McKenzie, Stoltze Lands and Resource Manager, accompanied me on part of that property inspection.

8. No one provided significant professional assistance to the appraiser.

9. The compensation for completing this assignment is not contingent upon development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

10. This appraisal report has been made in conformity with and is subject to the requirements of the Code of Professional Ethics and Standards of Professional Conduct of the Appraisal Institute. As of the date of this report, Warren A. Illi, has completed the continuing education program of the Appraisal Institute and the State of Montana.

11. This appraisal is based on the assumption there are no unacceptable encumbrances on the title to the subject property. My on-the-ground examination did not disclose any unacceptable title encumbrances. The appraiser reserves the right to adjust appraised values if new title defects become known.

12. On October 28, 2015, after reviewing all pertinent subject property data and market data available, I have reached an opinion of subject market value which is:

Estimated Total Values Being Exchanged

From the City of Whitefish to Stoltze:	Subject Parcels 1 and 2 with total value of	**$30,000**
From Stoltze to City of Whitefish:	Subject Tracts 1, 2 and 3 have a total value of	$60,000
	Water pipeline easement has a value of	$65,625
	Roads and road easement-half interest	$286,500
	Total value of Stoltze interest being conveyed	**$412,125**

Warren Illi, MAI
State Certified General Appraiser, No. 349

Exhibit A

This commitment was prepared for you by:

704 South Main/P.O. Box 1310, Kalispell, MT 59901
Phone (406)752-5388 - Fax (406)752-9617

Escrow Officer: Heidi Bredl - hbredl@gofirstam.com
Title Officer: Ted Gigrich - tgigrich@gofirstam.com

To: **The Trust for Public Land Alex Diekmann**
1007 East Main St, Ste 300
Bozeman, MT 59715

Order No.: **557504-CT**

Attention: **Alex Diekmann**

Your Reference:

Re: Property Address: **NO ADDRESS GIVEN, Whitefish, MT 59937**

ENCLOSED please find the following:

- Title Commitment
- Required Affidavit(s)

Should you have any questions or need further assistance, please contact the undersigned. We appreciate the opportunity to serve you.

Sincerely,

Ted Gigrich

enc.

File No.: 557504-CT

Commitment for Title Insurance

ALTA PLAIN LANGUAGE COMMITMENT

AGREEMENT TO ISSUE POLICY

We agree to issue a policy to you according to the terms of the Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six (6) months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the policy is issued and then our obligation to you will be under the policy.
Our obligation under this Commitment is limited by the following:
The Provisions in Schedule A.
The Requirements in Schedule B-I.
The Exceptions in Schedule B-II.
The Conditions.
This Commitment is not valid without SCHEDULE A and Sections I and II of SCHEDULE B.

CONDITIONS

1. DEFINITIONS
   (a) "Mortgage" means mortgage, deed of trust or other security instrument. (b) "Public Records" means title records that give constructive notice of matters affecting your title according to the state statutes where your land is located.
2. LATER DEFECTS
   The Exceptions in Schedule B - Section II may be amended to show any defects, liens or encumbrances that appear for the first time in the Public Records or are created or attach between the Commitment Date and the date on which all of the Requirements (a) and (c) of Schedule B - Section I are met. We shall have no liability to you because of this amendment.
3. EXISTING DEFECTS
   If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.
4. LIMITATION OF OUR LIABILITY
   Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:
   Comply with the Requirements shown in Schedule B - Section I or Eliminate with our written consent any Exceptions shown in Schedule B - Section II.
   We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.
5. CLAIMS MUST BE BASED ON THIS COMMITMENT
   Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this Commitment and is subject to its terms.

Issued through the Office of:

First American Title Company
704 South Main/P.O. Box 1310, Kalispell, MT 59901

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

By _____ President

Attest _____ Secretary

Authorized Signature

ORT Form 4311
ALTA Plain Language Title Insurance Commitment 06/06

Commitment for Title Insurance

ALTA PLAIN LANGUAGE COMMITMENT

INFORMATION

The Title Insurance Commitment is a legal contract between you and the Company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the Policy.

The Company will give you a sample of the Policy form, if you ask.

The Policy contains an arbitration clause. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or you as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <http://www.alta.org/>.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

THIS INFORMATION IS NOT PART OF THE TITLE INSURANCE COMMITMENT. YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.

If you have any questions about the Commitment, contact First American Title Company (406)752-5388

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INFORMATION	Front Page
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SCHEDULE A	Insert
1. Commitment Date	
2. Policies to be Issued, Amounts and Proposed Insureds	
3. Interest in the Land and Owner	
4. Description of the Land	
SCHEDULE B	Insert
SCHEDULE B - I REQUIREMENTS	Insert
SCHEDULE B - II EXCEPTIONS	Insert

FILE NO.: 557504-CT

FIRST COMMITMENT

SCHEDULE A

1. Commitment Date **: July 15, 2015** at **7:30 A.M.**

2. Policy or Policies to be issued:

	Policy Amount	Premium Amount
Owner's Policy Standard Owner's Policy (6/17/06) ORT Form 4309	**$To be determined**	**$**
(Premium amount reflects $no available credit)		
Proposed Insured: **Stoltze Land and Lumber Co.**		
Loan Policy Loan Policy (06/17/06) ORT Form 4310	**$0.00**	**$**
(Premium amount reflects $no available credit)		
Proposed Insured:		
Endorsements:		**$**

Total Title Fees:	**$**
Underwriting Fees:	**$**
Agent Title Fees:	**$**

3. A fee simple interest in the land described in this Commitment is owned, at the Commitment Date, by:

Town of Whitefish, a municipal corporation, as to Parcel 1 and City of Whitefish, as to Parcel 2

4. The land referred to in this Commitment is described as follows:

PARCEL 1:
THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST OF SECTION 12, TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, DESCRIBED AS FOLLOWS, TO WIT:

TRACT 2A AS SHOWN ON CERTIFICATE OF SURVEY NO. 16877.

PARCEL 2:
A TRACT OF LAND PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 31, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, THENCE RUNNING EAST FORTY RODS; THENCE NORTH EIGHT RODS, THENCE WEST FORTY RODS AND THENCE SOUTH EIGHT RODS TO THE POINT OF BEGINNING

Commonly known as: NO ADDRESS GIVEN, Whitefish, MT 59937

FILE NO.: 557504-CT

SCHEDULE BI AND BII

SCHEDULE B-SECTION I

REQUIREMENTS

The following requirements must be met:

(a) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.

(b) Pay us the premiums, fees and charges for the policy.

(c) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.

(d) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.

(e) Release(s) or Reconveyance(s) of items(s) **As required by Buyer**.

(f) If any document in the completion of this transaction is to be executed by an attorney-in-fact, the Power of Attorney must be submitted for review prior to closing.

(g) You must give us the following information:

1. Any off record leases, surveys, etc.
2. Statement(s) of identity, all parties.
3. Other.

(h) We require the attached Seller/Borrower Affidavit be completed prior to recording.

(i) We require a certified copy of the municipal resolution authorizing the sale and directing the execution of the forthcoming deed.

FILE NO.: 557504-CT

SCHEDULE B -SECTION II

EXCEPTIONS

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company.

PART I:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.

3. Easements, claims of easement or encumbrances which are not shown by the public records.

4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the land, and that are not shown in the public records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

6. Any liens, or rights to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

7. Any right, title or interest in any minerals, mineral rights or related matters, including but not limited to oil, gas, coal and other hydrocarbons, sand, gravel or other common variety materials, whether or not shown by the public records.

8. County road rights-of-way not recorded and indexed as a conveyance of record in the office of the Clerk and Recorder pursuant to Title 70, Chapter 21, M.C.A., including, but not limited to any right of the Public and the County of Flathead to use and occupy those certain roads and trails as depicted on County Surveyor's maps on file in the office of the County Surveyor of Flathead County.

9. There is no Assessor's Parcel Number or Treasurer's Billing number identifying this property. Therefore we are unable to search real property tax information.

10. Provisions in deed to The Town of Whitefish, recorded May 14, 1920 in Book 170 of Deeds, page 151. (Affects Parcel 1)

    Amendment to Water Line Easement, recorded May 18, 2001 as Instrument No. 2001-138-09460.

11. Right, title and interest of John R. Stoltze, as disclosed in Sheriff's Deed recorded November 13, 1934 in Book 218, Page 173. (Affects Parcel 1)

12. The effect of Reciprocal Easement recorded September 14, 2000, as Doc. No. 2000-258-14150, records of Flathead County, Montana.
And Amendment recorded October 18, 2000, as Doc. No. 2000-292 16330, records of Flathead County, Montana. (Affects premises and other property)

13. All matters, covenants, conditions, restrictions, easements and any rights, interest or claims which may exist by reason thereof, disclosed by Certificate of Survey(s) No. 16788 and 18188, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restriction violate 42 USC 3604 (c).

14. Existing roadways and gas, power and water lines as disclosed in document recorded October 20, 2004 as Instrument No. 2004-294-16280.

15. Lack of a right of access to and from said land.

16. The Company will not assume any responsibility of liability for any actions or judgments brought against the City of Whitefish.

NOTE: The foregoing numbered exceptions (1-4 and 6) may be eliminated in an ALTA Extended or HOMEOWNER'S Coverage Policy.

INFORMATIONAL NOTES

A. As an accommodation and not part of this commitment, no liability is assumed by noting the following conveyances describing all or a part of the subject property, which have been recorded within the last 24 months: None

B. **In addition to standard County recording fees, an electronic filing fee of $5.00 per document may be charged.**

C. Other than as shown in Schedule B; we find no Judgment Liens, State Tax Liens, Federal Tax Liens or Child Support Liens of record which attach to the name(s) or interest of the vested owner and/or proposed insured owner/borrower.

OLD REPUBLIC NATIONAL TITLE INSURANCE AGENCY
PRIVACY POLICY NOTICE

PURPOSE OF THIS NOTICE

Title V of the Gramm-Leach-Bliley Act (GLBA) generally prohibits any financial institution, directly or through its affiliates, from sharing nonpublic personal information about you with a nonaffiliated third party unless the institution provides you with a notice of its privacy policies and practices, such as the type of information that it collects about you and the categories of persons or entities to whom it may be disclosed. In compliance with the GLBA, we are providing you with this document, which notifies you of the privacy policies and practices of Old Republic National Title Insurance Company.

We may collect nonpublic information about you from the following sources:

Information we received from you such as on applications or other forms.
Information about your transactions we secure from our files, or from others.
Information we receive from a consumer reporting agency.
Information that we receive from others involved in your transaction, such as the real estate agent or lender.

Unless it is specifically stated otherwise in an amended Privacy Policy Notice, no additional nonpublic personal information will be collected about you.

We also may disclose this information about our customers or former customers to the following types of nonaffiliated companies that perform services on our behalf or with whom we have joint market agreements:

Financial services providers such as companies engaged in banking, consumer finance, securities and insurance.
Non-financial companies such as envelope stuffers and other fulfillment service providers.

We do not disclose any nonpublic personal information about you with anyone for any purpose that is not specifically permitted by law.

We restrict access to nonpublic information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

ORT Privacy Policy 12.02.2008

(This page left blank intentionally to separate printed sections)

RESOLUTION NO. 16-___

A Resolution of the City Council of the City of Whitefish, Montana, authorizing the transfer of two parcels of land in Haskill Basin to F.H. Stoltze Land & Lumber Company in exchange for 41.28 acres of perpetual easements allowing the City to access, maintain and use its municipal water system.

WHEREAS, F.H. Stoltze Land & Lumber Company is the owner of approximately 3,020 acres of land located in Haskill Basin, Flathead County, Montana; and

WHEREAS, the Haskill Basin watershed currently comprises approximately ninety percent (90%) of the source drinking water for the City of Whitefish; and

WHEREAS, the City of Whitefish has an existing water system including pipelines, gates, head gates, gate valves, and other associated structures located in and on the land owned by F.H. Stoltze Land & Lumber Company in Haskill Basin; and

WHEREAS, the City of Whitefish has relied on F.H. Stoltze Land & Lumber Company to voluntarily provide access to its municipal water supply and to its water system for many years; and

WHEREAS, the City of Whitefish has approved the purchase of a conservation easement over the approximately 3,020 acres of land in Haskill Basin owned by F.H. Stoltze Land & Lumber Company and a Multi-Resource Management Plan ("MRMP") governing the management of the land; and

WHEREAS, in 1907, the State Lumber Company, now F.H. Stoltze Land & Lumber Company, deeded an approximately one and one-tenth acre parcel of land located within the boundaries of the Haskill Basin conservation easement to the City of Whitefish to be used as an intake site for the City's water system; and

WHEREAS, in 1929, the City was deeded an approximately two acre parcel of land located within the boundaries of the Haskill Basin conservation easement; and

WHEREAS, the City of Whitefish's water intakes are not actually located on either of the two parcels of land located within the boundaries of the Haskill Basin conservation easement that are now owned by the City; and

WHEREAS, in conjunction with the purchase of the Haskill Basin conservation easement, the City and F.H. Stoltze Land & Lumber Company negotiated the terms of a "Municipal Water System Easement and Road Access Easement" which preserves in perpetuity the City's right to access, use, inspect, construct, maintain, and repair its water system located on F.H. Stoltze Land & Lumber Company's land and will protect and preserve the City's water supply; and

WHEREAS, in exchange for the 41.68 acres of perpetual easements granted to the City of Whitefish under the "Municipal Water System Easement and Road Access Easement," and to consolidate ownership of the property within the conservation easement and ensure it is all subject to the MRMP, the City agreed to transfer its two parcels of land to F.H. Stoltze Land & Lumber Company; and

WHEREAS, Montana has established a statutory process and procedure pursuant to §7-8-4201, MCA, for the transfer of municipal property which requires a resolution of the City Council of the City of Whitefish passed by a two-thirds vote of all members of the Council; and

WHEREAS, Warren A. Illi, M.A.I., performed an appraisal of the two parcels of land owned by the City in Haskill Basin and the water system and road access easement F.H. Stoltze Land & Lumber Company will grant to the City; and

WHEREAS, the appraisal valued the two parcels of land owned by the City in Haskill Basin at $30,000 and the water system and road access easement F.H. Stoltze Land & Lumber Company will grant to the City at $412,125; and

WHEREAS, the value of the water system and road access easement F.H. Stoltze Land & Lumber Company will grant to the City is significantly greater than the value of the two parcels of land owned by the City in Haskill Basin; and

WHEREAS, it will be in the best interests of the City of Whitefish and its inhabitants for the City to transfer its two parcels of land located within the Haskill Basin conservation easement to F.H. Stoltze Land & Lumber Company in order to provide compensation for the 41.68 acres of perpetual easements granted to the City under the "Municipal Water System Easement and Road Access Easement," to consolidate ownership of the property within the conservation easement, and ensure all property within the conservation easement is subject to the MRMP.

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

Section 1: The City Council of the City of Whitefish, Montana, hereby approves the transfer of its two parcels of property located within the Haskill Basin conservation easement to F.H. Stoltze Land & Lumber Company.

Section 2: The City Manager is authorized and directed to execute all documents necessary in connection with the transfer of the City's two parcels of land located within the Haskill Basin conservation easement, including the warranty deeds attached hereto as Exhibits A and B.

Section 3: This Resolution shall take effect immediately upon its adoption by the City Council, and signing by the Mayor thereof.

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

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

Return to:
F.H. Stoltze Land & Lumber Co.
600 Halfmoon Road
Columbia Falls, Montana 59912

WARRANTY DEED

FOR VALUABLE CONSIDERATION, including approximately 7.69 acres of a water system and maintenance easement and approximately 30.99 acres of a road system easement, the receipt of which is acknowledged, the CITY OF WHITEFISH, a Montana municipal corporation, of P.O. Box 158, Whitefish, Montana 59937 ("Grantor") hereby grants to F.H. Stoltze Land & Lumber Company, of 600 Halfmoon Road, Columbia Falls, Montana 59912 (“Grantee") all its right, title and interest in the following real property:

That portion of the northeast quarter of the southeast quarter of Section 12, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana, described as follows:

Tract 2A as shown on Certificate of Survey No. 16877.

The complete legal description of the property is attached hereto as Exhibit A.

SUBJECT TO covenants, conditions, restrictions, provisions, easements and encumbrances apparent or of record.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, its heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies and assessment and except U.S Patent reservations, restrictions, easements of record, and easements visible upon the premises and that Grantor will warrant and defend the same from all lawful claims whatsoever.

Dated this ___ day of _____, 2016.

CITY OF WHITEFISH, a
municipal corporation

By: _____
Charles C. Stearns, City Manager

STATE OF Montana)
) ss.
COUNTY OF Flathead)

This instrument was acknowledged before me on _____ by Charles C. Stearns.

_____
Notary Public for the State of Montana
Residing at:
My Commission Expires:

EXHIBIT A

Beginning at a point in the northeast quarter of the southeast quarter of Section 12, Township 31 North, Range 22 West, Montana Meridian, bearing south eighty-four degrees thirty-seven minutes west, one thousand one hundred twenty and five tenths feet from the quarter corner on the east line of said section twelve; running thence south forty-seven degrees one minute west, fifty feet to the northwest corner; thence south forty-two degrees fifty-nine minutes east two hundred forty-eight feet to the southwest corner; thence north forty-seven degrees one minute east one hundred feet to the southeast corner; thence north forty-two degrees fifty-nine minutes west two hundred forty-eight feet to the northeast corner; thence south forty-seven degrees one minute, west, fifty feet to the place of beginning.

Return to:
F.H. Stoltze Land & Lumber Co.
600 Halfmoon Road
Columbia Falls, Montana 59912

WARRANTY DEED

FOR VALUABLE CONSIDERATION, including approximately 7.69 acres of a water system and maintenance easement and approximately 30.99 acres of a road system easement, the receipt of which is acknowledged, the CITY OF WHITEFISH, a Montana municipal corporation, of P.O. Box 158, Whitefish, Montana 59937 ("Grantor") hereby grants to F.H. Stoltze Land & Lumber Company, of 600 Halfmoon Road, Columbia Falls, Montana 59912 ("Grantee") all its right, title and interest in the following real property:

A tract of land particularly described as follows:

Beginning at the southwest corner of the northeast quarter of the northeast quarter of Section 8, Township 31 North, Range 21 West, P.M.M., Flathead County, Montana, thence running East forty rods; thence North eight rods; thence West forty rods and thence South eight rods to the point of beginning.

SUBJECT TO covenants, conditions, restrictions, provisions, easements and encumbrances apparent or of record.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, its heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies and assessment and except U.S Patent reservations, restrictions, easements of record, and easements visible upon the premises and that Grantor will warrant and defend the same from all lawful claims whatsoever.

Dated this ___ day of _____, 2016.

CITY OF WHITEFISH, a
municipal corporation

By: _____
Charles C. Stearns, City Manager

STATE OF Montana)
) ss.
COUNTY OF Flathead)

This instrument was acknowledged before me on _____ by Charles C. Stearns.

_____
Notary Public for the State of Montana
Residing at:
My Commission Expires:

ROBERT PECCIA & ASSOCIATES

May 14, 2012

John Wilson, PE
City of Whitefish
Public Works Director
PO Box 158
Whitefish, MT 59937

Subject: Draft Certificates of Survey's (COS's) and Easements for Haskill Basin (RPA Job # 11112.000)

John:

RPA has completed the preliminary survey and research for the Haskill Basin Water Intakes and Water Line Project. We have drafted three (3) COS's and an Easement Exhibit. We would like to have a meeting with the following people to review these documents:

City of Whitefish:
- John Wilson
- Greg Acton
- Mary VanBuskirk
- Dave Taylor

RPA:
- Ryan Mitchell
- Jason Smith

Below is a narrative of what we have found, regarding record information and what we have proposed with the three COS's and the Easement Exhibit.

The City of Whitefish owns two (2) tracts of land in Haskill Basin. The first is in the 1st Creek Area and the second is in the 3rd Creek Area.

1st Creek Screen Box: Deed per Book 170, Page 151. This is for the 1st Creek Intake, which is now a screen box. The deed calls for 1.10 acres, but is actually only 0.569 acre (248' x 100'). It is proposed to perform a Boundary Line Adjustment here so that the property is centered on the screen box and rotated to the waterline.

HELENA - CORPORATE OFFICE
P.O. Box 5653
825 Custer Avenue
Helena, MT 59604
(406) 447-5000
FAX (406) 447-5036

KALISPELL
P.O. Box 5100
102 Cooperative Way, Suite 300
Kalispell, MT 59903
(406) 752-5025
FAX (406) 752-5024

2nd Creek Intake: No deed or easement exists. It is proposed to create a utility site of 1.00 acre, centered on the 2nd Creek Intake. This will be exempt from subdivision review, but needs zoning acceptance.

3rd Creek Intake: Deed per Book 201, Page 607. The City owns a 2.00 acre site. The 3rd Creek Intake is not located within the deeded property. It is proposed to perform a Boundary Line Adjustment here so that a new 1.00 acre piece of property is centered on the 3rd Creek Intake. The remaining 1.00 acre will be transferred back to Stoltz Land and Lumber, and be used to offset the 1.00 acre that was created for the 2nd Creek Intake. There will be no change in total ownership acreage.

Access and Utility Easement: No existing access or utility easement could be found from 3rd Creek to 1st Creek and from 1st Creek to Iron Horse. Exhibit "A" shows the location of the waterline and existing roads in the area. We need to review both the map and the easement language to make sure it is what the City wants.

Please review and we look forward to discussing this project with you.

Thank you and please call if you have any questions.

Sincerely
ROBERT PECCIA & ASSOCIATES

Ryan Mitchell, PE, PLS
Office Manager

K:\Kal-Proj-Data\11112.000 - Haskill Basin Water Survey\D. Correspondence\1. Client\120514jw.Ltr - Draft COS's & Easement For Review.Docx

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

January 26, 2016

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

RE: Montana Tap House; (WCUP 15-20)

Honorable Mayor and Council:

Summary of Requested Action: The Reisch Family Partnership is requesting a Conditional Use Permit to operate a bar within an existing commercial building at 845 Wisconsin Avenue. The building has previously been an antique shop, as well as the location of the Dire Wolf bar/restaurant. The commercial building is approximately 6,150 square feet. No substantial exterior renovation or remodeling is proposed. The applicant is proposing to obtain a 'Montana Retail On-premises Consumption Beer and Wine License' from the State of Montana, which does not include the sale of liquor. The property 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 eleven (11) conditions set forth in the attached staff report.

Public Hearing: The applicant's representative spoke at the public hearing on January 21, 2016. The draft minutes for this item are attached as part of this packet.

Planning Board Action: The Whitefish Planning Board met on January 21, 2016 and considered the request. Following the hearing, the Planning Board unanimously recommended approval of the above referenced conditional use permit with eleven (11) conditions as contained in the staff report and adopted the staff report as findings of fact.

Proposed Motion:

- I move to approve WCUP 15-20 along with the Findings of Fact in the staff report and the eleven (11) conditions of approval, as recommended by the Whitefish Planning Board.

This item has been placed on the agenda for your regularly scheduled meeting on February 1, 2016. Should Council have questions or need further information on this matter, please contact the Planning Board or the Planning & Building Department.

Respectfully,

Bailey Minnich, AICP, CFM
Planner II

Att: Exhibit A: Recommended Conditions of Approval
Draft Minutes of 1-21-16 Planning Board Meeting

Exhibits from 1-21-16 Staff Packet to Planning Board:

1. Staff Report – WCUP 15-20, 1-14-16
2. Adjacent Landowner Notice, 12-31-15
3. Advisory Agency Notice, 12-31-15
4. Application for Conditional Use Permit, 12-4-15

c: w/att Necile Lorang, City Clerk

c: w/o att Reisch Family Partnership, 9 Baker Avenue, Whitefish, MT 59937
Mark T Johnson Architect, Ltd, 680 Stone Street, Kalispell, MT 59901

Exhibit A
Montana Tap House
WCUP 15-20
Whitefish Planning Board
Recommended Conditions of Approval
February 1, 2016

1. The project shall be in compliance with the site plan submitted on December 4, 2015, except as amended by these conditions. Any significant deviation from the plans shall require approval.

2. The applicant shall maintain and demonstrate continued compliance with all adopted City Codes and Ordinances.

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

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

5. A total of 46 parking spaces located on-site are required for the proposed uses. The parking areas shall be paved and comply with all standards outlined in §11-6-3-2, WCC. (Finding of Fact, #2 & #4)

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

7. Approval from the Architectural Review Committee shall be obtained prior to any remodel of the exterior of the building. (§11-3-3B, WCC)

8. The applicant shall coordinate with the Public Works Department to determine if an engineered stormwater plan is required, or obtain a letter from the Department that the proposed project is exempt. (Finding of Fact #5)

9. The refuse location shall be reviewed and approved by the Public Works Department and North Valley Refuse. (§4-2, WCC)

10. A landscaping plan shall be submitted for review and approval. (11-4-4, WCC; Finding of Fact #4)

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

WHITEFISH PLANNING BOARD
MINUTES OF MEETING
JANUARY 21, 2016

CALL TO ORDER AND ROLL CALL

The regular meeting of the Whitefish Planning Board was called to order at 6:00 pm. Board members present were Chairman Ken Meckel, Councilor Richard Hildner, John Ellis, Jim Laidlaw, Rebecca Norton and Melissa Picoli. Ken Stein was absent. Planning Director David Taylor, Senior Planner Wendy Compton-Ring and Planner II Bailey Minnich represented the Whitefish Planning and Building Department.

There were approximately 22 people in the audience.

PLANNING BOARD APPOINTMENTS
6:00 pm

Following discussion, Rebecca moved and Jim seconded to select Ken Meckel as the Whitefish Planning Board Chair and the motion passed unanimously. Richard moved and Jim seconded to select Melissa Picoli as the Vice Chair and the motion passed unanimously.

APPROVAL OF MINUTES
6:05 pm

Rebecca moved and John seconded to approve the December 17, 2015 minutes with one amendment. The motion passed unanimously.

COMMUNICATIONS FROM THE PUBLIC (ITEMS NOT ON THE AGENDA)
6:05 pm

Don Spivey, 117 Park Knoll Lane in Whitefish, said he has material to distribute for the record and asked when to do so. Director Taylor replied during the public hearing relevant to the issue.

OLD BUSINESS:
6:05 pm

None.

PUBLIC HEARING 1: REISCH FAMILY PARTNERSHIP CONDITIONAL USE PERMIT
6:06 pm

A request by Reisch Family Partnership for a Conditional Use Permit to operate a Bar/Tavern. The subject property is zoned WB-1 and is developed with an existing commercial building. The subject property is located at 845 Wisconsin Avenue, and can be legally described as Lot 3 in Kramer Add Amd Subdivision in S25, T31N, R22W.

STAFF REPORT WCUP 15-20 (Minnich)

Planner Minnich reviewed her staff report and findings. To date, no comments have been received.

Staff recommended adoption of the findings of fact and conditional of approval within staff report WCUP 15-20, and for **approval** to the Whitefish City Council.

BOARD QUESTIONS OF STAFF

Rebecca asked what the staff report meant regarding the height standard *appearing to be met* and Minnich replied she was not provided with side elevations. The zoning permits a maximum height of 35', which would be easily met since this is a primarily a one-story building, with a two-story portion.

APPLICANT / AGENCIES

Mark Johnson, 680 Stone Street in Kalispell, the project architect, said the staff report Minnich prepared was comprehensive. He said the maximum height of the building in the two-story portion is 22' and the building is appropriately sized for this type of use. It has a functioning fire system, proper exits and locations and they will comply with whatever requirements are imposed by the Building Department.

Richard asked if there were specific provisions for recycling and Mr. Johnson replied that the owners also own the adjacent Alpine Market and plan to include the cardboard recycling with the cardboard recycling done by Alpine Market. Since this is a Tap House, there is not as much waste associated with this type of business as is typical of a restaurant or bar as most of the product will be served from kegs, etc.

PUBLIC COMMENT

None.

MOTION / BOARD DISCUSSION

Richard moved and Melissa seconded to adopt the findings of fact within staff report WCUP 15-20, with the eleven (11) Conditions of Approval as proposed by City Staff.

Rebecca said this seems like a very nice project.

John said he plans to vote in favor of this CUP, but he believes if the Board reads the definition of WB-1 in the City-County Growth Policy, it actually should not be approved. The WB-1 district is intended for limited commercial uses within or adjacent to residential districts to meet certain convenience services catering to the daily needs of those nearby residents living within one mile of the district. This Tap House would serve the whole community. This is an illustration that the WB-1 definition needs to be updated/changed. Since 46 parking spaces are a requirement, it is clear that automobiles are anticipated as being the primary means for getting to the building, which clearly illustrates that the WB-1 definition and Whitefish-County designation need to be changed.

Taylor noted that there are many different types of businesses that cater to a neighborhood. This building was previously used as a bar for ±25 years, a pizza place and the Dire Wolf, and frequented by people

coming back from Whitefish Mountain, downtown, and residents from Colorado/Wisconsin. The neighbors can walk to the Tap House rather than going downtown.

Melissa commented that she likes all the interesting food and beverage services coming into Whitefish, but suggested this would be a good time to address reducing single-use plastics. No food is planned to be made onsite, but there will probably be food served. She asked that the owners consider taking the lead to use dishes rather than one-use plastic items, even though that might be less convenient.

VOTE

The motion passed unanimously. The matter is scheduled to go before the Council on February 1, 2016.

PUBLIC HEARING 2: AMENDMENT OF WHITEFISH CITY CODE TITLE 11, ZONING REGULATIONS
6:20 pm

A request by the City of Whitefish for an amendment to Section 11-2S, WPUD, Planned Unit Development District, to clarify the blending of uses and density where a PUD overlays multiple underlying zones.

STAFF REPORT WZTA 15-01 (Taylor)

Director Taylor reviewed his staff report and findings and distributed two recently received letters of support from Bruce Boody and Brian Wood of Bruce Boody's office, and Eric Mulcahy of Sands Surveying.

Staff recommended adoption of the findings of fact within staff report WZTA 15-01 and for **approval** to the Whitefish City Council.

BOARD QUESTIONS OF STAFF

Rebecca said she thought in the past Taylor had said that we have been doing it this way for ten years and Taylor replied it has been done this way since the PUD chapter was put in the Code, which was probably back in the 1980s. When they looked back, almost all the PUDs that have been approved had multiple zoning districts in them because if you are going to do a PUD they are usually on multiple tracts of land or a large area that spans multiple districts. Rebecca asked if we are different from Kalispell and Flathead County, would that impair us when/if going to a unified code. We just got the whole doughnut rezoned to match our existing zoning and she thinks that eventually we should go to a unified code for the whole Flathead County. So when we have really different regulations like this she wonders if we are just creating our own little thing here or is it standard practice. Taylor replied they are not significantly different. The development requirements within a PUD are established within it as it is adopted, so

MONTANA TAP HOUSE
CONDITIONAL USE PERMIT
WCUP 15-20
JANUARY 14, 2016

1. Staff Report – WCUP 15-20, 1-14-16
2. Adjacent Landowner Notice, 12-31-15
3. Advisory Agency Notice, 12-31-15

The following were submitted by the applicant:

4. Application for Conditional Use Permit, 12-4-15

MONTANA TAP HOUSE
CONDITIONAL USE PERMIT
WCUP 15-20
January 14, 2016

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 bar within an existing commercial building. This application has been scheduled before the Whitefish Planning Board for a public hearing on Thursday, **January 21, 2016**. A recommendation will be forwarded to the City Council for a subsequent public hearing and final action on Monday, **February 1, 2016**.

PROJECT SCOPE

The applicant is requesting a Conditional Use Permit to operate a bar within an existing commercial building, zoned WB-1. The building has previously been an antique shop, as well as the location of the Dire Wolf bar/restaurant. The commercial building is approximately 6,150 square feet in size, with an existing covered sidewalk and outdoor seating area, 27 paved parking spaces currently on-site and some minimal landscaping. There are two existing approaches off Wisconsin Avenue. No substantial exterior renovation or remodeling is proposed. The applicant is proposing to obtain a "Montana Retail On-Premises Consumption Beer and Wine License" from the State of Montana, which does not include the sale of liquor. No food is proposed to be made on-site, so the proposal would not meet the criteria for a restaurant.

A.

OWNER:
Reisch Family Partnership
9 Baker Avenue
Whitefish, MT 59937

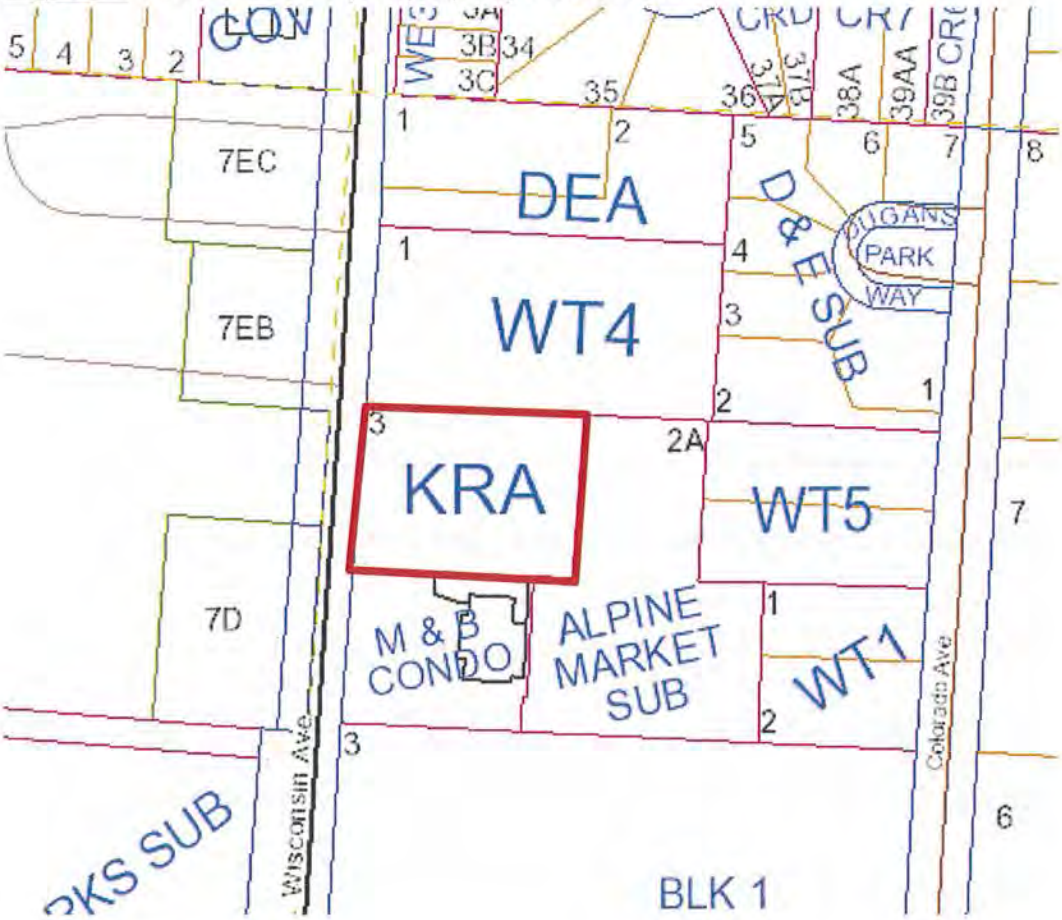
TECHNICAL/PROFESSIONAL:
Mark T Johnson Architect, Ltd
680 Stone Street
Kalispell, M T 59901

B. SIZE AND LOCATION OF PROPERTY:

The project is located at 845 Wisconsin Avenue. The project can be legally described as Lot 3 in Kramer Add Amd Subdivision in S25 T31N R22W, P.M.M., Flathead County, Montana.

EXHIBIT
1

Figure 1: Location of subject property outlined in red.



C. EXISTING LAND USE:

The subject property is currently developed with a commercial structure.

D. ADJACENT LAND USES AND ZONING:

North:	Commercial Use	WB-1
West:	Commercial Use	WB-1
South:	Commercial Use	WB-1
East:	Commercial Use	WB-1

E. ZONING DISTRICT:

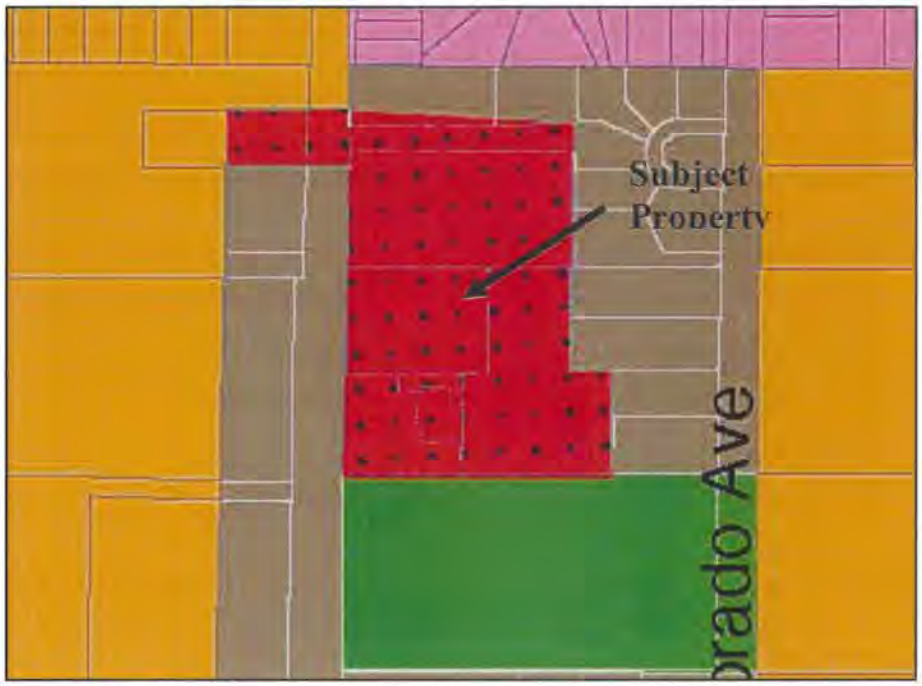
The property is zoned WB-1 (Limited Business District). The purpose of the WB- 1 District is 'intended for limited commercial uses within or adjacent to residential districts to meet certain convenience services catering to the daily need of those nearby residents living within one mile of the district.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

a business island rather than a strip and shall be located adjacent to an arterial or collector street and shall have convenient and safe access both for the vehicular and pedestrian customer. The maximum size of such a district at one location shall be seven (7) acres and the minimum shall be two (2) acres.'

F. WHITEFISH CITY-COUNTY GROWTH POLICY DESIGNATION:

The Growth Policy designation is Neighborhood Commercial which corresponds to the WB-1 zoning district. (See Figure 2) "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."

Figure 2: Growth Policy designation.



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 December 31, 2015. A notice was emailed to advisory agencies on December 31, 2015. A notice of the public hearing was published in the *Whitefish Pilot* on January 6, 2016. As of the writing of this report, no comments have been received.

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:** The Growth Policy designates this area as Neighborhood Commercial which is consistent with the WB-1 zoning district.

   Finding 1: The proposed use complies with Growth Policy Designation of Neighborhood Commercial because the property is zoned WB-1 (Limited Business District) and the use is a Conditional Use within the zoning district.

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

   The property is zoned WB-1, Limited Business District. The purpose of this district is 'intended for limited commercial uses within or adjacent to residential districts to meet certain convenience services catering to the daily need of those nearby residents living within one mile of the district. This district shall generally be a business island rather than a strip and shall be located adjacent to an arterial or collector street and shall have convenient and safe access both for the vehicular and pedestrian customer.' The development proposal is consistent with the purpose and intent of the applicable regulations.

   Setbacks:
   The WB-1 zoning setbacks are 20-feet from the front on Wisconsin Avenue and 0-feet on the sides and rear, as the property does not abut a residential district. The proposed use will be established in an existing building. The current building is setback approximately 45 feet from the front property line, 15 feet from the southern property line, 74 feet from the northern property line, and 89 feet from the rear property line. The setbacks are being met with this proposal.

Figure 3: Southern property line setbacks.

Parking:
The existing building will be comprised of multiple uses with the proposed bar totaling 4,163 square feet of floor space, the retail area comprising 889 square feet of floor space, and the apartment located in the partial upstairs. §11-6-2(A) of the zoning regulations regarding parking standards, requires two (2) parking spaces per dwelling unit for the upstairs apartment. §11-6-2(F), requires 40 spaces plus 1 space per 200 square feet of gross floor area in excess of 4,000 square feet, for a total of 41 spaces. §11-6-2(H), requires one (1) space per 300 square feet of gross floor area, for a total of 3 spaces. Therefore, for all the proposed uses, the total parking required is 46 spaces. Currently, the property has 27 parking spaces. As a condition of approval, 19 parking spaces will need to be added on-site.

Height:
The zoning permits a maximum building height of 35-feet. The current building is generally a single-story with a partial second floor that houses an un-occupied apartment. This standard appears to be 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 adequate to serve the proposed use as it is approximately 0.887 acres.

Access that meets the standards set forth in these regulations, including emergency access: All access requirements are being met. In addition, emergency access is being met with the surrounding rights-of-way.

Figure 4: Location of southern property access.

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 subject property is not located within the 100-year floodplain and there are no other environmental constraints on-site. The subject property is already developed with an existing commercial structure.

Finding 3: The proposed use is suitable for the site because there is adequate usable land area, the existing access meets emergency standards 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 subject property is currently partially paved. The applicant is proposing to pave the entire parking area, and complete parking striping. The parking location, numbers, and design standards are being met.

Traffic Circulation: The traffic will circulate off Wisconsin Avenue, a paved public street, through two existing 2-way approaches. It will then circulate around the north and east side of the property with a 2-way parking lot.

Open space: Open space is not applicable in the WB-1 zone, as it is intended to be built lot line to lot line, unless abutting a residential district.

Fencing/Screening: Fencing is located at the rear of the subject property adjacent to the existing storage facility. There is additional fencing around the outdoor seating area on the north side of the building. No additional fencing or screening is required or proposed.

Figure 5: Existing fencing around outdoor seating area.

Landscaping: Landscaping is required as the subject property is located within the WB-1 zoning district. The applicant will be required to meet the site landscaping

requirements located within Chapter 4 of the zoning regulations. For this project, the requirement will be 8% of the site, or approximately 2,500 square feet of landscaped area. This is being met through existing and proposed landscaping on-site. A final plan will be required for review and approval as a condition of the permit.

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: New utilities will be underground, if possible or required.

Finding 4: The quality and functionality of the proposed development has effectively dealt with the site design issues because there is adequate parking for the use, traffic circulation has been evaluated and landscaping will be installed.

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: The subject property currently has an existing building and is partially paved. While the applicant is not proposing any modifications to the building at this time, they are proposing to increase the paved parking area. If the project creates more than 5,000 square feet of additional impervious surface, an engineered stormwater plan meeting the City's engineering standards will be required. Documentation from the City's Public Works Department is required if the project is exempt from this condition.

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 adjacent to Wisconsin Avenue. No street improvements are proposed along Wisconsin Avenue.

Finding 5: The availability of public services is adequate because municipal water and sewer are available, stormwater will be reviewed by the Public Works Department if required, response times for police and fire are not anticipated to be affected due to the proposed development, and the property has adequate access to surrounding rights-of-way.

6. **Neighborhood/Community Impact:**

Traffic Generation: No impacts to existing roads is anticipated from the proposed use. The project is adjacent to Wisconsin Avenue, a state maintained road. The current roads should be able to handle any additional traffic.

Noise or Vibration: No impacts are anticipated beyond what would be expected from a typical commercial use.

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.

Hours of Operation: The hours of operation will be typical commercial hours, with 11AM – 9PM Sunday through Thursday, and 11AM – 10PM Friday and Saturday.

Finding 6: The proposed development is not anticipated to have a negative neighborhood impact because the existing roads should be able to handle anticipated traffic, noise, dust, smoke, odor or other environmental nuisances are not expected, and any outdoor lighting is required to meet city standards.

7. **Neighborhood/Community Compatibility:**

The surrounding neighborhood is a combination of commercial, professional offices, and some retail uses. The property and surrounding area is zoned WB-1. The structural bulk and massing, density and scale of the project will not be modified from the current configuration as the proposed use will be within an existing commercial building. No exterior changes are proposed at this time.

Finding 7: The project is compatible with the existing uses in the neighborhood because the subject property and surrounding area is zoned WB-1, no changes are proposed to the exterior of the building, and the proposed use 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 15-20 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 site plan submitted on December 4, 2015, except as amended by these conditions. Any significant deviation from the plans shall require approval.

2. The applicant shall maintain and demonstrate continued compliance with all adopted City Codes and Ordinances.

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

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

5. A total of 46 parking spaces located on-site are required for the proposed uses. The parking areas shall be paved and comply with all standards outlined in §11-6-3-2, WCC. (Finding of Fact, #2 & #4)

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

7. Approval from the Architectural Review Committee shall be obtained prior to any remodel of the exterior of the building. (§11-3-3B, WCC)

8. The applicant shall coordinate with the Public Works Department to determine if an engineered stormwater plan is required, or obtain a letter from the Department that the proposed project is exempt. (Finding of Fact #5)

9. The refuse location shall be reviewed and approved by the Public Works Department and North Valley Refuse. (§4-2, WCC)

10. A landscaping plan shall be submitted for review and approval. (11-4-4, WCC; Finding of Fact #4)

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

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 the Reisch Family Partnership is requesting a Conditional Use Permit for a Bar/Tavern. The property is developed with an existing commercial building and is zoned WB-1 (Limited Business District). The property is located at 845 Wisconsin Avenue and can be legally described as Lot 3 in Kramer Add Amd Subdivision 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, January 21, 2016
6:00 p.m.
Whitefish City Council Chambers, City Hall
1005 Baker Avenue, 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, February 1, 2016** 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 *bminnich@cityofwhitefish.org.* Comments received by the close of business on Tuesday, January 12, 2016, 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.

EXHIBIT

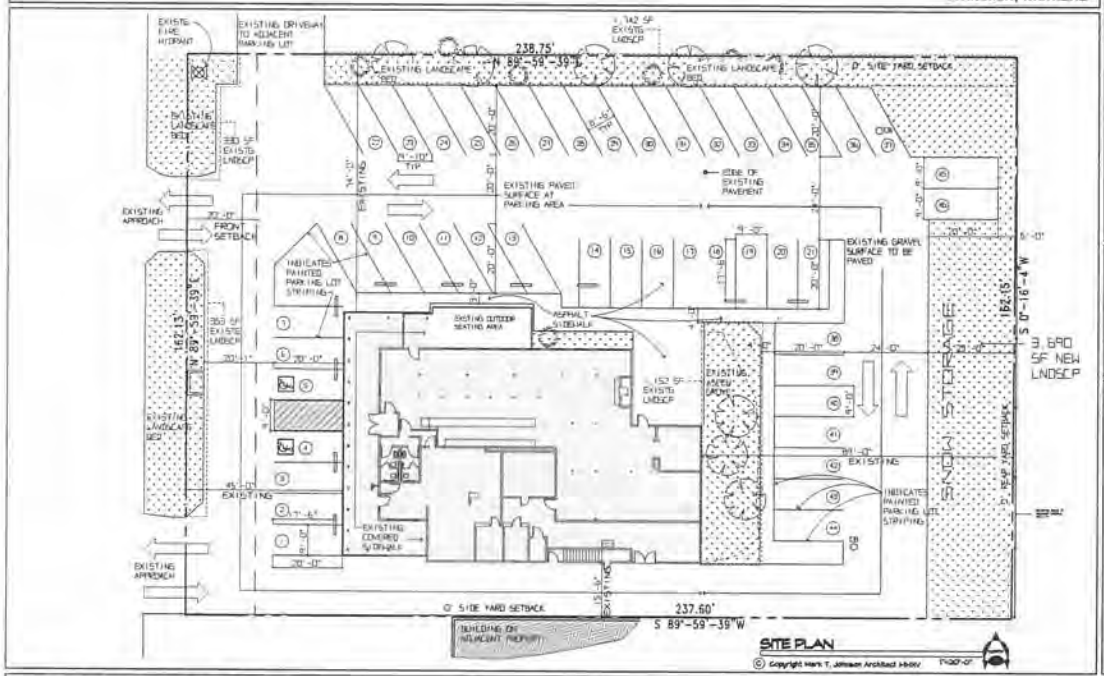
2

PLEASE SHARE THIS NOTICE WITH YOUR NEIGHBORS

A Tenant Improvement for

Montana Tap House

Whitefish, Montana



BUILDING DEPT. NOTES

DIRECTORY

OWNER:
MONTANA TAP HOUSE
845 WISCONSIN AVENUE
WHITEFISH, MT 59937

ARCHITECT:
MARK T. JOHNSON ARCHITECT, LTD
680 STONE STREET
KALISPELL, MT 59901
OFFICE (406) 756-0334
FAX (406) 756-5582

CIVIL: STRUCTURAL: MECHANICAL: ELECTRICAL:

SITE INFORMATION

ADDRESS:
845 WISCONSIN AVE
WHITEFISH, MT 59937

GEOCODE
07429225100900000

ASSESSOR #
0274625

LEGAL DESCRIPTION
LOT 3 AMENDED PLAT OF KRAMER ADDITION AN AMENDED PLAT OF A PART OF LOT 2 BLOCK 1 WHITEFISH TOWNSITE COMPANY'S FIVE ACRE TRACTS. SW1/4 NE 1/4 SEC. 23, T.31N., R.22W., P.M.M., FLATHEAD COUNTY, MONTANA

ZONING:
WB-1

SETBACKS
FRONT 20' - EXISTING 45'
SIDE 0' - PROPOSED 15' & 74'
REAR 0' - PROPOSED 33'
SIDE CORNER NA

LOT COVERAGE
ALLOWED = NA

MAX. HT.
ALLOWED: 35'
PROPOSED: 35'

SHEET INDEX

TS TITLE SHEET/SITE PLAN/CODE NOTES
A1.1 GROUND LEVEL PLAN

PROPERTY DEVELOPMENT

PARKING RATIO CALCULATION:

RETAIL SHOP	889 SF @ 1/300 = 3 SPACES
TAVERN	4163 SF @ 40 SPACES FOR FIRST 4000 SF + 1/200 IN EXCESS OF 4000 = 40 + (163/200) = 41 SPACES
APARTMENT	2 SPACES PER DWELLING UNIT, PLUS 1 GUEST SPACES FOR EACH 3 UNITS = 2 SPACES
TOTAL REQ'D SPACES	46

OFF STREET LOADING:

RETAIL SHOP	889 SF
TAVERN	4163 SF TOTAL 5,052 SF 1 SPACE REQ'D FOR 10,000 TO 19,999
	5,052 SF < 10,000 SF NO LOADING SPACE REQ'D

11-4-4: PROPERTY LANDSCAPING STANDARDS

DEVELOPED AREA:

BUILDING FOOTPRINT	6,150 SF
PARKING AREA	25,500 SF
TOTAL	31,650 SF DEVELOPED AREA
22,000 SQ. FT. TO 5 ACRES: 8% REQUIRED LANDSCAPING AREA	31,650 SF X 8% = 2,532 SF REQ'D

11-6-5: OFF STREET PARKING LANDSCAPING AND SCREENING

LANDSCAPE RATIO PER SPACES:

NUMBER OF PARKING SPACES	46
5-50 PARKING SPACES: 8% REQUIRED LANDSCAPING AREA	25,140 SF X 8% = 2,011 SF REQ'D
2,532 + 2,011 = 4,543 SF REQUIRED PROVIDED = 7,240 SF (O.K.)	

CODE ANALYSIS

APPLICABLE CODES:

IBC 2012 UPC 2012 IMC 2012 IFGC 2012 NFPA 99 2012 NEC 2014 IECC 2012

OCCUPANCY (CHAPTER 3)

TAVERN	ASSEMBLY GROUP A-2
RETAIL SHOP	MERCHANTILE GROUP M
2ND FLOOR APARTMENT	RESIDENTIAL GROUP R-2

GENERAL BUILDING HEIGHTS AND AREAS (CHAPTER 5)

CONSTRUCTION (Table 503)
ALLOWABLE STORIES / AREA

USE	CONSTRUCTION TYPE VB
A-2	1 / 6,000
M	1 / 9,000
R-2	3 / 7,000

SPRINKLER INCREASE (Section 504.2)
ALLOWABLE STORIES / AREA

USE	CONSTRUCTION TYPE VB
A-2	2 / 6,000
M	2 / 9,000
R-2	3 / 7,000

NON-SEPARATED OCCUPANCIES
A-2 OCCUPANCY MOST RESTRICTIVE

BUILDING AREA MODIFICATIONS (SECTION 506)

$A_a = [A_t + [(A_1 \times I_1)] + (A_2 \times I_2)]$
$A_t = 6,000$
$I_1 = 0$ (FRONTAGE INCREASE NOT REQUESTED)
$I_2 = 2$ (506.3 AUTOMATIC SPRINKLER SYST. INCR.)
$A_a = [6,000 + [6,000 \times 0] + [6,000 \times 2]]$
$A_a = [6,000 + [0] + [12,000]]$
$A_a = 18,000$ SF
18,000 SF >/= 6,150 SF EXISTING
THEREFORE O.K.

TABLE 601

FIRE RESISTANCE RATING REQ'S FOR BUILDING ELEMENTS

VB - ALL BUILDING ELEMENTS ALLOWED TO BE NON RATED

TABLE 602 FIRE RESISTANCE RATING REQ'S FOR EXTERIOR WALLS BASED ON FIRE SEPARATION DISTANCE

SIDE	F.S. DISTANCE	REQUIRED RATING	PROVIDED RATING	
NORTH	FS >/= 30'	0 HR	0 HR	(UP,S) NOT REQUIRED
SOUTH	FS = 15'	0 HR	0 HR	(UP,S) 75%
EAST	FS >/= 30'	0 HR	0 HR	(UP,S) NOT REQUIRED
WEST	FS >/= 30'	0 HR	0 HR	(UP,S) NOT REQUIRED

TABLE 705.8 MAX. AREA UNPROTECTED, SPRINKLERED OPENINGS

UP,S: UNPROTECTED, SPRINKLERED (NOM 'N' OCC)

BUILDING CLASSIFICATION
A-2 OCCUPANCY, TWO STORY 6,150 SF GROUND LEVEL (< 18,000SF ALLOWABLE) TYPE VB CONSTRUCTION NFPA 13 SPRINKLERED

MEANS OF EGRESS (CHAPTER 10)

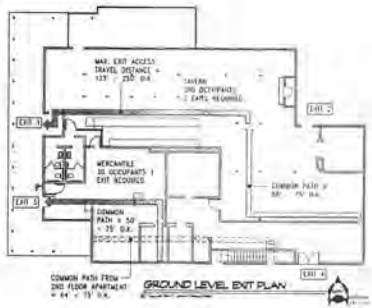
OCCUPANT LOAD: (1004)

RETAIL SHOP	889 SF @ 1/30 = 30 OCC'S
TAVERN	3014 SF @ 1/15 = 200 OCC'S
TAVERN STORAGE	934 SF @ 1/300 = 3 OCC'S
RESTROOMS	215 SF @ 1/100 = 2 OCC'S
UNDER STAIR	105 SF @ 1/30 = 0 OCC'S
TOTAL OCCUPANTS =	235 OCCUPANTS

EGRESS WIDTH: (1005)
1005.3.2 OTHER EGRESS COMPONENTS:
MAX. 235 OCCUPANT AT EXIT DISCHARGE
X 0.2" = 47" MIN. EGRESS WIDTH REQ'D
= 252" PROVIDED (OK)

EXIT AND EXIT ACCESS DOORWAYS: (1015)
TABLE 1015.1
SEE GROUND LEVEL EXIT PLAN MAX. SPACE OCCUPANT LOAD = 235. TWO EXIT REQ'D. 4 EXITS PROVIDED

EXIT ACCESS TRAVEL DISTANCE: (1016)
TABLE 1016.2
SEE GROUND LEVEL EXIT PLAN MAX. TRAVEL DISTANCE = 123' < 250' THEREFORE O.K.



MARK T. JOHNSON ARCHITECT, Ltd.

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680 Stone St.
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406-756-0334 office
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PLANS ISSUED FOR:
DESIGN REVIEW
FINAL DESIGN
PRICING
CONSTRUCTION

PLANS ARE NOT TO BE USED FOR CONSTRUCTION UNLESS INDICATED

PLANS ARE THE INTELLECTUAL PROPERTY OF MARK T. JOHNSON ARCHITECT AND ARE NOT TO BE USED FOR USE TO EXCESS OF THIS PROJECT WITHOUT WRITTEN PERMISSION OF THE ARCHITECT. ANY UNAUTHORIZED REPRODUCTION OF USE IS STRICTLY PROHIBITED

DEC 04 2015

A Tenant Improvement for
Montana Tap House
845 Wisconsin Ave, Whitefish, Montana

REVISIONS
MARK DATE

CAUTION: THESE PLANS MAY HAVE BEEN ELECTRONICALLY REPRODUCED. SCALING OF DRAWINGS MAY RESULT IN DIMENSIONAL INCONSISTENCIES. CONTACT ARCHITECT FOR ADDITIONAL INFORMATION

NOT FOR CONSTRUCTION

BLDG DEPT NOTES CODE ANALYSIS

SHEET #
2 DECEMBER, 2015
TS

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

Date: December 31, 2015

To: Advisory Agencies & Interested Parties

From: Whitefish Planning & Building Department

The regular meeting of the Whitefish Planning Board will be held on Thursday, January 21, 2016 at 6:00 pm in the Whitefish City Council Chambers at **1005 Baker Avenue**. During the meeting, the Board will hold a public hearing on the items listed below. Upon receipt of the recommendation by the Planning Board, the Whitefish City Council will also hold subsequent public hearing on Monday February 1, 2016 for items 1-3 and a public hearing for item 4 on Tuesday, February 16, 2016. City Council meetings start at 7:10 pm at **1005 Baker Avenue** in the Whitefish City Council Chambers.

1. A request by Reisch Family Partnership for a Conditional Use Permit to operate a Bar/Tavern. The subject property is zoned WB-1 and is developed with an existing commercial building. The subject property is located at 845 Wisconsin Avenue, and can be legally described as Lot 3 in Kramer Add Amd Subdivision in Section 25, Township 31N, Range 22W. WCUP 15-20 (Minnich)

2. A request by the City of Whitefish for a variety of housekeeping amendments in §11-2-3B(5) & §11-2L-4, building height; change the term 'servant' to 'domestic worker' in the list of Permitted Uses in §11-2A-2, Agricultural District, §11-2B-2, Country Residential District, §11-2C-2, Suburban Residential District, §11-2D-2, Estate Residential District, §11-2E-2, One-Family Limited Residential District, §11-2F-2, One-Family Residential District, §11-2G-2, Two-Family Residential District, §11-2H-2, Low-Density Multi-Family Residential District, §11-2I-2, High Density Multi-Family Residential District, §11-2L-2, General Business District, §11-2N-2, Low Density Resort Residential District, §11-2O-2, Medium Density Resort Residential District, §11-2P-2, Limited Resort Business District, §11-2Q-2, General Resort Business District; §11-9-2, definitions add 'domestic worker' and 'building footprint'; add new subsections §11-1-4, General Zoning Provisions, §12-1-4, General Provisions, §13-1-6, General Lake and Lakeshore Protection Provisions, §14-1-7, General Floodplain Regulations to add a burden of proof standard; §12-3-7A, Preliminary Plat Review Process; Minor Subdivisions, Waiver of Preliminary Plat, review criterion. WZTA 16-01 (Compton-Ring)

3. A request by the City of Whitefish for an amendment to Section 11-2S, WPUD, Planned Unit Development District, to clarify allowed density where a PUD overlays multiple underlying zones. WZTA 15-01 (Taylor)

EXHIBIT

3

4. A request for a Zoning Text Amendment by the City of Whitefish to amend Section 11-2 of the City Code to create a Whitefish Neighborhood Mixed Use Transition zone and a Whitefish Industrial Transition zone, Section 11-3 to provide development standards for Artisan Manufacturing, Live/Work Units, and Micro-Breweries and Micro-Distilleries; and Section 11-9 to add definitions of Business Incubators, Coffee Shops/Sandwich Shops, Live/Work Units, Artisan Manufacturing, Micro-brewery, Micro-distillery, Mixed-Use Environment, Mixed-Use Building, and Research Facilities as part of the implementation of the Highway 93 West Corridor Plan. WZTA 16-02 (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.

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

File #: WCUP-15-20
Date: 12/4/15
Intake Staff: BM
Date Complete: _____

CONDITIONAL USE PERMIT

FEE ATTACHED $ $1980.00
(See current fee schedule)

INSTRUCTIONS:

☐ A Site Review Meeting with city staff is required. Date of Site Review Meeting: _____

☐ Submit the application fee, completed application and appropriate attachments to the Whitefish Planning & Building Department a minimum of **forty five (45) days prior** to the Planning Board meeting at which this application will be heard.

☐ The regularly scheduled meeting of the Whitefish City Planning Board is the third Thursday of each month at 6:00PM in the Council Chambers at 1005 Baker Avenue.

☐ 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: Montana Tap House

Project Address: 845 Wisconsin Ave Whitefish, MT 59937

Assessor's Tract No.(s) 0274625 Lot No(s) 3
Block # _____ Subdivision Name Kramer Addition
Section 25 Township 31N Range 22W

I hereby certify that the information contained or accompanied in this application is true and correct to the best of my knowledge. The signing of this application signifies approval for the Whitefish staff to be present on the property for routine monitoring and inspection during the approval and development process.

Reisch Partnership Dale Reisch President — 12/4/15
Owner's Signature[1] — Date

Dale Reisch
Print Name

Dale Reisch — 12/4/15
Applicant's Signature — Date

Dale Reisch
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

EXHIBIT 4

APPLICATION CONTENTS:

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

___ Conditional Use Permit Application – **8 copies**

___ Written description how the project meets the criteria in Section D – **8 copies**

___ Site Plan – **8 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: Reisch Family Partnership Phone: 406 862 2011

Mailing Address: 9 Baker Street

City, State, Zip: Whitefish, MT 59937

Email: bigskying@juno.com

APPLICANT (if different than above):

Name: _____ Phone: _____

Mailing Address: _____

City, State, Zip: _____

Email: _____

TECHNICAL/PROFESSIONAL:

Name: Mark T Johnson Architect, Ltd Phone: 406-246-5681

Mailing Address: 680 Stone Street

City, State, Zip: Kalispell, MT 59901

Email: markitect40@gmail.com

C. DESCRIBE PROPOSED USE:

Tavern

ZONING DISTRICT: WB-1

D. FINDINGS: The following criteria form the basis for approval or denial of the Conditional Use Permit. The burden of satisfactorily addressing these criteria lies with the applicant. Review the criteria below and discuss how the proposal conforms to the criteria. If the proposal does not conform to the criteria, describe how it will be mitigated.

1. Describe how the proposal conforms to the applicable goals and policies of the Whitefish City-County Growth Policy.

   See Attached

2. Describe how the proposal is consistent with the purpose, intent and applicable provisions of the regulations.

   See Attached

3. How is the property location suitable for the proposed use? Is there adequate usable land area? Does the access, including emergency vehicle access, meet the current standards? Are environmentally sensitive areas present on the property that would render the site inappropriate for the proposed use?

   See Attached

4. How are the following design issues addressed on the site plan?
   a. Parking locations and layout
   b. Traffic circulation
   c. Open space
   d. Fencing/screening
   e. Landscaping

f. Signage
g. Undergrounding of new utilities
h. Undergrounding of existing utilities

See Attached

5. Are all necessary public services and facilities available and adequate? If not, how will public services and facilities be upgraded?
   a. Sewer
   b. Water
   c. Stormwater
   d. Fire Protection
   e. Police Protection
   f. Street (public or private)
   g. Parks (residential only)
   h. Sidewalks
   i. Bike/pedestrian ways – including connectivity to existing and proposed developments

All Utililities are existing at the property and functional.

6. How will your project impact on adjacent properties, the nearby neighborhoods and the community in general? Describe any adverse impacts under the following categories.
   a. Excessive traffic generation and/or infiltration of traffic into neighborhoods
   b. Noise, vibration, dust, glare, heat, smoke, fumes, odors

See Attached

7. What are the proposed hours of operation?
See Attached

8. How is the proposal compatible with the surrounding neighborhood and community in general in terms of the following:
   a. Structural bulk and massing
   b. Scale
   c. Context of existing neighborhood
   d. Density
   e. Community Character

See Attached

Mark T. Johnson Architect, Ltd

Mark T. Johnson, Architect 680 Stone St. Kalispell, MT 59901
406-756-0354 office 406-756-5592 fax

Conditional Use Permit Request
Montana Tap House
845 Wisconsin Ave. Whitefish, MT 59937
Assessor # 0274625

D. FINDINGS:

1. ***Describe how the proposal conforms to the applicable goals and policies of the Whitefish City-County Growth Policy.***

NATURAL RESOURCES ELEMENT

AIR QUALITY:

The proposed Tavern is within an existing building and no new construction with the exception of interior remodeling is being proposed. The impact to air quality will be no greater than what the existing facility already presents. The facility does not generate dust or other finely granulated particulate.

WATER QUALITY:

The proposed Tavern is within an existing building and no new construction with the exception of interior remodeling is being proposed. The project is not adjacent to any natural waterways and thus will have no impact to water quality. Existing on-site storm water facilities manage storm water accumulations.

CRITICAL AREAS:

The proposed Tavern is within an existing building that is not located in or adjacent to sensitive environmental areas.

ECONOMIC ELEMENT

The proposed tavern will provide opportunities in employment for approximately 5 full and/or part time workers. Drinking and dining establishments are a great benefit to the tourist trade of the Whitefish community and have become a hallmark of the resort nature in Whitefish. The nature of the proposed business is such that it will be a different kind of experience and will add to the already wide variety of fine establishments that Whitefish offers.

LAND USE ELEMENT

MAINTAINING CHARACTER:

The existing exterior character of the building can be described as low scale traditional vernacular architecture that is rustic in nature. No substantial exterior renovation or remodeling is proposed which is suitable for the type of business proposed. At the same time this is in keeping with much of the aesthetic nature of the adjacent properties as well as other parts of Whitefish.

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HISTORIC PRESERVATION:
There is no historic relevance to the project that requires preservation.

ZONING:
The proposed tavern as previously stated will be located in an existing building on a lot with generous parking. Infill projects are a major part of the Growth Policies' goals. Infill projects rely on existing infrastructure thus reducing the need for extensions to public services and utilities. This building in the past was a tavern and restaurant which was a well visited business location. The current use is an antique furniture store. The property is surrounded on all sides by WB-1 zoning and is an established long time commercial property. No additional property or development of previously undeveloped land is part of this proposal.

ENVIRONMENTAL FACTORS:
No environmentally sensitive areas are near or adjacent to the subject property.

WATERFRONT DEVELOPMENT:
Not applicable.

GROWTH:
Not applicable, no new development is proposed. The proposal is an infill project that is a conditional use under the existing zoning for the property. The proposal does not significantly increase activity beyond that which the subject property has already experienced.

PRESERVATION OF OPEN/RURAL LANDS:
Not applicable.

DEVELOPMENT DENSITY:
Not applicable, no new construction except interior remodeling is proposed.

ENVIRONMENTAL CONFLICTS:
Not applicable.

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COMMUNITY FACILITIES ELEMENT

MUNICIPAL WATER SERVICE

The proposed project is in an existing building and is currently served with municipal water service. The municipal system also provides existing fire sprinkler supply water. The existing landscaping are currently 'rustic' and not well maintained. These areas will be improved with attention to drought tolerant and low water demand plant species. The existing project does not directly impact existing surface water sources such as ponds, creeks, rivers or lakes.

WASTEWATER COLLECTION AND TREATMENT:

The project is served by municipal sewer service thus it does not rely on aging septic systems which can contribute to area water quality degradation.

STORMWATER MANGEMENT:

The project currently has on-site storm water management facilities to deal with storm generated accumulations.

SOLID WASTE:

The project will contract for on-site waste disposal and recycling services. The Tavern business will handle beverages in keg form thus limiting the amount of recyclables such as aluminum and glass. The cardboard that passes through the business will be recycled with the cardboard services at the adjacent Alpine Village Market which is under the same ownership. Additionally construction waste generated during the construction process will be disposed of in accordance with Flathead County Solid Waste regulations. Hazardous materials are not anticipated in the development and remodeling of this project and if encountered will be handled with due care and in observance with established protocols.

EMERGENCY SERVICES:

Emergency services at the existing property are currently provided by Whitefish Police, Whitefish Fire and Ambulance services. No exceptional demands on services over those of similar entities with the City will be required by the approval of this request.

MAJOR MUNICIPAL FACILITIES:

Not applicable.

HUMAN INFRASTRUCTURE:

Not applicable.

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PARKS AND RECREATION:
The current property is fully developed and no additional development is proposed. Impact to Parks and Recreation will be minimal.

OPEN SPACES:
The current property is fully developed and no additional development is proposed. Approval of this request will not reduce existing open spaces. A small aspen grove exists behind the building that will be maintained as part of the parking lot improvements.

PUBLIC SCHOOLS:
No schools are immediately adjacent to this property thus no direct impact to school environments will be caused by approval of this request. Additional impact to school enrollment is not anticipated as employees of the business are likely to be current City residents.

SUSTAINABILITY:
Current code requirements for energy efficiency will require higher efficiencies for lighting and space conditioning equipment than what is currently installed. New lighting and mechanical systems that are installed as part of the renovation will see an increase in energy savings over the existing facilities. The proposed remodel will make use of renewable resources in material and finish selections.

HOUSING ELEMENT
The impact to housing is expected to be minimal as the business's employees are likely to be Whitefish residents.

TRANSPORTATION ELEMENT
Impact to transportation is expected to be minimal. The existing property is on Wisconsin Ave. which is a well maintained and developed main circulation route with many pedestrian amenities and traffic control devices. A bike and pedestrian path exists on the opposite side of Wisconsin that connects Whitefish to other regional locations. No new vehicle approaches are requested and the current ones will be maintained as demands of use require.

IMPLEMENTATION/INTERGOVERNMENTAL ELEMENT
Not applicable.

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2.) Describe how the proposal is consistent with the purpose, intent and applicable provisions of the regulations:

11-2J-1: INTENT AND PURPOSE:
The WB-1 district is intended for limited commercial uses within or adjacent to residential districts to meet certain convenience services catering to the daily needs of those nearby rather than a strip and shall be located adjacent to an arterial or collector street and shall have convenient and safe access both for vehicular and pedestrian customers. The maximum size of such a district at one location shall be seven (7) acres and the minimum shall be two (2) acres.

The proposed Tavern is to be located in an existing building and will involve no new construction apart from interior remodeling. The subject property is within the WB-1 Zoning District and the proposed use is a Conditional Use under the district regulations. The property is surrounded by WB-1 zoned parcels on all sides with uses of office, retail commercial, storage facility and vehicle fuel dispensing. The property is adjacent to and has two approaches on Wisconsin Ave, a collector road that is well maintained with patrolled speed zones and controlled intersections. The subject property is 0.887 acres with suitable off street parking with limited and defined access to Wisconsin Ave. The use, property size and vehicular ingress and egress are in keeping with the purpose and intent of the district.

3.) How is the property location suitable for the proposed use? Is there adequate usable land area? Does the access, including emergency vehicle access, meet the current standards? Are environmentally sensitive areas present on the property that would render the site inappropriate for the proposed use?

The property is located in the WB-1 zone on Wisconsin Ave. Immediately south is the Alpine Market, a small grocery store with deli and laundry mat and to the north is the Alpine Village Center which is a commercial center with shops and office uses. This proposal a conditional use under the zoning regulations and is complementary to the uses in the immediate area.

The property is 0.887 acres and developed with a 6,150 SF commercial building and paved parking area with 27 paved parking spaces and allowable room to expand to the full 44 required parking spaces while maintaining all required setbacks and all required landscaping plus 60%.

No environmentally sensitive areas are present on the subject property.

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4.) How are the following design issues addressed on the site plan?
a. Parking locations and layout.
b. Traffic circulation.
c. Open space.
d. Fencing/screening
e. Landscaping
f. Signage
g. Undergrounding of new utilities.
h. Undergrounding of existing utilities.

The attached site plan for the proposed project illustrates size location and spacing of parking spaces, striping and sidewalks as well as circulation patterns, existing and new landscaping. Fencing and signage locations are shown graphically and in note form.
No undergrounding of utilities is proposed.

5.) Are all necessary public services and facilities available and adequate? If not, how will public services and facilities be upgraded?

All utilities are existing at the property and functional and adequate to the proposed project.

6.) How will your project impact on adjacent properties, the nearby neighborhoods and the community in general? Describe any adverse impacts under the following categories.
a. Excessive traffic generation and/or infiltration of traffic into neighborhoods.
b. Noise, vibration, dust, glare, heat , smoke, fumes, odors.

The subject property is within the WB-1 Zoning District and the proposed use is a Conditional Use under the district regulations. The property is adjacent to and has two approaches on Wisconsin Ave, a collector road that is well maintained with patrolled speed zones and controlled intersections. Wisconsin Ave. is capable of handling the traffic generated by the business and infiltration of traffic into adjacent neighborhoods is only likely to be by neighborhood residents.

The business with not generate noise, vibration, dust, glare, heat, smoke, fumes or odors.

7.) What are the proposed hours of operation?

11:00AM to 9:00PM Sunday through Thursday and 11:00AM to 10:00PM Friday and Saturday.

Mark T. Johnson Architect, Ltd

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406-756-0354 office 406-756-5592 fax

8.) How is the proposal compatible with the surrounding neighborhood and community in general in terms of the following:

a. Structural bulk and massing

b. Scale

c. Context of existing neighborhood

d. Density

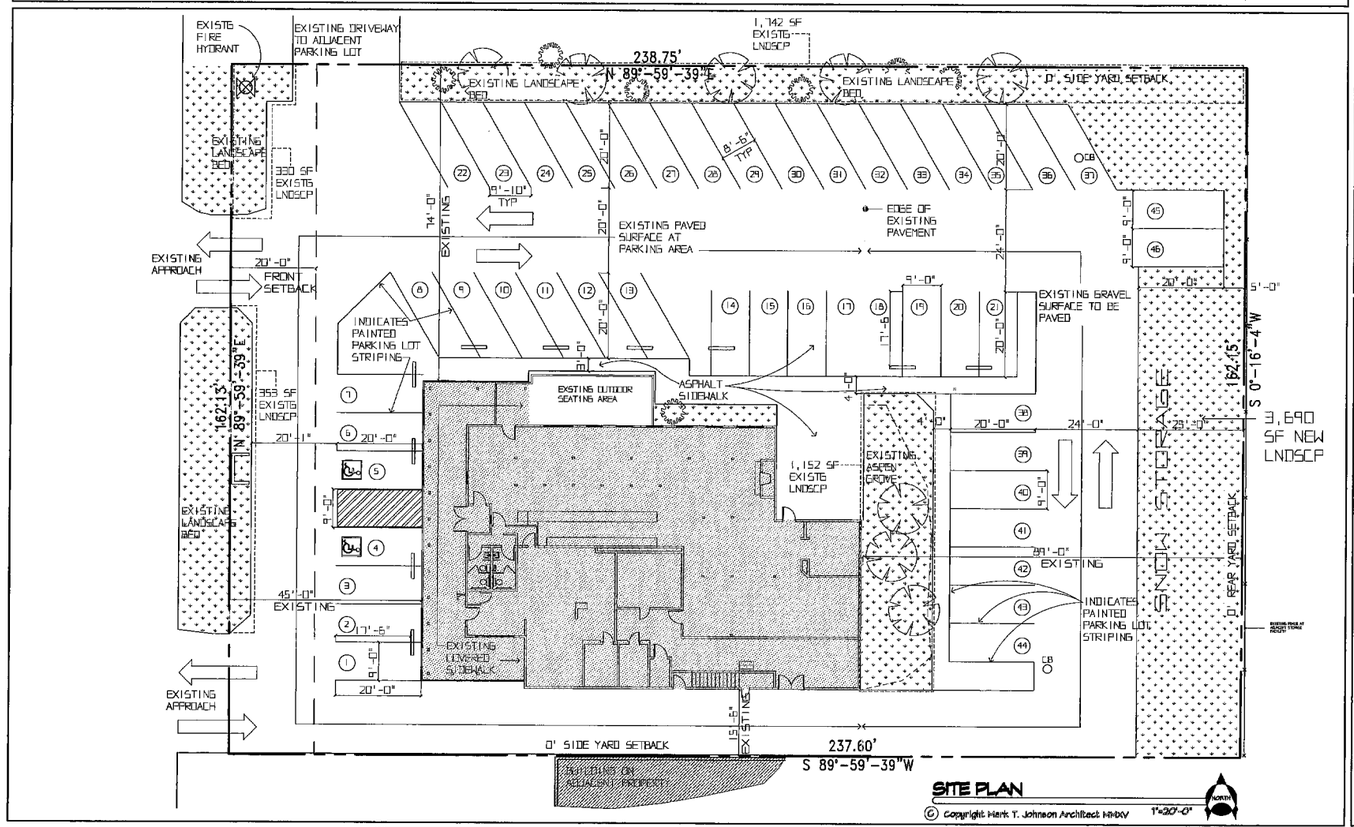
e. Community character

The existing exterior character of the building can be described as low scale traditional vernacular architecture that is rustic in nature. It is a typical false front building design with distressed vertical board and batten siding, wood windows and a rustic covered front porch. No substantial exterior renovation or remodeling is proposed. The building is a single story generally with a partial second floor that houses an un-occupied apartment. This building has existed on the subject property for many years. The general character is common to the Whitefish community. Newer commercial buildings were constructed on the two lots to the north which are single story in one case and two stories in the other. The general character of both projects present gable roof forms with timber accents. To the south is the Alpine Village Market, another long time Wisconsin Ave commercial building that is generally single story in massing with gable roof elements and mansards. All of the properties in close proximity to the subject property are similar in bulk, massing, scale and character with the exception of the hockey rink further south which is much larger than any nearby buildings. The density of this project is the same as the other commercial entities in the area again with the exception of the hockey rink.

A Tenant Improvement for

Montana Tap House

Whitefish, Montana



BUILDING DEPT. NOTES

DIRECTORY

OWNER:
MONTANA TAP HOUSE
845 WISCONSIN AVENUE
WHITEFISH, MT 59937

ARCHITECT:
MARK T. JOHNSON ARCHITECT, LTD
680 STONE STREET
KALISPELL, MT 59901
OFFICE (406) 756-0354
FAX (406) 756-5592

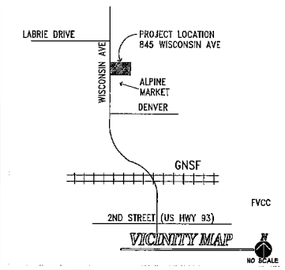
CIVIL:

STRUCTURAL:

MECHANICAL:

ELECTRICAL:

SITE INFORMATION



ADDRESS:
845 WISCONSIN AVE
WHITEFISH, MT 59937

GEOCODE
07429225109080000

ASSESSOR #
0274625

LEGAL DESCRIPTION
LOT 3 AMMENDED PLAT OF KRAMER ADDITION AN AMENDED PLAT OF A PART OF LOT 2 BLOCK 1 WHITEFISH TOWNSITE COMPANY'S FIVE ACRE TRACTS SW1/4 NE 1/4 SEC. 25, T.31N., R.22W., P.M.M., FLATHEAD COUNTY, MONTANA

ZONING:
WB-1

MAX. HT.
ALLOWED: 35'
PROPOSED: 35'

SETBACKS

FRONT	20' - EXISTING 45'
SIDE	0' - PROPOSED 15' & 74'
REAR	0' - PROPOSED 89'
SIDE CORNER	NA

LOT COVERAGE
ALLOWED = NA

SHEET INDEX

TS TITLE SHEET/SITE PLAN/CODE NOTES
A1.1 GROUND LEVEL PLAN

PROPERTY DEVELOPMENT

PARKING RATIO CALCULATION:

RETAIL SHOP	889 SF @ 1/300 = 3 SPACES
TAVERN	4163 SF @ 40 SPACES FOR FIRST 4000 SF + 1/200 IN EXCESS OF 4000 = 40 + (163/200) = 41 SPACES
APARTMENT	2 SPACES PER DWELLING UNIT, PLUS 1 GUEST SPACES FOR EACH 3 UNITS = 2 SPACES
TOTAL REQ'D SPACES	46

OFF STREET LOADING:

RETAIL SHOP	889 SF
TAVERN	4163 SF TOTAL 5,052 SF 1 SPACE REQ'D FOR 10,000 TO 19,999
	5,052 SF < 10,000 SF NO LOADING SPACE REQ'D

11-4-4: PROPERTY LANDSCAPING STANDARDS

DEVELOPED AREA:

BUILDING FOOTPRINT	6,150 SF
PARKING AREA	25,500 SF
TOTAL	31,650 SF DEVELOPED AREA
22,000 SQ. FT. TO 5 ACRES: 8% REQUIRED LANDSCAPING AREA	31,650 SF X 8% = 2,532 SF REQ'D

11-6-5: OFF STREET PARKING LANDSCAPING AND SCREENING

LANDSCAPE RATIO PER SPACES:

NUMBER OF PARKING SPACES	46
5-50 PARKING SPACES: 8% REQUIRED LANDSCAPING AREA	25,140 SF X 8% = 2,011 SF REQ'D

2,532 + 2,011 = 4,543 SF REQUIRED
PROVIDED = 7,240 SF (O.K.)

CODE ANALYSIS

APPLICABLE CODES:

IBC 2012 UPC 2012 IMC 2012 IFGC 2012 NFPA 99 2012 NEC 2014 IECC 2012

OCCUPANCY (CHAPTER 3)

TAVERN	ASSEMBLY GROUP A-2
RETAIL SHOP	MERCHANTILE GROUP M
2ND FLOOR APARTMENT	RESIDENTIAL GROUP R-2

GENERAL BUILDING HEIGHTS AND AREAS (CHAPTER 5)

CONSTRUCTION (Table 503)
ALLOWABLE STORIES / AREA

USE	CONSTRUCTION TYPE VB
A-2	1 / 6,000
M	1 / 9,000
R-2	2 / 7,000

SPRINKLER INCREASE (Section 504.2)
ALLOWABLE STORIES / AREA

USE	CONSTRUCTION TYPE VB
A-2	2 / 6,000
M	2 / 9,000
R-2	3 / 7,000

NON-SEPARATED OCCUPANCIES
A-2 OCCUPANCY MOST RESTRICTIVE

BUILDING AREA MODIFICATIONS (SECTION 506)

Aa = {At + [At X If] + [At X Is]}
At = 6,000
If = 0 (FRONTAGE INCREASE NOT REQUESTED)
Is = 2 (506.3 AUTOMATIC SPRINKLER SYST. INCR.)
Aa = {6,000 + [6,000 X 0] + [6,000 X 2]}
Aa = {6,000 + [0] + [12,000]}
Aa = 18,000 SF
18,000 SF >/= 6,150 SF EXISTING
THEREFORE O.K.

TABLE 601
FIRE RESISTANCE RATING REQ'S FOR BUILDING ELEMENTS
VB - ALL BUILDING ELEMENTS ALLOWED TO BE NON RATED

TABLE 602 FIRE RESISTANCE RATING REQ'S FOR EXTERIOR WALLS BASED ON FIRE SEPARATION DISTANCE

SIDE	F.S. DISTANCE	REQUIRED RATING	PROVIDED RATING	
NORTH	FS >/= 30'	0 HR	0 HR	(UP,S) NOT REQUIRED
SOUTH	FS = 15'	0 HR	0 HR	(UP,S) 75%
EAST	FS >/= 30'	0 HR	0 HR	(UP,S) NOT REQUIRED
WEST	FS >/= 30'	0 HR	0 HR	(UP,S) NOT REQUIRED

TABLE 705.8 MAX. AREA UNPROTECTED, SPRINKLERED OPENINGS
UP,S: UNPROTECTED, SPRINKLERED (NON 'H' OCC)

BUILDING CLASSIFICATION
A-2 OCCUPANCY, TWO STORY 6,150 SF GROUND LEVEL (< 18,000SF ALLOWABLE) TYPE VB CONSTRUCTION NFPA 13 SPRINKLERED

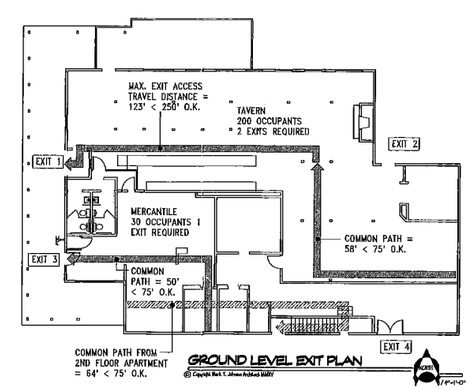
MEANS OF EGRESS (CHAPTER 10)
OCCUPANT LOAD: (1004)

RETAIL SHOP	889 SF @ 1/30 = 30 OCC'S
TAVERN	3014 SF @ 1/15 = 200 OCC'S
TAVERN STORAGE	934 SF @ 1/300 = 3 OCC'S
RESTROOMS	215 SF @ 1/100 = 2 OCC'S
UNDER STAIR	105 SF @ 1/30 = 0 OCC'S
TOTAL OCCUPANTS =	235 OCCUPANTS

EGRESS WIDTH: (1005)
1005.3.2 OTHER EGRESS COMPONENTS:
MAX. 235 OCCUPANT AT EXIT DISCHARGE X 0.2" = 47" MIN. EGRESS WIDTH REQ'D < 252" PROVIDED (OK)

EXIT AND EXIT ACCESS DOORWAYS: (1015)
TABLE 1015.1
SEE GROUND LEVEL EXIT PLAN MAX. SPACE OCCUPANT LOAD = 235. TWO EXIT REQ'D. 4 EXITS PROVIDED

EXIT ACCESS TRAVEL DISTANCE: (1016)
TABLE 1D16.2
SEE GROUND LEVEL EXIT PLAN MAX. TRAVEL DISTANCE = 123' < 250' THEREFORE O.K.



MARK T. JOHNSON ARCHITECT, Ltd.
Mark T. Johnson Architect
680 Stone St.
Kalispell, MT 59901
406-756-0354 office
406-756-5592 fax

PLANS ISSUED FOR:
DESIGN REVIEW
FINAL DESIGN
PRICING
CONSTRUCTION

PLANS ARE NOT TO BE USED FOR CONSTRUCTION UNLESS INDICATED.

PLANS ARE THE INTELLECTUAL PROPERTY OF MARK T. JOHNSON ARCHITECT AND ARE NOT TO BE USED FOR WORK IN EXCESS OF THIS PROJECT UNDER THE EXPRESSED APPROVAL OF THE ARCHITECT. ANY UNAUTHORIZED REPRODUCTION OR USE IS STRICTLY PROHIBITED.

DEC 04 2015

A Tenant Improvement for
Montana Tap House
845 Wisconsin Ave. Whitefish, Montana

REVISIONS
MARK DATE

CAUTION: THESE PLANS MAY HAVE BEEN DISTORTED DURING REPRODUCTION. SCALING OF DRAWINGS MAY RESULT IN ERRONEOUS MEASUREMENTS. CONTACT ARCHITECT FOR ADDITIONAL INFORMATION

BLDG DEPT NOTES CODE ANALYSIS

SHEET #
2 DECEMBER, 2015
TS

NOT FOR CONSTRUCTION

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ORDINANCE NO. 16-___

An Ordinance of the City Council of the City of Whitefish, Montana, amending Zoning Regulations in Whitefish City Code Title 11, Chapter 2, Zoning District, Article S, WPUD Planned Unit Development District, Section 3, Standards of Development, and Section 5, Deviations from Standards, to clarify the maximum average density where a PUD overlays more than one underlying zone.

WHEREAS, the City Council has approved numerous Planned Unit Developments that included the averaging of density across multiple underlying zoning districts; and

WHEREAS, questions have arisen regarding the Planned Unit Development Chapter and lack of clarity with respect to the issue of boundaries spanning multiple underlying zones; and

WHEREAS, in response to the questions, the Whitefish Planning and Building Department initiated an effort to amend City Code §11-2S-3, WPUD, Planned Unit Development District, Standards of Development, and §11-2S-5, WPUD, Planned Unit Development District, Deviations to Standards, to clarify maximum average density when a PUD overlays more than one underlying zone; and

WHEREAS, in response to the proposal to amend City Code §§11-2S-3, and 11-2S-5, the Planning & Building Department prepared Staff Report WZTA-15-01, dated January 15, 2015; and

WHEREAS, at a lawfully noticed public hearing on February 19, 2015, the Whitefish Planning Board received an oral report from Planning staff, reviewed Staff Report WZTA-15-01, invited public comment, and thereafter voted to recommend a continuance of the proposed amendment and directed staff to look at revising the PUD chapter; and

WHEREAS, at a work session on June 18, 2015, the Whitefish Planning Board received an oral report from Planning staff, reviewed codes from Kalispell, Flathead County, Missoula, and Minnesota, invited public comment, and thereafter following discussion directed staff to focus on a quick fix to address the confusion regarding density averaging where a PUD overlays multiple underlying zones, and in the future look at revising the PUD chapter; and

WHEREAS, in response to the proposal to amend City Code §§11-2S-3, and 11-2S-5, the Planning and Building Department prepared a revised Staff Report WZTA-15-01, dated January 21, 2016; and

WHEREAS, at a lawfully noticed public hearing on January 21, 2016, the Whitefish Planning Board received an oral report from Planning staff, reviewed Staff Report WZTA-15-01, invited public comment, and thereafter voted to recommend denial of the proposed text amendments and asked the City Council to direct staff to do a major revision of the PUD chapter as well as place a moratorium on allowing blended density PUD's; and

WHEREAS, at a lawfully noticed public hearing on February 1, 2016, the Whitefish City Council received an oral and written report from Planning staff, reviewed Staff Report WZTA-15-01, and invited public input; and

WHEREAS, the City Council finds that proposed text amendments substantially conform with the 2007 City-County Growth Policy Future Land Use Goal 5 because Planned Unit Developments allow the City Council to provide input into the special character, scale, and qualities of existing neighborhoods while supporting and encouraging attractive, well-designed neighborhoods compatible with infill development; and

WHEREAS, the City Council finds that the proposed text amendments support historic code interpretations and land use patterns; and

WHEREAS, the City Council finds that the proposed text amendments promote the health and general welfare because the amendments continue to promote the use of Planned Unit Developments which are an important mechanism to encourage affordable housing for the general welfare of the community; and

WHEREAS, the City Council finds the proposed text amendments will help prevent overcrowding of land and avoid undue concentration of people by helping spread density evenly across a site through careful site review, stipulations for approval, and other existing regulations; and

WHEREAS, the City Council finds the proposed text amendments give reasonable consideration to the character of the district because each Planned Unit Development is reviewed on a case-by-case basis and neighborhood character and compatibility is critical to approval; and

WHEREAS, the City Council finds the proposed text amendments give reasonable consideration to the peculiar suitability of the property for particular uses because each Planned Unit Development is reviewed on a case-by-case basis and each site can thus be reviewed individually for suitability; and

WHEREAS, the City Council finds the proposed text amendments encourage the most appropriate use of the land throughout the municipality because they allow the City more flexibility to choose appropriate land uses proposed with a Planned Unit Development; and

WHEREAS, the City Council finds adoption of the proposed text amendments clarify would be in the best interest of the City and its inhabitants.

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

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

Section 2: Staff Report WZTA-15-01 dated January 21, 2016, together with the letter of transmittal from the Whitefish Planning & Building Department, and the findings above are hereby adopted as Findings of Fact.

Section 3: Amendments to Whitefish City Code Sections 11-2S-3 and 11-2S-5, amending the language as provided in the attached Exhibit "A", with insertions shown in red and underlined, and deletions shown in red with strikethrough, are hereby adopted.

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

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

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, THIS _____ DAY OF _____, 2016.

_____
Richard S. Hildner, Deputy Mayor

ATTEST:

_____
Necile Lorang, City Clerk

EXHIBIT "A"

Whitefish City Code Title 11 – Zoning Regulations
Chapter 2 – Zoning Districts
Article S. WPUD Planned Unit Development District

11-2S-3: STANDARDS OF DEVELOPMENT:

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
WR-2	12 dwelling units/gross acre	18 dwelling units/gross acre
WR-3	14 dwelling units/gross acre	21 dwelling units/gross acre
WR-4	38 rental or condominium units or 21 townhouse units/gross acre	57 rental or condominium units or 31 townhouse units/gross acre
WB-1*	13 dwelling units/gross acre	20 dwelling units/gross acre
WB-2*	13 dwelling units/gross acre	20 dwelling units/gross acre
WB-3*	13 dwelling units/gross acre	20 dwelling units/gross acre
WRR-1	10 dwelling units/gross acre	10 dwelling units/gross acre
WRR-2	15 dwelling units/gross acre	15 dwelling units/gross acre
WRB-1*	15 dwelling units/gross acre	15 dwelling units/gross acre
WRB-2*	15 dwelling units/gross acre	15 dwelling units/gross acre

(*Gross acreage shall exclude all lands set aside for commercial or industrial activities and associated accessory uses.)

1. Maximum Average Density: In order to allow greater development flexibility to achieve the purpose and intent outlined in 11-2S-1, when a proposed PUD overlay site is subject to more than one underlying zoning district, density averaging shall determine the maximum allowable density. Maximum average density per acre is calculated as follows: (maximum density zoning district A multiplied by acreage of zoning district A) + (maximum density of zoning district B multiplied by acreage of zoning district B) divided by (total combined acreage of property within proposed PUD boundary). Residential units may be distributed within a PUD without regard to the precise boundary lines of the underlying zoning, but in no case shall a PUD allow more units to be approved than the maximum average density.

~~1.~~2. Cash In Lieu Dedication: For PUD subdivisions incorporating the affordable housing standards of this article, the developer shall have the option of providing lots or housing units on site or providing a cash in lieu of affordable housing dedication. The cash in lieu figure shall be reassessed annually, and may be adjusted from time to time by resolution of the Whitefish city council.

~~2.~~3. Land In Lieu Dedication: For subdivisions greater than nine (9) lots, the developer may have the option of land in lieu of affordable housing units subject to acceptance by the city council. The land may be on or off site. The land in lieu payment per unit shall be made on a case by case basis. Land dedications shall meet the following standards:

Land dedication must be suitable from the perspective of size, configuration, physical characteristics, physical and environmental constraints, legal access, location, adjacent use, zoning classification, and other relevant planning criteria.

Any fraction of a dwelling unit shall be rounded off to the nearest whole number. In computing residential density, areas of commercial uses will be subtracted before the density is computed.

11-2S-5: DEVIATIONS FROM 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. Where the PUD overlay includes more than one underlying zoning district, maximum average density cannot be exceeded (see 11-2S-B-1);

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

February 1, 2016

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

Re: Zoning Text Amendment: WZTA 15-01

Honorable Mayor and Council:

Summary of Requested Action: This application is a request by the City of Whitefish to amend Section 11-2S-3, WPUD, Planned Unit Development District, Standards of Development, to clarify maximum average density where a PUD overlays more than one underlying zone.

Planning & Building Department Recommendation: Staff recommended approval of the draft text amendment attached to the staff report. Staff also recommends that the council provide direction on whether to pursue a major revision of the entire PUD chapter in the future.

Public Hearings: A public hearing on this item was first scheduled at the Whitefish Planning Board for January 15, 2015, but was postponed to the next meeting due to the lateness of the hour. On February 19, 2015, the public hearing to review the text amendment was held. After public comment by Don Spivey, Judy Spivey, Mayre Flowers, and Rhonda Fitzgerald opposing the proposed amendments to clarify density averaging and questioning the entire PUD chapter, the Planning Board made a motion to continue the item to a later meeting, and asked staff to look at amending the whole PUD chapter and review criteria, and to compare our PUD criteria with what Flathead County and Kalispell do (minutes attached). Staff then held a work session with the Whitefish Planning Board on June 18, 2015, and presented codes from Flathead County, Kalispell, Missoula and other jurisdictions to get direction on how the Planning Board would like to proceed with a PUD chapter revision. After much discussion of the various codes and the pros and cons of how each addressed density and underlying zones as well as current staff workload limits, the Planning Board's direction to staff was to not look at revising the whole PUD chapter, but pursue the simpler fix by adding a couple of things to the amendment that was presented on February 19th, and look at a possible major revision in the future when we have more time. Based on that, staff added some revisions to the draft from January 15, 2015, and scheduled another public hearing for an amendment to address the specific issue of density averaging in a PUD with multiple underlying zones for December 17, 2015. That hearing was later postponed to January 21, 2016.

Public Comment on January 21, 2016
At the January 21, 2016 public hearing, Attorney Tom Tornow spoke as a representative of Barbara Morris of River's Edge subdivision, and challenged the legality of density blending, saying it was not a clarification but a reversal of what the code says, and offered to be part of a revision steering committee. Mayre Flowers, Citizens for a Better Flathead, spoke and supported Mr. Tornow's comments, had other concerns and claimed PUD's may be considered spot zoning. Dave Hunt, 113 Park Knoll Lane, read a letter (attached) and supported a major PUD revision and not the proposed amendment. Wendy Coyne, 3 Rock Creek Court in Rivers Edge, said she opposed the zoning text change and the affordable housing project. Judy Spivey, 117 Park Knoll Lane, spoke in favor of updating the whole PUD chapter. Bob Horne, 151 Wedgewood Lane, spoke in support the changes to clarify density averaging, stated the city has always allowed blending in those situations, and it serves a useful purpose. He said would also support looking at a more comprehensive revision in the future. Rhonda Fitzgerald, 412 Lupfer, spoke in favor of neighborhoods and protecting them from people wanting to do things outside the lines. Don Spivey asked that the Planning Board recommend to the council to reject the amendment and to initiate the process of re-writing the PUD regulations and issue a moratorium on further PUD activity or blending until the re-write is complete, or else remove blending from the WPUD regulations entirely. Anne Moran, 432 W 3rd, agreed with Tom Tornow's points and brought up concerns with it creating spot zoning. The draft minutes of the January 21, 2016 Planning Board hearing are included. Staff also received two letters supporting the zoning text amendment as is, from Eric Mulcahy of Sands Surveying, and from design professionals Bruce Boody and Brian Wood (attached).

Planning Board Recommendation: The Whitefish Planning Board held a public hearing on January 21, 2016. Following this hearing, the Planning Board recommended denial (3-2, Ellis and Meckel opposed) of the proposed amendments. Additionally, a motion was made (Norton) to "forward to council a rewrite of the entire PUD chapter and a moratorium on blending until that is finished." That motion passed unanimously.

Proposed Motion:

> I move to approve WZTA 15-01 along with the Findings of Fact in the staff report

The City Council could also consider directing staff to pursue a more comprehensive re-write of the PUD chapter per the Planning Board's recommendation.

This item has been placed on the agenda for your regularly scheduled meeting on February 1, 2016. Should Council have questions or need further information on this matter, please contact the Whitefish Planning Board or the Planning & Building Department.

Respectfully,

David Taylor, AICP
Director

Att: Exhibit A, Staff proposed zoning text amendment, 1-21-16
Minutes of 1/21/16 Planning Board Meeting
Staff Report WZTA 15-01 from 1/21/16 Planning Board Packet
Public comments received as of 1/26/16 (64 pages)

Other Exhibits

1. Staff Work Session Memo, 6/18/15
2. Staff Report 1/15/15 Planning Board Meeting
3. Minutes from 2/19/15 Planning Board Meeting
4. Letter from David Hunt, Park Knoll Lane, 2/18/15

c: w/att Necile Lorang, City Clerk

EXHIBIT 'A'
Staff Recommendation (Planning Board recommended denial)
WZTA 15-01
FEBRUARY 1, 2016

1. 11-2S-3 STANDARDS OF DEVELOPMENT

B.

1. *Maximum Average Density: In order to allow greater development flexibility to achieve the purpose and intent outlined in 11-2S-1, when a proposed PUD overlay site is subject to more than one underlying zoning district, density averaging shall determine the maximum allowable density. Maximum average density per acre is calculated as follows: (maximum density zoning district A multiplied by acreage of zoning district A) + (maximum density of zoning district B multiplied by acreage of zoning district B) divided by (total combined acreage of property within proposed PUD boundary). While clustering is encouraged, residential units may be distributed within a PUD without regard to the precise boundary lines of the underlying zoning. In no case shall a PUD allow more units to be approved than the maximum average density.*

2~~1~~. Cash-in-Lieu Dedication: For PUD subdivisions incorporating the affordable housing standards of this article, the developer shall have the option of providing lots or housing units on site or providing a cash in lieu of affordable housing dedication. The cash in lieu figure shall be reassessed annually, and may be adjusted from time to time by resolution of the Whitefish city council.

3~~2~~. Land In Lieu Dedication: For subdivisions greater than nine (9) lots, the developer may have the option of land in lieu of affordable housing units subject to acceptance by the city council. The land may be on or off site. The land in lieu payment per unit shall be made on a case by case basis. Land dedications shall meet the following standards:

Land dedication must be suitable from the perspective of size, configuration, physical characteristics, physical and environmental constraints, legal access, location, adjacent use, zoning classification, and other relevant planning criteria.

Any fraction of a dwelling unit shall be rounded off to the nearest whole number. In computing residential density, areas of commercial uses will be subtracted before the density is computed

***2**. 11-2S-5*

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. Where the PUD overlay includes more than one underlying zoning district, maximum average density cannot be exceeded (see 11-2S-3-B-1);

Exhibit B

WHITEFISH PLANNING BOARD
MINUTES OF MEETING
JANUARY 21, 2016

CALL TO ORDER AND ROLL CALL

The regular meeting of the Whitefish Planning Board was called to order at 6:00 pm. Board members present were Chairman Ken Meckel, Councilor Richard Hildner, John Ellis, Jim Laidlaw, Rebecca Norton and Melissa Picoli. Ken Stein was absent. Planning Director David Taylor, Senior Planner Wendy Compton-Ring and Planner II Bailey Minnich represented the Whitefish Planning and Building Department.

There were approximately 22 people in the audience.

PLANNING BOARD APPOINTMENTS
6:00 pm

Following discussion, Rebecca moved and Jim seconded to select Ken Meckel as the Whitefish Planning Board Chair and the motion passed unanimously. Richard moved and Jim seconded to select Melissa Picoli as the Vice Chair and the motion passed unanimously.

APPROVAL OF MINUTES
6:05 pm

Rebecca moved and John seconded to approve the December 17, 2015 minutes with one amendment. The motion passed unanimously.

COMMUNICATIONS FROM THE PUBLIC (ITEMS NOT ON THE AGENDA)
6:05 pm

Don Spivey, 117 Park Knoll Lane in Whitefish, said he has material to distribute for the record and asked when to do so. Director Taylor replied during the public hearing relevant to the issue.

OLD BUSINESS:
6:05 pm

None.

PUBLIC HEARING 1: REISCH FAMILY PARTNERSHIP CONDITIONAL USE PERMIT
6:06 pm

A request by Reisch Family Partnership for a Conditional Use Permit to operate a Bar/Tavern. The subject property is zoned WB-1 and is developed with an existing commercial building. The subject property is located at 845 Wisconsin Avenue, and can be legally described as Lot 3 in Kramer Add Amd Subdivision in S25, T31N, R22W.

STAFF REPORT WCUP 15-20 (Minnich)

Planner Minnich reviewed her staff report and findings. To date, no comments have been received.

Staff recommended adoption of the findings of fact and conditional of approval within staff report WCUP 15-20, and for **approval** to the Whitefish City Council.

DRAFT

BOARD QUESTIONS OF STAFF

Rebecca asked what the staff report meant regarding the height standard *appearing to be met* and Minnich replied she was not provided with side elevations. The zoning permits a maximum height of 35', which would be easily met since this is a primarily a one-story building, with a two-story portion.

APPLICANT / AGENCIES

Mark Johnson, 680 Stone Street in Kalispell, the project architect, said the staff report Minnich prepared was comprehensive. He said the maximum height of the building in the two-story portion is 22' and the building is appropriately sized for this type of use. It has a functioning fire system, proper exists and locations and they will comply with whatever requirements are imposed by the Building Department.

Richard asked if there were specific provisions for recycling and Mr. Johnson replied that the owners also own the adjacent Alpine Market and plan to include the cardboard recycling with the cardboard recycling done by Alpine Market. Since this is a Tap House, there is not as much waste associated with this type of business as is typical of a restaurant or bar as most of the product will be served from kegs, etc.

PUBLIC COMMENT

None.

MOTION / BOARD DISCUSSION

Richard moved and Melissa seconded to adopt the findings of fact within staff report WCUP 15-20, with the eleven (11) Conditions of Approval as proposed by City Staff.

Rebecca said this seems like a very nice project.

John said he plans to vote in favor of this CUP, but he believes if the Board reads the definition of WB-1 in the City-County Growth Policy, it actually should not be approved. The WB-1 district is intended for limited commercial uses within or adjacent to residential districts to meet certain convenience services catering to the daily needs of those nearby residents living within one mile of the district. This Tap House would serve the whole community. This is an illustration that the WB-1 definition needs to be updated/changed. Since 46 parking spaces are a requirement, it is clear that automobiles are anticipated as being the primary means for getting to the building, which clearly illustrates that the WB-1 definition and Whitefish-County designation need to be changed.

Taylor noted that there are many different types of businesses that cater to a neighborhood. This building was previously used as a bar for ±25 years, The Place and the Dire Wolf, and frequented by people

coming back from Whitefish Mountain, downtown, and residents from Colorado/Wisconsin. The neighbors can walk to the Tap House rather than going downtown so it serves a neighborhood function.

Melissa commented that she likes all the interesting food and beverage services coming into Whitefish, but suggested this would be a good time to address reducing single-use plastics. No food is planned to be made onsite, but there will probably be food served. She asked that the owners consider taking the lead to use dishes rather than one-use plastic items, even though that might be less convenient.

VOTE

The motion passed unanimously. The matter is scheduled to go before the Council on February 1, 2016.

PUBLIC HEARING 2: AMENDMENT OF WHITEFISH CITY CODE TITLE 11, ZONING REGULATIONS
6:20 pm

A request by the City of Whitefish for an amendment to Section 11-2S, WPUD, Planned Unit Development District, to clarify the blending of density where a PUD overlays multiple underlying zones.

STAFF REPORT WZTA 15-01 (Taylor)

Director Taylor reviewed his staff report and findings and distributed two recently received letters of support from Bruce Boody and Brian Wood of Bruce Boody's office, and Eric Mulcahy of Sands Surveying.

Staff recommended adoption of the findings of fact within staff report WZTA 15-01 and for **approval** to the Whitefish City Council.

BOARD QUESTIONS OF STAFF

Rebecca said she thought in the past that we have been doing it this way for ten years and Taylor replied it has been done this way since the PUD chapter was put in the Code, which was probably back in the 1980s. When they looked back, almost all the PUDs that have been approved had multiple zoning districts in them because if you are going to do a PUD they are usually on multiple tracts of land or a large area that spans multiple districts. Rebecca asked if we are different from Kalispell and Flathead County, would that impair us when/if going to a unified development code. We just got the whole doughnut rezoned to match our existing zoning and she thinks that eventually we should go to a unified code for the whole Flathead County. So when we have really different regulations like this she wonders if we are just creating our own little thing here or is it standard practice. Taylor replied they are not significantly different. The development requirements within a PUD are established within it as it is adopted, so there is always a list of

certain setbacks and differences. He said Kalispell has different zoning than the County and the County has different zoning districts than Whitefish. They have a few that are the same as ours, but they all have different setback requirements, etc. If the County decides a unified development code would be important like Missoula County did, that would be great, but he does not necessarily foresee that happening. The County does not have any building code requirements and he does not think there is much interest in that. We are focusing on Whitefish and what we can do within Whitefish to keep our community as solid as we can and allow good development to proceed. It allows enough flexibility for sites that do not meet all the standards, they might need some reduced setbacks or whatnot, but it also provides the City an opportunity to ask for things we want to see, like affordable housing, protecting environmental areas, adding trails, etc. We get a benefit when those things are adopted where if it was a standard subdivision, we may not be able to ask for those types of things.

Rebecca also asked about the Water Quality law, whether it would require them to be compliant regardless of what kind of building was going in, and Taylor replied yes, all developments have to meet the buffer requirements. Rebecca said so that should not really be considered an added benefit. Taylor replied certain areas have wetlands that do not meet our classification of "wetland" where there is not much of a setback requirement within our Water Quality Ordinance. Whether it is a manmade wetland or a stormwater pond, there are things we could require with a PUD to provide trails around, buffers, access, restoration or other things within a PUD so there are additional things we can do above the Water Quality Ordinance requirements. Chairman Meckel said we have done that on some projects in the past if he remembers correctly and Taylor replied yes.

John asked why the phrase "[r]esidential units may be distributed within a PUD without regard to the precise boundary lines of the underlying zoning", needs to be in Taylor's proposed change. Taylor said that may be redundant but it just makes it clear where a PUD is being developed it is not subject to the underlying zoning boundaries. You are creating a new exterior boundary that supersedes the existing interior zoning boundaries. That is implied within a PUD so it is a statement that may be superfluous. John said it leads him to the question of why isn't there some language about the commercial part that mirrors that. For instance, if you took the word "commercial" and substituted it for the word "residential", would that be a true statement? Taylor said not necessarily because if it is a residential Planned Unit Development, even if it is on commercial property, you are still limited to 10 or 15 percent

commercial within that project. For instance, within our WB-2 zoning district (the highway district or whatever you want to call it out along the strip), which is the area where we have the most undeveloped property within Whitefish, and also the area we are seeing people look at for housing development, whether apartments, low income housing, or affordable housing, you cannot do any residential in that district without a Planned Unit Development. So, if someone wanted to do a Planned Unit Development, with the residential it would be a residential Planned Unit Development, which would then limit the amount of commercial that could occur out on that property. If it is a non-residential Planned Unit Development, then there wouldn't be residential units to distribute.

John said it is his understanding that our Code allows mixed commercial and residential PUDs. Taylor replied there is a residential PUD and then there is a non-residential PUD. Within a non-residential PUD it does not necessarily preclude residential within that so there is a potential that someone could apply for some mixed use within a non-residential PUD, because it talks about any other use that could be justified, but someone would have to make a case for that. John asked if the 11-2S-3 standard applies to residential and non-residential PUDs. Taylor replied it is under the section of the Code that is specific to residential density, so when you are talking about density, it is specific to residential because it is how many units per acre, how many dwelling units can be placed on the property. It is under the chapter that talks about density bonuses and cash-in-lieu so is really applying specifically to residential types of planning development.

Richard asked for a further explanation, when you limit the PUD to "like zoned," in other words, if you are going to have a PUD overlay, at least in the examples, those are all "like zones." Would those criteria still be there? Taylor replied it would. Again, if it is a residential PUD, then it would limit the commercial even if there was some commercial zoning in there. Deer Tracks is an example that was done a while ago that was exclusively on a WB-2 zoning district, a residential PUD exclusively on commercial, so like zones aren't always applicable. There is a provision where residential PUD's could have had a 10 or 15 percent commercial. They would have to establish with the plan where their 10 percent (without affordable housing) or 15 percent (with affordable housing) would be. Richard asked whether that is "commercial" and Taylor replied yes within any residential PUD, as established by Code. The Lakes had a component where they have a lot that is set up for doing a small convenience store or something that was specific to that particular neighborhood in the future. It was never developed and is

still vacant, but when that was approved that was their commercial component. Compton-Ring said at Cougar Ridge at Labrie and Wisconsin Avenue, they set aside a larger lot for professional offices or something. They subsequently came back and amended their plat and now that is where that triplex is located, but originally that was supposed to be some commercial plot. Taylor said he thought McGarry's was the product of an expired residential PUD where that was the commercial component.

Rebecca said when one PUD went in, neighbors were alarmed because they felt like their property values might be diminished because it was too close to their neighborhood so they complained about the PUD spanning several different zonings. Then they researched it and found that other municipalities give PUDs based on the underlying zone, residential/commercial, etc., and you have to stick to that in those other municipalities, but in ours, we can mix it all up. Taylor said that is not entirely true as we have some situations where you have some commercial property like on Highway 93 where the front part of it is within the WB-2 zoning district which has a much higher density than property that is behind that is more of a Suburban density. Because the commercial allows a much higher density, with the density averaging with the two units. So say the overall density of the property allows 20 units per acre with the mix of the two, where if the PUD was just on the portion that was the Suburban density, only five units per acre might be allowed. The concern was pushing higher density back into those areas. Within the design of a PUD, it states within the PUD chapter at the beginning that there are character things you have to go through for any PUD to meet, whether it is environmental concerns, compatibility with an existing neighborhood, etc. All those things are looked at and the developer has to make their case regarding where densities are most appropriate in a certain area and why. There are some sites that have some environmental concerns and obviously you want to push density away from those. Every project is different and every location is different so it is not always going to be the same case by case by case. That was one of the concerns that was brought up with density averaging when you have two different types of underlying zoning. There is no concern about commercial getting pushed back into the residential because there is the limitation built into the PUD chapter that only 15 percent commercial, if it has affordable housing, can be on the property. So you know the majority of the project is going to be residential. The PUD chapter encourages multiple types of housing projects, whether it is single-family or multi-family. The purpose of it is to provide greater density in exchange for affordable housing. It will always have some impact to neighboring property owners. How many

subdivisions have we seen where none of the neighbors object to development? They like an undeveloped tract of land where the deer roam, but the subdivision they live in was probably done with a PUD with the same issue. So the fact is as a community grows you have to find some place for these types of developments.

Richard asked about the chart on Page 5 where the Consideration from Section 11-7-10E says, "Prevent Overcrowding of Land and Avoid Undue Concentration of People". The first sentence of the Staff Analysis, "This amendment will help development spread density evenly across a site rather than concentrating it" seems to contradict that. Maybe "appropriately" should be substituted for the word "evenly".

APPLICANT / AGENCIES

None.

PUBLIC COMMENT

Don Spivey, 117 Park Knoll Lane in Whitefish, apologized in advance for a lot of people having comments, which were not included in the packet due to time constraints, but he will leave copies of everything. He distributed copies and read his three-page letter into the record. He has served on the Planning Board, Board of Adjustment, and Pedestrian and Bike Path committees and several other City committees for many years. His wife Judy has always supported him, as well as serving as a member and chair of the Housing Authority Board for ten years. They understand and support the need for affordable housing, but are opposed to the current wording of the WPUD regulations because he does not believe they support healthy growth for the entire community. They are not opposed to PUDs or "blending", but as written they do not believe the WPUD regulations support that type of usage. For this evening's discussion he proposed the following ways to look at Zoning Regulations:

1. For the Planning Staff – They provide a set of rules along with other relevant regulations which they can use to evaluate and take positions on and make recommendations about development proposals.
2. For the City and general citizenry – There are a set of regulations that help to manage the growth of the City in an orderly, safe manner consistent with the Growth Policy.
3. For the homeowner – They are intended to provide a sense of security that the character of their neighborhood and the values of their properties are reasonably protected over time.

He asked to be allowed to return at the end of the presentation to present his conclusion and recommendations and Chairman Meckel agreed.

Tom Tornow, 309 Wisconsin Avenue in Whitefish, distributed a letter written by Barbara Morris, 1 Rock Creek Court, who he is representing. She is currently not in the area so asked him to speak on her behalf. He said he was speaking in opposition to the proposed text amendments and in support of the decision made by this Board on February 19, 2015, directing staff to prepare a comprehensive revision of the PUD chapter. That motion passed six to one and should be followed. He distributed an excerpt of Minutes from the February 19, 2015 Planning Board meeting for the record. Instead of following the Planning Board's decision made a year ago, he feels the Planning office has given a piecemeal approach tonight, which has several problems. The first is that it does not clarify the allowable density in a PUD. There has been no misunderstanding regarding the permissible density. What has happened is that the Planning office and the City have routinely approved Planned Unit Developments that are in direct violation of our Code. They brought that to their attention and the City's attention with regard to the Deer Park [sic] application. He distributed a copy of the letter he wrote dated October 27, 2014, which identifies the parts of the Code that will give it this kind of density transfer. It is not a clarification of our existing Code; it is a reversal of our existing Code. What this proposed text amendment does is potentially increase the allowable density in every zone for every property. All a developer has to do is whisper "PUD" and the density can double or triple, and apparently according to what Dave was saying tonight, can now include up to 10 or 15 percent commercial. Imagine if you bought a property next to what you investigated and found out was a single-family residentially-zoned area and then a developer comes in and wants to put a commercial facility there. They would be told no, that is a residential zone, but if he whispers the word "PUD", now he can introduce a commercial component. You might say, well, it is only 10 or 15 percent, but if that 10 percent is next to your yard that is a significant change. His client's home is an example of what can, and almost did, happen in this regard. Barbara lives in a WR-1 zone, single-family residential, and the vacant land next to her is also W-1, which allows four units per acre. The property has some WB-2 next to the Highway, where it belongs, and that WB-2 allows 13 units per acre. With a PUD, that 13 units per acre density can be transferred back to that WR-1 zone and the lot next to Barbara's home can be developed at between nine and 13 units per acre, which is more than double or triple what is allowed in the underlying zone. This text amendment effectively rezones every property, doubling or tripling the density without any of the procedural or substantive due process rights that come with a rezoning. When people buy their property if they do their job, they find

out what their zoning is and the zoning of adjacent properties, and they rely on that. They understand that that could be changed through a rezoning process, but what they do not understand is that the density might be increased significantly by the use of a PUD without a rezoning, and he feels that is what is wrong with this proposed text amendment. It also rezones everyone's property without any of the criteria or justification as to when the density could be transferred. This proposed text amendment just says you can move it, as Mr. Ellis pointed out, anywhere in that zone. There is nothing to stop you from taking the 15 percent from the commercial zone and moving it back to the single-family residential zone. That is what he thinks Mr. Spivey was alluding to, that if the developer says, "I want to move it there", Planning staff has no basis for saying no because our Code says you can put it anywhere you want. And the Planning report also talks about the City benefitting from such things as an increase in buffering, trails or a transportation network, but this Code text amendment does not tie any of those benefits to this density transfer. It does not say you have to give us those in order to transfer the density, it says you can just transfer the density, and we are going to hope to get those things from you. So, at a minimum, this proposed text should be moved down to Section 11-2S-5 where the Code requires that the increased density be justified as a clear public benefit and directly relate to the purpose and intent of a PUD. So it is not just a carte blanch do whatever you want, it is saying if you can provide a clear public benefit and directly relate your proposal to the purpose and intent of a PUD, then we will consider allowing you to move this density.

Another problem is that this patchwork change that is proposed tonight creates even more conflicts with the Zoning Code. As pointed out in the letter he distributed, he believes he cited three provisions where the transfer of density was not permitted and this proposed text amendment fixes one of those, but does not fix the other two. So again, it is just a patchwork mending of a Code that as Member Ellis commented on needs to be revised in its entirety. One thing that the Planning office report did get right is that the density transfers have been opposed by neighboring citizens when the PUD process is abused by the developers, disrespecting the rights of the neighbors who bought and built their homes in reliance on the density of the adjacent zoning. One recent example was the Park Knoll project. The Planning office told this Board and told the City Council that the density transfer was allowable through a PUD and clearly it was not so the neighborhood opposed that. The lesson that was learned from that was that this Code needs to be fixed, and needs to be fixed comprehensively, and this particular section needs a comprehensive fix. Another example is the

low-income housing project on Highway 93, which did not get its tax credits from the State. And the lesson learned from there is this piecemeal, carte blanch, approach is not the right fix. What you need is a comprehensive rewrite of the PUD Code which is what the Board directed almost a year ago. The Board was on the right track then and should stay on that track and insist that this provision be revised in its entirety. In doing that, he would encourage the Board to take advantage of the community support, participation and expertise to fix that section in the manner that balances the interest of the developer with the rights of the existing citizens, and in a manner which provides the substantive, and procedural due process rights and gets the community the benefits in return for the density transfer so that there is a model that protects what we value in our community instead of selling out in favor of the developers. The Board can do that by sticking to the proposal it made a year ago and inviting people like Mr. Spivey and Mr. Hunt and himself to work in a committee with the Planning office, maybe with Citizens for a Better Flathead, and also with the developers, to come up with a comprehensive PUD development program. This is not a major section of the Zoning Code, it is only four or five pages, he thinks, and he would imagine it could be rewritten in a matter of a month or two. He understands that staff is overwhelmed and that is why he encourages them to draw from citizenry to help the staff and Board so that everybody buys into this revision rather than something that is not in the interests of the citizens.

Mayre Flowers, Citizens for a Better Flathead, 35 4th Street West in Kalispell, distributed copies of a six-page comment letter. She said some of her comments would be somewhat repetitive with those just heard, which she supports, so she summarized her nine comments as she read them into the record.

1. Tom spoke to of the letter he gave the City in October 2014 and again as he pointed out I think you need to realize that the proposal before the Board tonight does not correct two of the legal issues that were raised in that letter. The proposed zoning is not consistent with the intent of the PUD standard statute found at 11-2S-1 which only refers to the ability to vary standards and not densities to underlying permitted uses (provided citation). The proposed zoning amendment in the staff report and the scant and inadequate findings of fact failed to address or analyze how the proposed text amendment furthers, conflicts with or provides the benefits identified within the intent of the PUD section 11-2S-1. Those are important standards and as Tom noted they are bypassed in the way the zone changes are proposed tonight.

2. In this hearing it also needs to be made clear that PUD Blending or Density Averaging is being used to allow for more than just increased densities. It is being used to allow a developer to take permitted uses in one zone and to blend them into other zones so that they are not consistent with the underlying zoning. That is a big deal particularly when you have two very dissimilar zoning districts. It is also being used to justify taking affordable housing density bonuses that vary in the number of density that is allowed depending on the underlying zone. You get some of the highest density bonuses for commercial but when you take those affordable housing bonuses and put them into your low density residential again you are creating conflicts and abusing a system that should not be used in that way. Affordable housing is a critical issue in our community and this whole section need to be reviewed consistent with the new affordable housing study that is going on but also looking at if we are just giving away density and not getting the kind of affordable housing that we really need here in the community.

3. The proposed zoning text amendment violates the due process rights of adjoining property owners to raise objections to zone changes by making the blended uses a de facto legal through the Blending or Density Averaging. Referred to state statute 76-2-302 cited in written comments. If you go to our state statutes, there is not a statute written that contemplates PUDs but they are used quite frequently throughout the state but in using those we need to use them in compliance with state law and she would suggest that this is another area of legality that needs to be looked at for compliance. The rights to protest afforded adjoining property owners or of residents at large are diminished when blended zones are made de facto legal and no public hearing is held on specifically on the nature, suitability, or legality of the blending proposed as required under 76-2-305, which is the statute that requires and protects citizens' rights to a public hearing on zone changes, so again that legality needs to be looked at.

4. The staff report and proposed findings of fact provide an inadequate consideration of the proposed text and its compliance with the Whitefish Growth Policy as required by state statue. For example, the Whitefish Growth Policy calls for clustering not spreading of density or “blending density" and she provided the citation in her written comments. The Growth Policy identifies the need for density created by infill to address transportation impacts, which this proposed text amendment fails to consider. That was going to be a real issue in this proposed density out on

Highway 93 in this affordable housing project there where increased density was not only going to increase transportation from that development but from a proposed hotel that is coming into the area as well. The proposed zoning text amendment that allows blending of densities across zones is too narrowly focused and does not adequately consider or review related policies and issues identified in the Whitefish Growth Policy, for example in the Growth Policy it says, "Through use of the planned unit development (PUD), densities up to 12 units per acre, and up to 18 per acre with affordable housing, are possible by code. And while such densities are not usually granted in a predominantly single-family area, the threat of erosion of the existing scale and character remain very real." In this situation, Barbara Morris and the neighbors of the Whitefish Crossing had to hire an attorney to slow down this railroad of increased density and inappropriate uses being applied in residential areas. All of these points to the real need for a comprehensive review and rewrite of this section of the Code.

5. Mayre would further suggest that as proposed the way the PUD regulation is being proposed would most likely meet the standards for spot zoning which has been significantly different from prevailing uses in the area applied to benefit a small number of folks and that it is rather a small change with separated landowners benefitting from the proposed change. So, that again is another reason to go back and rework these.

6. The lack of clearer PUD standards tie local government decision makers' hands by failing to provide clear public benefit criteria and standards on which they can rely on in approving or denying such proposals.

7. The proposed zoning text amendment fails to address the more comprehensive review of the City PUD zoning regulations as called for by resolution of the Whitefish Planning Board after consideration of an almost identical staff report and consideration of public comment at their February 19, 2015 meeting. Our prior comments above provide numerous examples of why a more comprehensive review of the City PUD regulations are needed.

8. A more comprehensive review is needed to not only address inadequacies of the current regulations but also potential best practices being used in other jurisdictions that could be an improvement over our current regulations. Issues or topics that merit further consideration should include:

- Reduced parking tied to affordable housing benefits. At the Whitefish Crossing hearing we gave the council and

the planning a detailed study of how this is being done elsewhere in the county.

- Density credits for affordable housing tied to building the type of affordable housing Whitefish most needs. The affordable housing study soon to be underway needs to be incorporated in a comprehensive review of the PUD standards.
- Affordable housing benefits tied to providing energy efficiency and even design for solar and wind (roof design or heights can impact current future application of such energy uses). Energy costs are a significant impact to those seeking affordable housing options.

(There were additional suggestions and Mayre requested we read through her written comments.)

9. In conclusion she thinks it is important to move forward with a comprehensive review and encouraged the planning board to take action tonight to deny any further movement forward of the application before them, to go back to their comprehensive review and to put a moratorium on the use of blended zoning until the legality and fairness of this can be addressed for the community.

David Hunt, 113 Park Knoll Lane in Whitefish, came in on the earlier version of this proposed Code amendment and feels as do other presenters here that the proposed amendment still leaves the PUD Code unclear and Whitefish property homeowners vulnerable. He read his three-page letter and asked that his comments be included in the record. In conclusion, he recommended the Board not approve this proposed amendment and requested that a more deliberate study be undertaken to develop clear and unambiguous PUD code that works for the City, developers and residents. He recommended such effort consider the following:

1. Develop categories of PUD by use (Residential, Business, mixed use, etc.).
2. Clear specification of the underlying zones to which a PUD may apply within each category.
3. If blending is to be allowed,
    a. Clear and non-conflicting code that addresses blending of density within a PUD.
    b. <u>Consider restrictions of PUD use across vastly different zones</u>. For example, why allow WLR single family to be blended with WR-4 where densities can be as high as 57 rental or condominium units or 31 townhouse unites/gross acre?

He encouraged collaboration between the Planning Staff, residents, any other lawyers that want to get involved and others as this process moves forward.

Wendy Coyne, 3 Rock Creek Court in the Rivers Edge area of Whitefish. She disagrees with what is proposed to happen with the zoning laws. She wanted to give her perspective of being a resident of Whitefish and what it has meant for her and the neighborhood in the last couple of months with the affordable housing. She has owned property in Whitefish for 16 years and became a permanent resident of Whitefish six years ago and bought her house in Rivers Edge. She knew there was a ten-acre piece of land just to the south of her and understood that part of it was commercially zoned and two-thirds of it was single-family residences. She also understood she was moving into a more urban environmental than further uptown, but she did research and knew the land behind her was going to be residential. Then this year everything changed because of this blended density. Affordable housing was agreed upon but all of a sudden they had blended density happening to them and they went from single-family to multiplex buildings possibly going in next to them, going from as Mr. Tornow pointed out densities of maybe four houses per acre to ten. Everything was sided to the developer and in the blink of a moment, they saw that things were going to change where they live and pay taxes and where they bought because there was trust that the land behind them was zoned WR-1, as single residences. They trusted the zoning when they bought their property and found it can change in a moment. People cannot trust when they make a property purchase and it is giving potential buyers a bad taste of Whitefish. She does not feel that the proposal before us tonight is a move in the right direction, so she, too, asked that we look at this thing as a whole new deal and do it right.

Judy Spivey, 117 Park Knoll Lane in Whitefish, feels confident that every person in the room including the hardworking Planning staff and volunteer Planning Board is happy to be part of this rare and wonderful little City. As the Planning board, their role in helping plan for the present and future of Whitefish is critical. It is not easy. Investors, developers and entrepreneurs, possess unlimited time, energy, and especially financial resources to achieve their goals. That is their job. The Planning Board's job of considering and recommending possible action regarding our current WPUD regulations is an enormous task, one that may not have been in their original job description. She understands that but also understands how imperative it is for all of us together to face the issue of updating the current WPUD regulations

NOW. It must be done NOW. *Once the tarmac is laid down it's almost impossible to take it up.*

Robert Horne, 151 Wedgewood Lane in Whitefish, two houses in from the Dog Park. The issue before us tonight is a Code amendment to put in the Code a perfectly reasonable and logical practice that we have been doing for years. He was Planning Director from 2005-2007 and we did it then. It is very simple. If you have a PUD, say 10 acres that overlies two properties in two zoning districts, one five acres and one ten acres of equal size, this says that you can apply for a density of 7.5 acres. Not one unit per five acres on this one and one unit per ten acres on the other, it does not increase the density at all. He just heard things like it doubles and triples the density. It does NOT. We just had a situation a couple of years ago with the Residences on 2nd Avenue where the Kauffman property. About a quarter of the property which is mostly taken up by Cow Creek and was zoned WR-1. The other three-quarters of the property was zoned Whitefish Agricultural and the developer was requesting a zone change to WER. Without the ability to average the density, you could not have developed that property or you would have been cramming the most density in the most environmentally sensitive part of the parcel. That is the ways it is supposed to work. It gives the developer the opportunity to move that density around to respect the more critical parts of the site - to protect, respect and leave some open space and put the density in the most buildable parts of the site. He thinks a lot of folks are confusing what this section does. This section is in the section that tells the developer what he can APPLY for, only what he can APPLY for - that does not mean he is going to get it. This section does not negate all of the purpose and intent stated in the very first section of the Code – they are still there. They still have to be met. He heard some very well-meaning people, who are friends of his, really tell us things that are not characteristic of the way the PUD is actually administered. He heard things like, "The Planners don't like it". Whether the Planners don't like it or don't dislike it, the Planners go according to the Code. So, the issue here before us tonight which once again is only to put in the Code what is a very reasonable practice that we have been doing for years and he would encourage approval of that. However, he has also had a chance to discuss this with the staff as they were kind enough to meet with him last month, so he is not blindsiding them by saying that he too agrees that the PUD section needs to be rewritten. The community has outgrown the PUD. It has become a more complex community, with a more complex set of issues and the PUD section just needs to be written to take that into account. Suffice to say that it needs a fresh look.

Rhonda Fitzgerald, 412 Lupfer Avenue in Whitefish, said specifics have already been very well covered by people very informed on the subject who spent a lot of time reviewing it and she also appreciates Bob's perspective. Over the many decades that she has lived here she has always been impressed by the fact that the elected officials of the City and the City in general kind of default on the side with the people who live here and the understanding they have about where they live. We have a Growth Policy that talks about neighborhood integrity and character and the first part of the zone that Bob referenced is really important to people and they read it and they believe it. They believe that City staff works for them in making sure that it is followed through with. They believe the Planning Board serves to protect their interests, and of course, also to help people to create new businesses or grow their business. But she thinks that quite often the emphasis is on someone coming in and wanting to do something maybe a little outside the lines and we work really hard at finding a way for them to do something that the people that live around these projects really thought was not going to happen. She thinks that is a shame and she really hopes that we could all step back and think about the expectations of the people who live here because people who come here want the same kind of life that those of us who do live here have. She thinks if we don't honor the promise that we have made, that we are in trouble in the long run. So she hopes that we could all step back and think about what people expect from all of us.

Don Spivey, before concluding, he wanted to comment that the housing study just getting underway involving the City, the Chamber, and other interested parties, will go a long way towards helping all of us understand the true nature of Whitefish's housing needs and should also be helpful as regulation changes are considered in support of helping to satisfy those needs. This evening, many and varied reasons have been heard about why they as citizens support a rewrite of the WPUD regulations. It is the same recommendation they made on February 19, 2015, which the Planning Board supported at that time. This evening we have heard even more reasons why that is needed and they hope the Planning Board would again choose to support one of the following recommendations:

1. Forward to Council a recommendation that they direct staff to initiate the process of rewriting the entire WPUD Regulations and at the same time issue a moratorium on any further PUD activity until that rewrite is completed. OR
2. Forward to Council a recommendation that they direct staff to initiate the process of rewriting the entire WPUD Regulations and at the same time issue a moratorium on the use of "blending"

until that rewrite is completed and there is a better understanding of the need for blending and how and where it is applicable in Whitefish. OR

3. Forward to Council a recommendation that Council direct staff to explicitly remove "blending" totally from the WPUD Regulations.

Anne Moran, 432 West 3rd Street in Whitefish, reviewed the blended zoning proposed language and will not repeat all of what has been said before, but she agrees with a good deal of it, particularly the points Mr. Tornow made. She has worked on any number of PUDs during her career representing developers and landowners and thinks often times as Ms. Fitzgerald said we start to think very hard about economic growth and who we are bringing in and she thinks that is critical and important. But it is also important to remember that our residential investors are huge drivers of that. Many people who invest in residential property invest more money than many of our commercial people do. Many people who invest in residential property are the ones who provide the funding for the development that the developers come in here to do. She knows because she used to do the analysis on that and that is where the money comes from. When we make those investments, we have chosen to invest in a zoned area because that provides protection and predictability to protect our investments. If the City is ambiguous in how it maintains the consistency on that over time, it threatens their investments. It is very important in a situation like this that there is not ambiguity in what is put forward and to adhere to actions on record so as not to create more conflict in the community. There will be longer meetings, more people turning out and thinking things are not going to be worked through the way they should be. The other thing that concerns her about this is that she sees a lot of exposure for the City in terms of spot zoning in how this lays out and as a taxpayer has had to pay for other damages and litigation that the City has lost in the past. She would prefer, as she is sure is the case with other taxpayers, not to have to pay for more conflicts. She appreciates the efforts the staff and Planning Board make but she hopes they will take a very close look at this because it has a lot of potentially unanticipated impacts.

MOTION / BOARD DISCUSSION

Melissa moved to deny the current proposed Code amendment WZTA 15-01 at this time in order to open conversation. Rebecca seconded the motion. Melissa said one of the difficulties she is having with the public comments around this issue is there seems to be a lot of language that feels like jabs at our City staff and it actually makes it difficult to really listen and to really hear the issues that are so well thought out and so important. She finds herself feeling really protective of the City staff

instead of hearing what the public is saying and it makes it harder for her to really pay as much attention to what is being said even though what is being said is really, really important. She is a homeowner and she hears what is being said, but she trusts our staff and she has seen the work they put into it as someone who has gone through this process. She trusts that they have the City's best intention in mind. She asked that a lot of the underhanded comments be removed from the process because this is a really complicated one. She thinks a steering committee is probably in order and she hopes the environment for more supportive and efficient communication exists. She appreciated the opposing comments that were done with respect.

Rebecca agrees that the staff is really wonderful and we are fortunate with all the people that work for our City. She just thinks sometimes we do not realize that we have grown into a more sophisticated city than we thought we were. Every once in a while if there is a lot of public angst it is worth doing a deeper look at our policies, especially when we are eroding public trust of our public process.

John asked Richard if he has any sense that City Council is aware of the concerns from citizens about the current WPUD chapter and whether there is any inclination on the City Council's part for a review and rewrite of this. Richard said he cannot speak for the Council but knows the Council is anticipating some kind of resolution, or certainly at least some direction from this Board. He thinks Council is open to whatever this Board recommends and will then act appropriately. He does not agree with Rebecca that there is an erosion of public trust. He thinks the fact that we are all sitting together in this room having civil discourse and dialogue is a celebration of the democratic process. Before a vote takes place, he would like a restatement of the motion so it is very clear to everyone what is being voted on. Chairman Meckel said the way he understands the motion is that this is a larger issue than it appears in the writing. If you look at the scope of what is actually being proposed, which is simply to define the density calculations in the current PUD, and we can discuss the broader issue later, but for now the question before us is the definition of how the areas in the densities are calculated in the current PUD and he wants everyone to remember that that is the one thing we are looking at now.

Melissa asked to rescind her motion but Rebecca (as second) did not agree. Chairman Meckel said it is important for everyone to understand that right now the process we are in is that we are addressing each other on the Board, so we are having a discussion about the question before us. Melissa asked whether approving this means that we do not have

an opportunity to then start to address the bigger issue which is some of the conflicting language in the PUD. Chairman Meckel said in his opinion we can address the language in the PUC, but the question before us is the area calculation within the current PUD.

Rebecca asked if we approve what is presented does that close the discussion? Chairman Meckel said he did not think so, that we could address the PUD issue. Taylor said it is obvious that all of our Code has sections that are not perfect. They have worked and we have been able to utilize them over the years, but we are constantly doing minor, and sometimes major, updates. A lot of it just depends on the workload and how big a project is. We could rewrite the whole chapter and come up with a completely different way of looking at it, but that is a pretty involved process. Just like if we were going to do the same thing to our Sign Code or areas of the Code. They see a lot of PUDs and there is a lot they seem to work fine but obviously there is some interest in improving it. But forwarding this to the Council as it is written or with a couple of minor changes does not preclude us from wanting to look at the WPUD chapter and refine it and possibly rewrite the whole thing if that is what the Council wants to have done. Chairman Meckel said he thought the Planning Board can offer amendments to what we are looking at. If we approve this, we can approve it with amendments, including recommendations, to the Council.

Richard reiterated his request because he is hearing two different things and he does not think the motion is the same as what Chairman Meckel restated. He thinks we have a motion on the table with a second and would like to have that restated so he is really aware and comfortable with what he is going to vote on. Then we can go back to what Chairman Meckel was just saying or we can go back to February 19, 2015. He does not know where it is going to go but he wants to have a good, clear statement. Chairman Meckel asked Melissa if her motion is to deny the area calculations. Melissa reiterated her motion that is on the table which she is not going to rescind because there is a second already attached to it is to deny the current proposed Code amendment WZTC 15-01 at this time in order to open up conversation. Chairman Meckel reiterated it is a motion to deny the revised amendment to clarify the allowed density where a PUD overlays multiple underlying zones as presented.

Melissa added that Mr. Hildner did clarify that that was an issue and she was mistaken in what she was denying. Chairman Meckel said it is to deny the density calculation as presented to us.

VOTE

The motion to deny the area calculation passed with Melissa, Rebecca, Jim and Richard voting in favor, and Chairman Meckel and John voting in opposition.

MOTION / BOARD DISCUSSION

Rebecca made a motion that we forward to Council a rewrite of the entire PUD chapter and a moratorium on blending until that is finished. John seconded.

John said as he said a year ago, the PUD chapter needs to be rewritten and it has been another year and he would urge the members of this Board to vote in favor of forwarding this matter to the City Council to direct staff to do it or say they are satisfied with what we have. Chairman Meckel said he wants the Council to know that a lot of the issue that was presented tonight is the different blending of zoning. Some people look at it as spot zoning and it is more than just density, if he understands this right it opens the barn door, as to say, for taking very unlike zones and blending them and creating basically, as the public sees it, a new zoning. That to him is a big concern with the issue we are looking at right now, so he would really like the City Council to understand that that is the issue that we are really looking at - taking extremely different zones and melding them together.

Rebecca said the other part that people have spoken about is that the public that is already invested in Whitefish does not always feel like they are included in the impact on their own investment. They can actually have a lot of devaluation of their property if they are not included in the final outcome. She thinks there must be something out there that works for both sides and maybe we can improve on what we have. We have a lot of citizens who are willing to participate in a committee if the Council decides to do that. People have researched things quite extensively already and that might keep us out of further lawsuits as well.

Richard would like to simplify it a little bit. He thinks Chairman Meckel's points are well taken, but based on the information received in the packet and again tonight from a variety of sources, this goes back to February 19, 2015, where this Board directed the Planning Department to rewrite the PUD section of the zone and he thinks we are cycling back to that – that the Motion speaks to that.

Rebecca said she knows it is a lot of work for the staff but she thinks if it was not such a big issue for our community we would not keep seeing the amount of turnout we have seen and so much investment, so she thinks it is worth our investment to do this for the public, as well as our

own collective future. She is sorry to put more work on the staff, but thanked them.

As requested, the motion was reread, "Rebecca made a motion that we forward to Council a rewrite of the entire PUD chapter and a moratorium on blending until that is finished."

VOTE

The motion passed unanimously. The matter is scheduled to go before the Council on February 1, 2016.

BREAK
8:05 to 8:15 pm

Break.

PUBLIC HEARING 3: AMENDMENT OF WHITEFISH CITY CODE TITLES 11, 12, 13 AND 14 ZONING, SUBDIVISION, LAKE AND LAKESHORE PROTECTION REGULATIONS, AND FLOOD CONTROL
8:20 pm

A request by the City of Whitefish for a variety of housekeeping amendments in §11-2-3B(5) and §11-2L-4, building height; change the term 'servant' to 'domestic worker' in the list of Permitted Uses in §11-2A-2, Agricultural District, §11-2B-2, Country Residential District, §11-2C-2, Suburban Residential District, §11-2D-2, Estate Residential District, §11-2E-2, One-Family Limited Residential District, §11-2F-2, One-Family Residential District, §11-2G-2, Two-Family Residential District, §11-2H-2, Low-Density Multi-Family Residential District, §11-2I-2, High Density Multi-Family Residential District, §11-2L-2, General Business District, §11-2N-2, Low Density Resort Residential District, §11-2O-2, Medium Density Resort Residential District, §11-2P-2, Limited Resort Business District, §11-2Q-2, General Resort Business District; §11-9-2, definitions add 'domestic worker' and 'building footprint;' add new subsections §11-1-4, General Zoning Provisions, §12-1-4, General Provisions, §13-1-6, General Lake and Lakeshore Protection Provisions, §14-1-7, General Floodplain Regulations to add a burden of proof standard; §12-3-7A, Preliminary Plat Review Process; Minor Subdivisions, Waiver of Preliminary Plat, review criterion.

STAFF REPORT WZTA 16-01 (Compton-Ring)

Senior Planner Compton-Ring reviewed her staff report and findings, which included five (5) different housekeeping text amendments.

Staff recommended adoption of the findings of fact within staff report WZTA 16-01 and for **approval** to the Whitefish City Council.

BOARD QUESTIONS OF STAFF

John asked about the fourth amendment concerning height limitations. He understands what a "chimney" is, but what about a "tank"? What if the brewery downtown wanted to put a 20' high tank on top of their building to hold grain, does this allow them to do that? Compton-Ring replied she was not sure what a "tank" is, and John said he did not know either. John asked what if someone downtown wanted to take a building that is currently within the height limitations and put a big gold

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dome on it that goes up 20'. Does this allow them to do that? Compton-Ring said she thought that and domes, belfries, spires, etc., might be for churches. John said his problem is he thinks it is so vague that someone can make pretty much anything fit. Compton-Ring said they are not proposing to add or change anything, but they just want to see equipment screened.

Richard said the current Code allows for tanks, so we are not adding anything and asked if tanks would have to meet the building height restrictions and now the screening. Compton-Ring said these are the things that are **exempt** from building height, and "tank" is one of them. She said it is probably a throwback from something long ago, and the Planning Board could certainly vote to take it out. She pointed out that no one has ever asked for that, though.

APPLICANT / AGENCIES

None.

PUBLIC COMMENT

Rhonda Fitzgerald, 412 Lupfer Avenue in Whitefish, suggested the Planning Board could cross out all those things in §11-2-3B(5) that no longer fit. She said the whole Zoning document needs a rewrite, parts of it are over 30 years old. Parts of it were cut and pasted from other communities and the idea was that at some point someone would go in and say, "What's a tank", and she thinks it is awesome that John brought it up. She suggested they just cross certain things out.

Mayre Flowers, 35 4th Street West in Kalispell, appreciates these are important areas to clean up and would second what Ms. Fitzgerald just said to take the time right now to also clean up terms that are not applicable and in current use. She appreciated the fact that "servant" has been removed but wonders if "domestic worker" is the best term. She had no other suggestion. She also thinks clarifying the responsibility for the burden of proof is a very important clarification to make and she encourages and appreciates those efforts.

MOTION / BOARD DISCUSSION

Rebecca moved to accept the proposed Code amendments to Titles 11, 12, 13 and 14 contained in staff report WZC 16-01, with one correction to remove "tanks" from Page 11 under 11-2-3B(5), Use Regulations. Melissa seconded.

Richard offered a friendly amendment to include in the exclusions "fire and hose towers" and "monuments". He is not sure what is meant by "aerials", but he is concerned that if we keep that, we could be into cellphone towers. Taylor said "aerial" could include "antennae", and

City Hall and the Fire Department have antennas that exceed the height limitation because it is exempt. Chairman Meckel asked if "aerials" will be a problem and Richard said he wanted to leave "aerials" in. Jim seconded the amendment.

John urged the Board to delete the whole section, not just pick items that seem bad tonight. Take "masts", for example. What if someone wanted to put a mast on their building that has sails on it and a big pirate flag on top of it? This would approve them doing that. He urged the Board to strike the fourth amendment in its entirety and let the Planning staff review it.

Richard withdrew his friendly amendment and Jim withdrew his second.

Now we are just back to voting on "tanks". Rebecca withdrew her motion and Melissa withdrew her second.

MOTION / BOARD DISCUSSION

John made a motion to approve staff report WZTA 16-01, but limit it to Sections 1, 2, 3 and 5 only, along with its review, findings of fact and recommendations. Rebecca seconded.

Compton-Ring said the reason this text amendment was added is because we had a project, but no application yet, come in, where they were looking at a way, kind of an end run around, to add more building height and they said it was "screening" the rooftop air conditioning equipment. Instead of just tightly screening the equipment so it was blocked from view, it was 8' tall and 50' long, so Planning staff wanted to make sure that is not considered acceptable equipment screening. The Architectural Standards say you have to screen it, but you cannot come in and add height under the guise of equipment screening. They felt it was sort of a loophole or gap in zoning so that is why they wanted to add it in there. They also had an instance with a building downtown that felt that elevators could go above the building height because they are clearly exempt in this section, but the WB-3 has different standards so that is why they added the last section. If someone is building in the downtown, they will know they also need to look at the specific criteria. They are trying to close some loopholes, so that is why this is before the Planning Board.

Rebecca asked just to clarify, right now we are voting on eliminating this whole section but accepting everything else.

Richard said sees a danger in eliminating this section as he feels it is fraught with danger, and others agreed. He felt the Planning Board was

at risk of doing something in haste. He asked for suggestions from Planning staff.

Compton-Ring said they could go through these terms and define them for the Council when this comes before the Council. Or they could do it and bring it back to the Planning Board. Melissa would like to table it until next month because she would like to see a definition of a "mast". Rebecca thinks the Council could probably go through the definitions and make that decision rather than holding it up for another month.

Richard wanted to be sure that if we vote against this then we can come back around and take another look at it. Chairman Meckel said what he thinks is that John wrapped an amendment to the motion, to eliminate this paragraph.

VOTE

The motion failed with John voting in favor, and Melissa, Chairman Meckel, Rebecca, Jim and Richard voting in opposition.

MOTION / BOARD DISCUSSION

Rebecca made a motion to accept staff report WZTA 16-01 with a requirement to include definitions of the language under the amendment to Section 11-2-3B(5) starting at "chimneys" and ending at "rooftop equipment" for the Council to review. Jim seconded.

VOTE

The motion passed five to one, with Melissa, Chairman Meckel, Rebecca, Richard and Jim voting in favor, and John voting in opposition. The matter is scheduled to go before the Council on February 1, 2016.

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PROPOSED CODE AMENDMENTS
PUD AVERAGE DENSITY CLARIFICATION
STAFF REPORT #WZTA-15-01
FEBRUARY 1, 2016

This is a report to the Whitefish City Planning Board and the Whitefish City Council regarding a request by the City of Whitefish to amend Section 11-2S-3, WPUD, Planned Unit Development District, Standards of Development, to clarify maximum average density where a PUD overlays more than one underlying zone.

A public hearing is scheduled before the Whitefish City Planning Board on January 21, 2016 and a subsequent hearing is set before the City Council on February 1, 2016. Draft regulations are below for Board review and action.

BACKGROUND INFORMATION

These amendments address Section 11-2S-3 of the zoning code, WPUD Planned Unit Development District, Standards of Development, to clarify how density is calculated when the PUD overlay spans multiple underlying zoning districts. The majority of previous PUD's approved over multiple underlying zones have some form of density averaging to determine the maximum allowed density. Each zoning district is assigned a maximum density, so where a PUD spans multiple districts, those densities are averaged based on the area of each district. Although it was never an issue in the past, recently the lack of specificity regarding how density is calculated within the code has been challenged by opponents to these types of developments. At the suggestion of the legal department, staff has drafted amendments to address this topic. We considered expanding our review of the PUD chapter, but decided for now to just focus on the item that needs clarification.

While the Planning Board at the initial public hearing on this amendment on January 19, 2015 postponed action and directed staff to pursue a major revision of the PUD chapter, at a subsequent work session on June 18, 2015, the Planning Board directed staff to just pursue a "quick fix" amendment with minor changes to the text originally reviewed on January 19, 2015, and to look at doing a major revision at a later time.

According to Section 11-2S-1, the intent and purpose of the WPUD overlay is to provide a mechanism to allow a developer the flexibility to respond to the environmental characteristics of a site, neighborhood character, and community housing demands. A developer gets increased flexibility and the opportunity to vary standards of the underlying zone, and the city gets some

community benefit such as increased critical area buffering, trails, affordable housing, infill, transportation network improvements, street construction, etc.

The PUD chapter does not specifically address how density is calculated where there are multiple underlying zones. However, it is inferred in the intent of PUD's, as they are a 'planned unit', an overlay zone that encompasses an entire site with one set of unified applicable development requirements, superseding the boundaries underlying zoning and providing one set of development standards. The definition of PUD in the code states it is land 'developed as an integrated unit'. Therefore having different standards for different areas of a PUD site would be contrary to the very nature of a PUD overlay.

Here is a sampling of PUD's approved over the past nine years that span multiple underlying zones and mix density and uses:

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 equally across the project, avoiding steep topography and environmentally sensitive areas.

93 LLC: a 69 unit project on 23.16 acres of which 0.27 acres is WSR (1 unit maximum) and 17.89 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.

High Point on 2nd: A 62 unit project on 23.8 acres of which 6.9 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 and back ½ WLR). The commercial PUD expanded the commercial uses to the residentially zoned portion of the lot.

A PUD gives the governing body flexibility to accommodate good development that responds appropriately to environmental constraints and other characteristics of the site. With the flexibility of density averaging, many approved projects have successfully moved higher density development away from critical areas such as streams or wetlands to more level, less impactful areas of a site. This flexibility also helps provide a variety of residential products types across a development site, which PUD's call for. It also provides more opportunities for affordable housing types.

A section within the PUD chapter that been challenged by opponents of density blending is Section 11-2S-5-B. It states that density standards established in 11-2S-3-B may not be deviated from with a PUD. Blending densities from two zoning districts within the overlay has never been considered a deviation of density since it is averaged across a site and maximum density allowed for the entire project is never exceeded. Additionally, it was brought up that Section 11-2-2-C prohibits density averaging. That Section refers to situations where one lot is divided by two zoning districts, and states: "..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 zones." That objection fails to recognize that a PUD overlay rezones a property into one unified zoning district, negating underlying zoning boundaries.

In approved projects where density was blended, the final density was basically an average of the maximum density between the two underlying zoning districts factored by the area of each. For example, if one part of the PUD had two acres of WB-2, which allows 20 dwelling units per acre with affordable housing, and one acre of WLR, which allows 5 units per acre, the total 3 acre site would qualify for a maximum of 45 units across the entire site. The final maximum density would be 15 dwelling units/acre with an affordable housing component. For clarities sake, we are proposing to add that formula to the code so it is clear how maximum density is calculated.

We are proposing to add the following formula: (maximum density zone A multiplied by acreage of zone A) plus (maximum density of zone B multiplied by acreage of zone B) divided by (total combined acreage of PUD).

We had an alternative suggestion that we simplify the formula and state that the maximum allowable density should just be the arithmetic average between the two underlying districts, but that would not factor in the size of each district. Using that method, just a small slice of higher density would increase density dramatically over a whole project. In a "mean" density scenario, one acre of WB-2 (20 units/acre) and ten of WLR (5 units/acre) would allow 12.5 units per acre over the site (with affordable housing), or 137 units. Using the staff proposed formula in the paragraph above, that same 11 acre example would yield 6.36 units per acre, or 70 total units (nearly half the other example), since it is weighted by acreage.

Also, it was suggested in early 2015 during public comment when the Planning Board reviewed an initial draft of these amendments that we develop categories of PUD use (Residential, Commercial, Mixed Use, etc.). Our PUD chapter divides it into two, either Residential or Non-Residential, without respect to the underlying zoning. You can create a residential PUD entirely in commercial zoning (in fact, that is the only way you can do residential development in the

WB-2 zoning district, which is the primary area where we have land available for affordable housing). That inherent flexibility provides many advantages both for the city and for developers. It must be noted that with a residential PUD, commercial uses are limited to no more than 10% of the gross area of the district (15% with affordable housing), and they "must be compatible with and complimentary to existing and proposed uses in the area". While adding a "mixed use" PUD type might give some advantages, it might also create more issues and potential conflicts with adjacent property owners, as lines between commercial and residential would be further blurred. So far there has not been a demand for mixed use PUD's, and there are not very many areas where such things might be appropriate since our town is so small. We chose to leave those categories as they are and focus on the primary item of confusion, how density is averaged.

RECOMMENDED CODE AMENDMENTS

11-2S-3 STANDARDS OF DEVELOPMENT

B.

1. *Maximum Average Density: In order to allow greater development flexibility to achieve the purpose and intent outlined in 11-2S-1, when a proposed PUD overlay site is subject to more than one underlying zoning district, density averaging shall determine the maximum allowable density. Maximum average density per acre is calculated as follows: (maximum density zoning district A multiplied by acreage of zoning district A) + (maximum density of zoning district B multiplied by acreage of zoning district B) divided by (total combined acreage of property within proposed PUD boundary). While clustering is encouraged, residential units may be distributed within a PUD without regard to the precise boundary lines of the underlying zoning. In no case shall a PUD allow more units to be approved than the maximum average density.*

2~~1~~. Cash-in-Lieu Dedication: For PUD subdivisions incorporating the affordable housing standards of this article, the developer shall have the option of providing lots or housing units on site or providing a cash in lieu of affordable housing dedication. The cash in lieu figure shall be reassessed annually, and may be adjusted from time to time by resolution of the Whitefish city council.

3~~2~~.Land In Lieu Dedication: For subdivisions greater than nine (9) lots, the developer may have the option of land in lieu of affordable housing units subject to acceptance by the city council. The land may be on or off site. The land in lieu payment per unit shall be made on a case by case basis. Land dedications shall meet the following standards:

Land dedication must be suitable from the perspective of size, configuration,

physical characteristics, physical and environmental constraints, legal access, location, adjacent use, zoning classification, and other relevant planning criteria.

Any fraction of a dwelling unit shall be rounded off to the nearest whole number. In computing residential density, areas of commercial uses will be subtracted before the density is computed

11-2S-5

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. Where the PUD overlay includes more than one underlying zoning district, maximum average density cannot be exceeded (see 11-2S-3-B-1);

REVIEW OF ZONING TEXT AMENDMENT REQUIREMENTS

The following considerations from Section 11-7-10(E) are required to be addressed in order to guide both the Planning Board and the City Council when considering an amendment to the zoning regulations or the official map:

CONSIDERATIONS FROM SECTION 11-7-10E.	Staff Analysis/Comments
Conformity to the Growth Policy	The 2007 Whitefish City-County Growth Policy Future Land Use Goal 5 states: Protect and preserve the special character, scale, and qualities of existing neighborhoods while supporting and encouraging attractive, well-designed, neighborhood compatible infill development. PUD's allow the city council input into all of those things, giving developers flexibility. The amendment also encourages clustering, a goal set by the Growth Policy.
Project Designed to Lessen Congestion in the Streets	Not applicable.
Historical and established use patterns and recent change in use trends weighed equally, not one to the exclusion of the other.	This amendment supports historic code interpretations and use patterns.
Security from Fire, Panic, and Disasters	Not applicable.
Promote Health and General Welfare	Health and general welfare are subjective, but the amendment continues to promote PUD's, which is the cities only mechanism to encourage affordable housing for the general welfare of the community.
Provide Adequate Light and Air	This criterion is not applicable to this code amendment.

CONSIDERATIONS FROM SECTION 11-7-10E.	Staff Analysis/Comments
Prevent Overcrowding of Land and Avoid Undue Concentration of People	Clustering is encouraged, and with careful site review, stipulations for approval, and other existing regulations, overcrowding of land and undue concentration of people can be mitigated. This amendment clarifies how development density can be appropriately spread across a planned unit development site.
Facilitate Adequate Provisions for Transportation, Water, Sewerage, Schools, Parks and Other Public Requirement	Not applicable to this amendment
Reasonable Consideration to the Character of the District	Each PUD is reviewed on a case by case basis, and neighborhood character and compatibility is critical to approval of them.
Reasonable Consideration to the Peculiar Suitability of the Property for Particular Uses	Since each use will be reviewed on a case-by-case basis and given conditional approval, each site can be reviewed individually for suitability.
Conserve the Value of Buildings	Not applicable.
Encourage the Most Appropriate Use of the Land throughout the Municipality	Allowing the council more flexibility allows them to decide on appropriate land uses proposed with a PUD

FINDINGS:

1. Whereas the city council has approved numerous PUD's that included the averaging of density across multiple underlying zoning districts; and

2. Whereas questions have arisen about the PUD chapter and lack of clarity on the issue of boundaries spanning multiple underlying zones; and

3. Whereas adding the proposed amendment clarifies the issue and establishes a formula for density averaging;

4. We find that it is in the best interest of the City of Whitefish to amend Section 11-2S-3 of the zoning code to clarify density averaging.

RECOMMENDATION

Staff recommends that the Whitefish City Planning Board ***approve*** recommended code changes set forth in this staff report, subject to the above findings, and transmit same to the Whitefish City Council for further action.

Exhibit C

January 20, 2016

Mr. David Taylor
City of Whitefish, Planning and Building Director
1005 Baker Avenue
Whitefish, MT 59937

Re: Density Averaging in a Planned Unit Development (PUD)
January 2016 Planning Board Agenda Item

Dear Dave:

Please provide copies of our attached letter supporting density averaging within a PUD to the Whitefish Planning Board for this Thursday's, January 21, meeting.

Thank you.

Sincerely,

Bruce Boody

Bruce Boody
Principal, Bruce Boody Landscape Architect Inc.

301 Second Street
Suite 1b
Whitefish, MT
59937

phone 406 862-4755
fax 406 862-9755

JAN 20 2016

BRUCE BOODY Landscape Architect Inc.

January 20, 2016

Mr. Ken Meckel, Chair
Whitefish Planning Board
1005 Baker Avenue
Whitefish, MT 59937

Re: Density Averaging in a Planned Unit Development (PUD)
January 2016 Planning Board Agenda Item

Chairman Meckel and Members of the Planning Board:

We are writing to express our opinion regarding the above-referenced agenda item. For the reasons enumerated herein we urge the Board to recommend to the City Council that *only clarification changes* be made to the PUD district standards, and that the established policy of allowing density averaging within a PUD that contains more than one underlying zoning district to continue.

The stated intent and purpose of the Planned Unit Development district is, in part, to "provide a mechanism to allow the developer and design professionals the flexibility to respond to the environmental characteristics of a site, character of the surrounding neighborhood, and changing market demands and housing needs of the Whitefish community." Developers using the flexibility afforded by the PUD district are in turn required to design and produce a development that provides benefits to the immediate neighborhood as well as to the Whitefish community as a whole. The holistic approach to site planning which characterizes a PUD takes into account factors and conditions both on and off of the development site, and results in a better product for the community than a typical subdivision. Among the benefits that are encouraged and can be realized through the PUD process are the following:

- Preservation and/or enhancement of environmentally sensitive areas of the site.
- Preservation of crucial wildlife habitat and/or daily or seasonal migration corridors.
- Provision of usable open space.
- Preservation and protection of the character and qualities of existing neighborhoods.
- Making efficient use of infill property.
- Providing effective buffers or transitions between potentially incompatible uses of land.
- Facilitating street continuity and connectivity, and attractive high quality streetscapes.
- Providing pedestrian and bicycle facilities and encouraging transportation alternatives.
- Providing affordable housing.
- Providing a variety of residential product types while avoiding a monotonous and institutional appearance.
- Compliance with and/or implementation of the growth policy.

Allowing density averaging, as has been the practice within the Whitefish jurisdiction since the adoption of the Planned Unit Development District standards, is one tool used by developers to provide community benefits.

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Specifically, density averaging can assist in making efficient use of infill property, provide usable open space, provide effective buffers or transitions between potentially incompatible land uses, preserve and protect the character and qualities of existing neighborhoods and provide affordable housing – all in a manner compliant with the city's growth policy.

The use of density averaging and locating appropriate residential density in appropriate locations within a PUD is one way to mitigate potential impacts to adjacent properties. Where potential conflicts arise with adjacent properties it is required that the PUD developer address/mitigate those conflicts through means such as landscape buffering and/or building location, size, height and use. One of the strengths of the PUD process over a typical subdivision is the authority the governing bodies have to require such mitigation. If the threshold of providing community benefit is not met and the developer fails to adequately address potential conflict with adjacent properties, the application can be denied by the city council - or they can require modifications to the PUD plan to ensure mitigation of potential conflicts. Density averaging and locating appropriate residential density in appropriate locations within a PUD is a valuable tool used to mitigate potential impacts to adjacent properties.

Individuals and groups that oppose density averaging within a PUD have pointed to Section 11-2S-5(B)(1) of the code, which states that "density standards *as set forth in this chapter*" may not be deviated from through the PUD (emphasis added). The "density standards" referred to can be found in Section 11-2S-3(B) of the PUD chapter of the code. We would argue that an averaging of densities is **not** a deviation from the standards set forth in the PUD district if the overall density of the PUD does not exceed the standards set forth in 11-2S-3(B). If, for instance, a PUD is sought on a ten-acre piece of property that is equally split by two separate underlying zoning districts (WR-1 and WB-1 for example), as long as the *overall* density of the PUD does not exceed the cumulative density allowed by the two underlying districts (20 units in WR-1 and 65 units in WB-1), then no deviation has occurred. The PUD overlay, and its holistic approach to site planning and development, allows a developer to distribute the allowable density throughout the site in a manner that is respectful of the site and least impactful to adjacent properties, all while providing numerous community benefits.

Further supporting this contention is the fact that Section 11-2S-5(B)(2), which addresses deviations from general categories of use within a PUD, includes very specific language relative to the zoning districts underlying a PUD. No such reference to underlying zoning districts is included in Section 11-2S-5(B)(1).

Opponents of density averaging would be hard-pressed to identify PUDs that have used this approach and that are problematic as a result. On the other hand, there are many examples of PUDs in and around the Whitefish community which have used density averaging to good effect. It doesn't make sense to fix something that is not only not broken, but which serves a beneficial purpose to the community. With affordable housing at or near the top of public priorities in Whitefish, the density averaging within a PUD is also one of the few tools available to developers to provide such housing. We urge you to leave the PUD District standards in place.

Sincerely,

Bruce Boody
Principal, Bruce Boody Landscape Architect Inc.

Brian Wood
Land-use Planner

SANDS SURVEYING, INC.
2 Village Loop Road
Kalispell, MT 59901
406-755-6481
Fax 406-755-6488

January 18, 2016

Mr. Ken Meckel, Chair
Whitefish Planning Board
1005 Baker Avenue
Whitefish, MT 59937

Re: Averaged Maximum Densities in a Planned Unit Development (PUD)
January, 2016 Planning Board Agenda Item

Chairman Meckel and members of the Planning Board:

I am writing in support of Planning Staff recommendation and the clarification that continues to allow PUD's to average the maximum density when a property contains more than one zoning classification. The practice of blending densities is long standing in Flathead County and promotes the intent of PUD's which is to provide flexibility in exchange for a high standard of design and creativity.

A recent example of blending that was supported by the community is the High Point on Second Street project. This property has two residential zoning classifications and by looking at the 24 acre site as a whole rather than following a somewhat arbitrary zoning boundary, the City was able to approve a subdivision that creates a neighborhood with appealing design elements while preserving a significant amount of creek frontage for a public park.

The Viking Creek Subdivision is another example where two Resort Business zoning designations were averaged to create a lodging use, a residential subdivision, and a 39 acre public open space amenity. The Viking Creek PUD/subdivision utilized the vegetation, soil characteristics, and neighboring land uses to derive a design as opposed to the hard lines of zoning to create the project. The Viking Creek development was largely supported by the community

The Iron Horse PUD is made up of WRR-1, WRB-1, WSR, and WLR zoning classifications. The City, through the PUD process, allowed the densities to average and work around the golf course amenity. Lots in locations with sensitive environmental feature are less dense and lots in areas with few environmental constraints have a higher density. Iron Horse is now almost twenty years old and is a successful neighborhood.

As the City of Whitefish continues to develop and infill, there are fewer large parcels with uniform zoning available for subdivision. Developers, in most cases, must assemble multiple properties to create a land holding large enough to develop economically. In many cases these assembled properties will have different zoning classification. The PUD land use tool allows the developer and the City an opportunity

to look at the land and the neighborhood in determining the unit type and density mix.

Complete separation of use is becoming an outdated zoning model. Just as the Downtown Whitefish Master Plan supports the inclusion of residential housing in the commercial downtown in order to provide walkable communities and economic boost to local businesses; land use planning literature is now promoting the mixing of densities and residential product types to diversify neighborhoods.

Opponents of density averaging appear to be worried about one particular multi-family residential project that they feel got to close to their neighborhood. These persons are now trying to persuade the City that all of these previously approved projects are somehow bad and violate the intent of the PUD. I strongly disagree with those opposed, and as shown in the examples provided here, believe that using the PUD to blend zoning can create unique and beautiful developments for the citizens of Whitefish to live. Please continue to allow the density averaging of zoning districts within a PUD.

Sincerely;

Eric H. Mulcahy, AICP
Sands Surveying, Inc.

To: Whitefish City Council Members

Re: Proposal by Planning Director to add language re: blended density to the PUD Section of the City Code

I am writing to oppose the concept of blended density which the City's Planning Director supports and is proposing be added to the City Code.

I have always been impressed by the values of Whitefish. That along with the town's natural beauty and inherent charm are what drew me here. The City Council has gone a long way toward defining these values by creating a City Code, and institutionalizing practices which consistently demonstrate respect for its citizens.

Whether in terms of extending the pedestrian/bike path along the Whitefish River or lengthening streets as anticipated in Whitefish's Transportation Plan, the City has generally chosen not to move forward until permission is granted from property owners whose land would be crossed, or until new development is proposed for the land parcel.

Nevertheless, the blended density proposal which the City Council is being asked to approve, would invite developers to, in effect, rezone lots which have more than 1 zoning designation to whichever one suits their objectives, irrespective of the impact it would have on neighboring homeowners. How is this consistent with the respect shown for homeowners in other city policies??

Please continue your practice of treating homeowners with respect and fairness, and if, in fact, there is a reason to consider making a zoning change other than to assist a developer in maximizing his financial return, let's rely on the existing re-zoning process as a means to work through the issue.

Accordingly, please do not pass the proposed blended density proposal. Rather, I hope that you support the recommendation of the Planning Board that there be a re-write of the entire WPUD Regulation which would include a thorough review of blended density, and while that process is ongoing, there be a moratorium on its use.

Respectfully,

Gary Seubert

Gary Seubert

703 Clearwater Dr.

Whitefish, MT

Dave Taylor

From: Necile Lorang <nlorang@cityofwhitefish.org>
Sent: Monday, January 25, 2016 10:59 AM
To: David Taylor; cstearns@cityofwhitefish.org
Subject: Fwd: Blended density to the PUD Section of the City Code

-------- Forwarded Message --------
Subject: Blended density to the PUD Section of the City Code
Date: Mon, 25 Jan 2016 09:50:05 -0800
From:bootjack2@centurytel.net <bootjack2@centurytel.net>
To:nlorang@cityofwhitefish.org

To: Whitefish City Council Members
Re: Proposal by Planning Director to add language re: blended density to the PUD Section of the City Code

I am writing to oppose the concept of blended density which the City's Planning Director supports and is proposing be added to the City Code.

I recently purchased and had built a lovely home at Rivers Edge, a 48 unit patio home/river lot community. Having recently lost my husband of 42 years, I desired a smaller, safer home, close to town with easy access to shopping and city events. I fell in love with the tranquility, the pristine environment, and the community of kind, gentle folk who are my neighbors. My decision to build there was predicated as well on the understanding that the 6 acres of greenspace adjoining our development to the south, was zoned for single family homes. However, I have subsequently learned that, at the suggestion of the City's Planning Director, the developer of that property intended to use the blended density concept to spread the high density attributable to the 3.5 acres of commercial property along Highway 93, back across the 6 acres as well, which represents an effective re-zoning. In addition, it represents a threat to the very reasons I chose to build in Rivers Edge.

It seems to me that making legal a zoning mechanism which invites developers to override existing zoning to their benefit may very well be detrimental to neighboring homeowners. Furthermore, why would the developer not be required to undergo the formal rezoning process already in place? Isn't that intended to provide homeowners due process when zoning changes are proposed. By short-circuiting the re-zoning process, my rights are being violated by not having an opportunity to defend my life style and the value of my home before a change is made.

Please do not pass the proposed change to the City Code which benefits developers at the expense of homeowners. Rather, please support the recommendations of the Planning Board that there be a re-write of the

entire WPUD Regulation which would include a thorough review of blended density, and while that process is ongoing, there be a moratorium on its use.

I appreciate very much your reconsideration of this override in view of the ramifications it may present to our community.

Sincerely,
Billie Bartlett

Sent from my iPad

Dave Taylor

From: Necile Lorang <nlorang@cityofwhitefish.org>
Sent: Monday, January 25, 2016 11:00 AM
To: David Taylor; cstearns@cityofwhitefish.org
Subject: Fwd: Letter to Council

-------- Forwarded Message --------
Subject: Letter to Council
Date: Mon, 25 Jan 2016 10:44:44 -0700
From: Brenda Berube <brendamberube@gmail.com>
To:nlorang@cityofwhitefish.org

Whitefish City Clerk;

Please forward the letter below to Whitefish City Council for their meeting next Monday. I am unable to attend the meeting in person; however I would like my opposition to this proposed blended density plan expressed, as we are residents who will be directly affected by this proposed change.

Thank you,

Dan & Brenda Berube

To: Whitefish City Council Members

Re: Proposal by Planning Director to add language re: blended density to the PUD Section of the City Code

I am writing to oppose the concept of blended density which the City's Planning Director supports and is proposing be added to the City Code.

I have always been impressed by the values of Whitefish. That along with the town's natural beauty and inherent charm are what drew our family here. The City Council has gone a long way toward defining these values by creating a City Code, and institutionalizing practices which consistently demonstrate respect for its citizens.

Whether in terms of extending the pedestrian/bike path along the Whitefish River or lengthening streets as anticipated in Whitefish's Transportation Plan, the City has generally chosen not to move forward until an agreement has been reached with property owners whose land would be crossed or directly affected, or until new development is proposed for the land parcel.

The blended density proposal which the City Council is being asked to approve, would invite developers to, in effect, rezone lots which have more than 1 zoning designation to whichever one suits their objectives, irrespective of the impact it would have on neighboring homeowners. How is this consistent with the respect shown for homeowners in other city policies? How can new home buyers rely on current zoning when they purchase their homes if the city will change it with no regard for them.

Please continue your practice of treating homeowners with respect and fairness, and if, in fact, there is a reason to consider making a zoning change other than to assist a developer in maximizing his financial return, let's rely on the existing re-zoning process as a means to work through the issue.

Accordingly, please do not pass the proposed blended density proposal. Rather, I hope that you support the recommendation of the Planning Board that there be a re-write of the entire WPUD Regulation which would include a thorough review of blended density, and while that process is ongoing, there be a moratorium on its use.

Respectfully,

Dan & Brenda Berube

11 Rock Creek Crt, Whitefish, MT

--
Brenda Berube

David and Mary Jochim
719 Clearwater Dr.
Whitefish, MT 59937

January 24, 2016

Attn: Members of the Whitefish City Council

Re: Proposed Amendment to add blended density to the PUD Section of the City Code

My wife Mary and I are writing to voice our strong opposition to the concept of Blended Density that has been proposed be added to the PUD Section of the Whitefish City Code.

We own property in Rivers Edge, a community immediately north of 6 acres of undeveloped land that is currently zoned as single-family. We recently learned of a proposed multi-family/ apartment development being proposed on this property, and understand that the City Planning Director has recommended the developer pursue a blended density approval to avoid having to go through a formal re-zoning process.

We bought our property in Rivers Edge because of its location and because it is sandwiched between existing single-family homes to our north and single-family zoning to our south. The City of Whitefish has historically treated homeowners with fairness and respect in land use issues. To allow this and future developers the option of using blended density to circumvent the City's open and transparent re-zone process is contrary to past City behavior. Further, it deprives existing and future property owners the opportunity of due process and creates a zoning mechanism wherein developers can pick and choose a zoning blend that maximizes their profits to the detriment of abutting properties. This proposal may have been made with the best of intentions, but it has the appearance of backdoor politics.

It is our understanding that the Planning Board has recommended a full re-write of the PUD Regulation, which would presumably include a review of blended density. We urge the City Council to support the Planning Board's recommendation, table any consideration of approving blended density, and disallow its use until there has been a full and transparent public process and the impacts of blended density have been fully vetted.

Sincerely,

David and Mary Jochim

To: Whitefish City Council Members

Re: Proposal by Planning Director to add language re: blended density to the PUD Section of the City Code

I am writing to oppose the concept of blended density which the City's Planning Director supports and is proposing be added to the City Code.

I have always been impressed by the values of Whitefish. That along with the town's natural beauty and inherent charm are what drew me here. The City Council has gone a long way toward defining these values by creating a City Code, and institutionalizing practices which consistently demonstrate respect for its citizens.

Whether in terms of extending the pedestrian/bike path along the Whitefish River or lengthening streets as anticipated in Whitefish's Transportation Plan, the City has generally chosen not to move forward until permission is granted from property owners whose land would be crossed, or until new development is proposed for the land parcel.

Nevertheless, the blended density proposal which the City Council is being asked to approve, would invite developers to, in effect, rezone lots which have more than 1 zoning designation to whichever one suits their objectives, irrespective of the impact it would have on neighboring homeowners. How is this consistent with the respect shown for homeowners in other city policies??

Please continue your practice of treating homeowners with respect and fairness, and if, in fact, there is a reason to consider making a zoning change other than to assist a developer in maximizing his financial return, let's rely on the existing re-zoning process as a means to work through the issue.

Accordingly, please do not pass the proposed blended density proposal. Rather, I hope that you support the recommendation of the Planning Board that there be a re-write of the entire WPUD Regulation which would include a thorough review of blended density, and while that process is ongoing, there be a moratorium on its use.

Respectfully,

Mike Mikkelson

7 Shore View Court

Whitefish, Montana

PO Box 771 ● 35 4th Street West
citizens@flatheadcitizens.org

Kalispell, Montana 59903
T: 406.756.8993 ● F: 406.756.8991

www.flatheadcitizens.org

To: Whitefish City Planning Board

Re: PROPOSED CODE AMENDMENTS PUD AVERAGE DENSITY CLARIFICATION STAFF REPORT #WZTA-15-01

Date: Jan. 21, 2016

Citizens for a Better Flathead, having reviewed the staff report, offers the following comments:

1. **The proposed zoning text amendment fails to address significant legal issues and conflicts with other portions of the city code** raised by Attorney Tom Tornow in his letter to the Whitefish City Attorney on October 27, 2014. As his letter points out, this includes:

> "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…**This option is limited to the allowable density of the underlying use district 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.'"

Additionally, the proposed zoning text amendment is not consistent with the purpose and intent of the PUD statute found at 11-2S-1, which only refers to the ability to vary standards and not densities or underlying permitted uses. It states:

"11-2S-1: PURPOSE AND INTENT: The purpose of the WPUD overlay is to provide a mechanism to allow the developer and design professionals the flexibility to respond to the environmental characteristics of a site, character of the surrounding neighborhood, and changing market demands and housing needs of the Whitefish community. **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:…"

Finally, the proposed zoning text amendment, the staff report, and the proposed scant and inadequate findings of fact fail to address or analyze how the proposed text amendment furthers, conflicts with, or provides the benefits identified as the intent of the PUD section under 11-2S-1 which include:

"A. Preserve and/or enhance environmentally sensitive areas of the site.

B. Preserve crucial wildlife habitat and/or daily or seasonal migration corridors.

C. Provide usable open space.

D. Preserve and protect the character and qualities of existing neighborhoods.

E. Make efficient use of infill property.

F. Provide effective buffers or transitions between potentially incompatible uses of land.

G. Facilitate street continuity and connectivity, and attractive high quality streetscapes.

H. Provide pedestrian and bicycle facilities and encourage transportation alternatives.

I. Provide affordable housing.

J. Provide a variety of residential product type while avoiding a monotonous and institutional appearance.

K. Compliance with and/or implementation of the growth policy. (Ord. 06-01, 1-17-2006)"

2. **In this hearing, it needs to be made clear that PUD Blending or Density Averaging is being used to allow for more than just blending of increased densities across multiple zones:**
   - **It is being used to allow a developer to take permitted uses in one zone and to "blend" them into zones where such uses are not allowed in the underlying zone,** as was the case in the Whitefish Crossing Apartments PUD that proposed allowing the "blended" use of commercial high-rise apartments in a WR1 residential zone where that use was not a permitted use in the underlying zoning. The illegality of this type of blending was the subject of Attorney Tom Tornow's letter to the city referenced above. Blending of permitted uses where such uses are not allowed in the underlying zone was recently supported by the planning director as being legal in the proposed affordable housing project housing off of US 93 that failed recently to qualify for Montana Housing funds. As will be discussed below, allowing uses not permitted in the underlying zone creates a de facto zone change that deprives adjoining property owners or residents at large of their legally protected rights to raise objections to zone changes impacting their property or the neighborhood or city at large (including broader impacts such as transportation impacts or loss of affordable housing).
   - **It is being used to justify taking affordable housing density bonuses that vary in number depending on the underlying zone, and to allow higher density applications in the zones in which they were not generated and in a zone where they are greater than what would be allowed otherwise**. This can result in densities intended for a commercial zone to be applied in a limited low-density residential area.

3. **The proposed zoning text amendment violates the due process rights of adjoining property owners to raise objections to zone changes by making them de facto legal**

through PUD Blending or Density Averaging. For example, state law requires that all regulations must be uniform for each class or kind of buildings throughout each district, yet the proposed text change to allow for blending is being used to allow for underlying permitted uses in one district to be "blended" into another district and thus not be uniform.

> " **76-2-302. Zoning districts.** (1) For the purposes of 76-2-301, the local city or town council or other legislative body may divide the municipality into districts of the number, shape, and area as are considered best suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.
> (2) **All regulations must be uniform for each class or kind of buildings throughout each district**, but the regulations in one district may differ from those in other districts."

The rights to protest afforded adjoining property owners or of residents at large are diminished when blended zones are made de facto legal and no public hearing is held on specifically on the nature, suitability, or legality of the blending proposal as required under 76-2-305.

> "**76-2-305. Alteration of zoning regulations – protest.** (1) **A regulation, restriction, and boundary may be amended, supplemented, changed, modified, or repealed. The provisions of 76-2-303 relative to public hearings and official notice apply equally to all changes or amendments.**
> (2) An amendment may not become effective except upon a favorable vote of two-thirds of the present and voting members of the city or town council or legislative body of the municipality if a protest against a change pursuant to subsection (1) is signed by the owners of 25% or more of:
> (a) the area of the lots included in any proposed change; or
> (b) those lots or units, as defined in 70-23-102, 150 feet from a lot included in a proposed change.
> (3) (a) For purposes of subsection (2), each unit owner is entitled to have the percentage of the unit owner's undivided interest in the common elements of the condominium, as expressed in the declaration, included in the calculation of the protest. If the property, as defined in 70-23-102, spans more than one lot, the percentage of the unit owner's undivided interest in the common elements must be multiplied by the total number of lots upon which the property is located.
> (b) The percentage of the unit owner's undivided interest must be certified as correct by the unit owner seeking to protest a change pursuant to subsection (2) or by the presiding officer of the association of unit owners."

4. **The staff report and proposed findings of fact provide an inadequate consideration of this proposed text amendment and its compliance with the Whitefish Growth Policy as required by state statue.** For example (1) the Whitefish Growth Policy WFGP calls for clustering not spreading of density or "blending density. (2) It identifies the need for density created by infill to address transportation impacts, which this proposed text change fails to consider. (3) The proposed zoning text amendment that allows blending of densities across zones is too narrowly focused and does not adequately consider or review related policies and issues identified in the Whitefish Growth Policy (see samples below)

and thus compliance with the growth policy as required by state zoning criteria is a standard that has not been met.

> "1. In order to protect and preserve the character, scale, and qualities of existing neighborhoods, the City of Whitefish shall revise the Zoning Jurisdiction Regulations and adopt "character based" standards and "neighborhood conservation" districts for new development, redevelopment, and infill. For newly developed areas, regulations shall provide for cluster and "conservation" subdivisions in order to preserve rural character and environmentally sensitive areas." (page 71)

> "In a community with an affordable housing shortage, any affordable unit is a good affordable unit. Generally, however, care must be taken to assure that affordable housing is close to employment, parks, schools, and commercial services. Low and moderate income families need more than just a roof over their head, they also need to be able to live sustainably within the community, and live where they have a variety of options to meet their transportation needs. Therefore, affordable housing is best located within the urban environs of Whitefish within walking and cycling distance of most services and facilities. Also, affordable housing should be spread throughout the community, and should not be concentrated in one area or neighborhood." (page 115)

> "4. The City and the WHA shall proactively identify the prime locations for affordable housing in the community, and designate those areas on the Future Land Use Map that is contained in this Growth Policy." (page 120)

> "If infill is to be the primary growth mechanism as recommended in the Land Use Element of this Growth Policy, alternative character sensitive street standards must be developed. However, safety and the ability of the street to carry the expected volume of traffic must remain the primary concerns. Projected volumes, connectivity, existing right-of-way, and any traffic impact analysis for a proposed development should all be taken into account in assessing the appropriateness of an alternative street standard." (page 129)

> "Through use of the planned unit development (PUD), densities up to 12 units per acre, and up to 18 per acre with affordable housing, are possible by code. And while such densities are not usually granted in a predominantly single-family area, the threat of erosion of the existing scale and character remain very real. The area of West 3rd and 4th Streets immediately east of Karrow Ave. faces a similar situation." (page 50)

5. **The proposed zoning text amendment fails to meaningfully consider the negative aspects of PUD Blending or Density Averaging on adjoining properties. The elephant in the room question that the proposed text amendment fails to ask or answer is this: Is the proposed PUD Blending or Density good for the whole community or only for those seeking to develop property?** We would argue that the staff report and findings of fact fail to demonstrate that this proposed text amend is good for the whole community or that it furthers the intent of the PUD section under 11-2S-1. **Instead we would suggest**

that as proposed and as it may be applied it would likely often meet the criteria of spot zoning as identified by the Montana Supreme Court.

> "The Montana Supreme Court identified three factors that enter into a determination of whether illegal spot zoning exists in any zoning action. All three of these factors must exist for the "spot" or "island" zoning to constitute unlawful spot zoning:
> (1) the proposed use is significantly different from the prevailing use in the area;
> (2) the area in which the requested use is to apply is rather small from the perspective of concern with the number of separate landowners benefited from the proposed change;
> (3) the change is special legislation designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public."

6. **Lack of clearer PUD standards tie local government decision makers' hands by failing to provide clear public benefit criteria and standards on which they can rely on in approving or denying such proposals.** More attention needs to be given to providing clear public benefit criteria and standards. Without these the existing PUD regulations as well as the proposed text amendment invites conflict or legal challenges by failing to provide greater predictability and economic security/welfare for the developer, the adjoining property owners and the community at large.

   For example the intent section of the PUD states that the proposed development should provide benefits such as "usable open space." The intent section of the PUD also states that the proposed development should "preserve and protect the character and qualities of existing neighborhoods." The Whitefish zoning code currently defines open space as;

   "OPEN SPACE: Undeveloped space performing a necessary or desirable function in relation to the adjoining residential use. Such a space may include, among other similar areas, rivers, lakes, public parks and grounds around public buildings."

   Yet there are no current PUD standards or criteria to ensure that open space provides benefits to adjoining residential uses. The proposed blended zoning text amendment also fails to address this deficiency. In the example of the Whitefish Crossing Apartments, open space was identified in part as the lawn space around the private apartment buildings, which clearly provides little if any benefit that would "preserve and protect the character and qualities of existing neighborhoods."

   Additionally the PUD intent regulation under 11-2S-1 provides that a proposed development provide all of the identified benefits A-K as applicable. Yet again, we would suggest that, with the Whitefish Crossing Apartments and other PUDs it is more often the case than not that these benefits are achieved on a very minimal level or only one or two of these benefits are secured. In the Whitefish Crossing PUD, the fact that it proposed to include some affordable housing almost blinded the council from consideration of securing as many as possible of the identified benefits that a PUD should provide in return for flexibility and the opportunity to vary standards of the underlying zone. For example, they made significant concessions to the developer granting reduced parking with no apparent public benefit. Indeed it took a legal challenge of the adjoining neighbors to even get the

much needed and required careful consideration of the blended zoning and other issues with this PUD.

7. The proposed zoning text amendment fails to address the more comprehensive review of the City PUD zoning regulations as called for by resolution of the Whitefish Planning Board after consideration of an almost identical staff report and consideration of public comment at their February 19, 2015, meeting. Our prior comments above provide numerous examples of why a more comprehensive review of the City PUD regulations are needed.

8. A more comprehensive review is needed to not only address inadequacies of the current regulations but also potential best practices being used in other jurisdictions that could be an improvement over our current regulations. Issues or topics that merit further consideration should include:
    - Reduced parking tied to affordable housing benefits. At the Whitefish Crossing Hearing we gave the council and the planning a detailed study of how this is being done elsewhere in the county.
    - Density credits for affordable housing tied to building the type of affordable housing Whitefish most needs. The affordable housing study soon to be underway needs to be incorporated in a comprehensive review of the PUD standards.
    - Affordable housing benefits tied to providing energy efficiency and even design for solar and wind (roof design or heights can impact current future application of such energy uses). Energy costs are a significant impact to those seeking affordable housing options.
    - Criteria needs to be developed to better address impacts of lot coverage and height impacts on the character and quality of existing neighborhood.
    - Lack of adequate definition of open space---counting grassy space around buildings is not open space---where are the benefits to adjoining neighbors or the community at large?
    - One-size-fits-all PUD regulations don't fit many situations. Why should a site with no environmental constraints receive the same benefits as a site that protects sensitive environmental sites? How might blending or density credits be inappropriate when a proposed PUD is 2 acres in size as opposed to 10 or more acres?
    - The proposed blended PUD blows the door off of the more limited current PUD regulation in terms of developer benefits, yet requires no additional benefits be provided.
    - What is and who provides legal enforcement for affordability of units? This needs to be more clearly established in the zoning code.

9. In conclusion we would ask that the planning board forward a recommendation to the City Council that the PUD text amendment before you be sent back to the planning staff and the planning board for more comprehensive review that includes a review and revision of the entire PUD regulations. You should also recommend that the city council place a moratorium on any further proposals for blended zoning until a comprehensive review of the current PUD statutes are carried out. At the very least, a recommendation for denial should be given to the proposed zone text amendment for PUD Average Density Clarification before you tonight.

Dave Taylor

From: Necile Lorang <nlorang@cityofwhitefish.org>
Sent: Tuesday, January 26, 2016 8:12 AM
To: David Taylor; cstearns@cityofwhitefish.org
Subject: Fwd: City Council Meeting 2/1/2016

-------- Forwarded Message --------
Subject: City Council Meeting 2/1/2016
Date: Mon, 25 Jan 2016 20:46:09 -0700
From: Wendy Coyne <wendy.coyne@icloud.com>
To:nlorang@cityofwhitefish.org

I am Wendy Coyne and live at 3 Rock Creek Crt Whitefish
I have been a home owner since 2000 and a permanent resident in Whitefish for the last six years. I spoke at the city planning meeting last week and wanted to express my concerns about the discussion concerning blended density.
1. When I purchase my house in 2009 I knew that there was a plot of land to the south of my property that was zoned both single family (2/3rds of 10 acres) and commercial (1/3rd of 10 acres). I conducted research on what could be built directly south of my home and felt good about the land being zoned single family homes. I also looked at the land west of my house that was vacant and understood there were parts zoned commercial. My realtor and I discussed the purchase of my home and what the zoning laws meant. I did not purchase the land in a vacuum and completed the sale. In 2015 when the affordable housing project began the zoning laws began to change and the commercial and single family land was "blended" which meant we would more than double the density originally thought. It obviously would change the lifestyle of our neighborhood and also possibly effect home prices. The advantage for doing this is totally one sided to the developer and not the existing home owner and tax pay
er.
2. After the holidays I was had a conversation with a potential home buyer (from outside Whitefish). Her realtor told them they needed to be cautious of buying land in Whitefish because "city hall" has been changing zoning laws to suit the needs of a developer. I asked her if she thought this was told to her so they would buy an existing house. She said she did not as they continued to look at land and houses all day. This couple then decided to look in another area of Montana given the news they received from the comment the realtor told them. They want to build and felt they could not "trust" where they bought and built. As I thought about this I was deeply saddened that this reputation might begin to gather legs to other potential buyers. The Beacon last week had an extensive article about the lose of Canadian population and how important it will be for communities in Flathead Valley to attract domestic homeowners and business. This kind of reputation does not help that cause.
Lastly, I further believe that if we, as a community, had done a better job communicating and working with the neighbors in Rivers Edge the affordable housing might have received the grant and been able to move forward. As a community in Rivers Edge we met with, talked to and openly communicated our concerns on blending densities on the parcel of 10 acres south of us. We always supported the idea of affordable housing in Whitefish but did not feel the high levels of density changes on the proposed property was fair to the existing neighborhood. It is very important that the zoning laws be updated and renewed to meet the needs of the Whitefish neighborhoods and not be such a huge Advantage to the developers.

The proposed changes to the zoning laws do not meet the needs of an ever changing Whitefish. I am asking the city council to ask for a complete rewrite of the zoning laws and greater consideration given to flaws in blended density.
I am planning on speaking at the meeting on Monday
Thank you for listening and hearing our voices.
Wendy Coyne

Sent from my iPad

Dave Taylor

From: Necile Lorang <nlorang@cityofwhitefish.org>
Sent: Tuesday, January 26, 2016 8:12 AM
To: David Taylor; cstearns@cityofwhitefish.org
Subject: Fwd: Blended Density Issues

-------- Forwarded Message --------
Subject: Blended Density Issues
Date: Mon, 25 Jan 2016 21:55:39 -0800
From: Robert Goldstein <robertgoldstein47@gmail.com>
To:nlorang@cityofwhitefish.org

To: Whitefish City Council Members:

Re: Proposal by Planning Director to add language re: blended density to the PUD Section of the City Code.

My name is Robert Goldstein and I own a house at 729 Clearwater Drive in Whitefish. I am writing to oppose the concept of blended density as it affects the property immediately to the south of the Rivers Edge Homeowner's Association which the City's Planning Director apparently supports and is proposing be added to the City Code.

I recently discovered that there was a multi-family/apartment development being planned for the land approximately 100 yards from my house despite the fact that this land is zoned for single-family homes. The property was bought by a developer recently despite knowing that the property was subject to significant building restrictions already imposed by the City.

Despite these restrictions, the Planning Director apparently encouraged the developer to use a concept called blended density which would enable him to transfer and spread some of the higher density zoning to the back 2/3 of the lot which is zoned for single family homes. If the City zoning laws apply to homeowners like my wife and me (and all other residents of our City), what rationale would the City have for granting a large developer the right to bypass and ignore these restrictions? To me, strict but reasonable zoning is what makes Whitefish such a great place to live and separates it from so many other nearby communities.

To give developers the right to bypass zoning restrictions when it is in their best financial interests, while clearly ignoring the interests of neighboring homeowners, is patently unfair and undermines the legislative process. Is there some underlying public good that overrides considerations of fair play and rationale zoning requirements? The proposal you are being asked to consider would result in a huge financial gain for the developer while offering little for the residents of the City other than the standard problems that come with high density buildings - increased noise, parking hassles, traffic congestion, etc.

In summary, I respectfully request that you not elevate the interests of the developer above those of neighboring residents by passing the proposed blended density proposal. Instead, please consider supporting the recommendation of the Planning Board that the the entire PUD Regulation be redrafted which would include a thorough review of blended density idea.

Please do not hesitate to contact me if you have any questions regarding my comments. Thank you.

Robert Goldstein
729 Clearwater Drive
Whitefish, MT 59937
858 504-0110

To: Whitefish City Council Members

Re: Proposal by Planning Director to add language re: blended density to the PUD Section of the City Code

I am writing to oppose the concept of blended density which the City's Planning Director supports and is proposing be added to the City Code.

I recently purchased property at Rivers Edge, a 48 unit patio home/river lot community, with the understanding that the 6 acres of greenspace adjoining our development to our south, was zoned for single family homes. However, I have subsequently learned that, at the suggestion of the City's Planning Director, the developer of that property intended to use the blended density concept to spread the high density attributable to the 3.5 acres of commercial property along Highway 93, back across the 6 acres as well, which as far as I'm concerned represents an effective re-zoning.

Why would you consider making legal a zoning mechanism which invites developers to override existing zoning to their benefit even though it may very well be detrimental to neighboring homeowners??

Furthermore, why would the developer not be required to undergo the formal rezoning process already in place?? Isn't that intended to provide homeowners due process when zoning changes are proposed. By short-circuiting the re-zoning process, my rights are being violated by not having an opportunity to defend my life style and the value of my home before a change is made.

Please do not pass the proposed change to the City Code which benefits developers at the expense of homeowners. Rather, please support the recommendations of the Planning Board that there be a re-write of the entire WPUD Regulation which would include a thorough review of blended density, and while that process is ongoing, there be a moratorium on its use.

Respectfully,

Dave Siegfried

Dave Siegfried
730 Clearwater Dr.
January 25, 2016.

Dave Taylor

From: Necile Lorang <nlorang@cityofwhitefish.org>
Sent: Tuesday, January 26, 2016 8:13 AM
To: David Taylor; cstearns@cityofwhitefish.org
Subject: Fwd: Proposal by Planning Director to add language re: blended density to the PUD Section of the City Code

-------- Forwarded Message --------
Subject: Proposal by Planning Director to add language re: blended density to the PUD Section of the City Code
Date: Mon, 25 Jan 2016 16:43:29 -0800
From: Michael <mdmmormino@cox.net>
To: nlorang@cityofwhitefish.org
CC: mdmmormino@cox.net, Paulette <paulette5@cox.net>

To: Whitefish City Council Members
Re: Proposal by Planning Director to add language re: blended density to the PUD Section of the City Code

I am writing to oppose the amendment of blended density which the City's Planning Director supports and is proposing be added to the City Code.

As retired civil service workers we both looked forward to finding a fantastic place to retire. After an intensive search, the city of Whitefish met our dream location. Not only for its small town atmosphere but because of the community's progressive arts and cultural environment.

We were fortunate after searching of numerous neighborhoods to find the Rivers Edge neighborhood. The community of 48 patio/river lots.

However, the 6 acres of vacant land to the south adjourning our development was of upmost importance on what could be built in that area. To our delight it was zoned for single-family homes. Based on this information we felt assured we had found the right location and bought our property.

In 2015 out of no where, at least for us, we found out that a developer was going to build multi-family residences on the adjacent property and the developer was using a concept called blended density which would enable him to transfer some of the density from the high density commercial lot to the front of the PUD parcel, across the back 2/3 of the lot, currently zoned for single family homes.

How can this happen without the developer going through a rigorous re-zoning process during which neighbors would have an opportunity to present their concerns?

They said, that apparently the Planning Director encouraged the developer to use this concept called blended density.

He further said that once the proposed amendment was passed and this was part of the City Code, homeowners didn't have any realistic way to challenge the use of this mechanism.

To give developers a blanket authorization which would enable them, whenever designing a project where multiple zoning districts are involved, to select whichever one is in their best interests, irrespective of the interests of neighboring homeowners makes no sense. Why would that be good for the residents of Whitefish?? Also, with re-zoning, I believe you are reevaluating a specific site(s), but the proposed amendment is an open-ended invitation to developers to use this approach without any due process available to homeowners.

Please don't place the developers' interests above those of neighboring homeowners by passing the proposed blended density proposal. Rather, I hope that you support the recommendation of the Planning Board that there be a re-write of the entire PUD Regulation which would include a thorough review of blended density idea, and while that process is ongoing, there be a moratorium on its use.

Respectfully,
Michael D. Mormino
Paulette L. Mormino

Sent from my iPhone

Barbara Morris

The City's Planning Director is half right when he says that those of us who oppose the use of blended density ARE opposed to development. We are opposed to development WHEN ITS DESIGN IS NOT RESPECTFUL OF THE INTERESTS OF NEIGHBORING HOMEOWNERS. I would have hoped that this would be a concern of his as well!

We all recognize that when people consider buying new homes, not only do they evaluate the home itself but also the surrounding environment. So for many prospective homeowners who are considering new homes next to undeveloped land, learning that the adjacent property is zoned for single family homes is a huge relief and often a critical factor.

To find out subsequently that a City's Planning Director is proposing an addition of language to the City Code that invites developers to effectively rezone property, often to the detriment of neighboring homeowners, without their receiving due process is viewed by homeowners as a violation of their rights.

This proposal shortcuts the rezoning process, thereby disenfranchising Whitefish residents of the rigorous review and the right inherent in that process to voice their concerns at a Public Hearing. Furthermore, whereas the re-zoning process is an evaluation of a particular site(s) with its own characteristics and circumstances, the proposed amendment is a blanket authorization inviting a developer to effectively re-zone property bearing multiple zoning codes to whatever configurations suits him irrespective of the impact on neighboring homeowners.

Blended density appears to be a mechanism designed entirely to accommodate developers so that they can maximize their financial

return while calling into question the integrity of zoning designations in Whitefish. I don't know with certainty how important it is to Whitefish to attract people to the area who are looking for retirement or vacation homes, but I would imagine these are desirable groups in terms of supporting the local economy.

If someone is considering multiple locations, and it's known Whitefish, by virtue of having a number or properties with multiple zoning codes, is willing to change zoning designations to accommodate contractors, and other places because of the manner in which they are zoned are not in this position, what do you think the reaction will be?? Predictability is critical when it comes to zoning!

And what about current residents - how do you think it makes them feel when the City is willing to sell them out, diminishing their life style and their home values to accommodate a developer's economic interests by effectively changing zoning without going through the re-zoning process specifically designed for this purpose??

Let me give you an example. At the suggestion of Whitefish's Planning Director, a developer has proposed utilizing the blended density methodology, which is being proposed this evening, to spread the high density permitted on the commercially zoned front 3.5 acres of the property next to Les Schwab, across the entire parcel of land, including the 6 acres zoned for single family homes. So instead of having 4 units/acre on the property, consistent with its current single family zoning, it is more likely to be 9/10, obviously a very different scenario than what homeowners who live on the other side of this property had anticipated after having been told that these 6 acres were zoned for single family homes. By approving the proposed

amendment, you invite developers to take actions such as this irrespective of the impact on neighboring homeowners.

Furthermore, homeowners' rights would be violated because with the passage of this amendment, they would be precluded from participating in a Public Hearing which would accompany a request for re-zoning.

To have as is true in this case, 2 equally sized lots adjacent to one another, where the density of one would be twice the other, it's unavoidable over time that the more highly populated neighborhood will negatively impact the quality of life, and home values of neighboring homeowners by virtue of sheer numbers which are typically accompanied by noise, property neglect and the general bulk and scale of multi-family structures. To think that these factors will not increasingly re-define the character of the less populated neighborhood over time would be naive.

Neighborhoods play a very unique role as they form the core of any community. A neighborhood is where we do our living, and often people's first connection to a new environment where they form social and support networks to assist in their transitions. It's where we can rely to varying degrees upon each other for the small favors that simplify everyday living. The relationships aren't always close but a bond is formed as residents work together to enhance their environment and improve their quality of life.

Even as neighbors' interests extend beyond this geographical unit, it continues to provide a framework within which people can work collectively to enhance their physical environment, both from an aesthetic and safety point of view – all of which is to the benefit of the overall community. It's neighbors working together and with the

City who contribute so significantly to positive developments that take place in Whitefish and many other places.

So, to make changes to the City Code which will institutionalize a practice that would appear to treat neighborhoods rather indiscriminately, thereby putting them at risk is hard to support. Ultimately, not only will it jeopardize neighborhoods but ultimately the City itself.

It is reassuring to know that there are communities who have refused to compromise their neighborhoods to the development of apartments and other multi-family housing. Eugene, Oregon is one. When their City Council was asked to approve a strategy which involved re-zoning single-family neighborhoods in favor of transit corridor development, they directed the City Manager to take low-density residential "off the table". The result is that most single-family neighborhoods will no longer be at risk.

Whitefish has always struck me as a town that is highly respectful of its homeowners' interests. Whether in terms of extending the pedestrian/bike path along the Whitefish River or lengthening streets as anticipated in Whitefish's Transportation Plan, the City has generally chosen not to move forward until permission is granted from property owners whose land would be crossed, or development is proposed for the land parcel.

Nevertheless, in this proposal, the City is being asked to approve a change to the City Code which would invite developers to, in effect, rezone lots which have more than 1 zoning designation to whichever one suits his objectives, irrespective of the impact it would have on

neighboring homeowners. How is this consistent with the respect shown for homeowners in other city policies??

By incorporating the proposed amendment into the City Code you invite developers to utilize a practice that clearly advantages them at the expense of neighboring homeowners without having to undergo the re-zoning process which provides homeowners the opportunity to express their concerns in a public hearing. Violating the due process to which homeowners in Whitefish have every right to expect makes a strong statement about the values of our community. Is that a message you truly want to send??!

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

Recap of Planning Board Discussions 15-01 Feb 19th 2015

RE: Proposed Code Amendment WZTA

Time	Discussion
07:05	Rebecca makes motion "to continue proposed amendment WZTA 15-01 with a charge to the Planning Dept. staff to model existing PUD criteria after Flathead County and Kalispell that would be similar to what we could use in Whitefish."
08:08	John urges to continue at least 2 meetings, adding that he finds the entire PUD chapter problematic, citing examples and recommends rewriting PUD chapter to provide clarity and that the examples presented by the public demonstrate the need to that. Cites problems with proposed amendment and existing code with regard to "blended densities".
09:37	Ken S makes suggestion (not a motion) that a couple Planning Board members, a couple councilors and public be involved with staff to get input from interested parties and try to get this revised.
10:25	Rebecca is asked to restate her motion. Motion is read by staff (see 07:05). Adds one more section to insert after "Flathead County and Kalispell" – "or better examples from other municipalities". Added section is seconded.
13:27	Motion carries 6-1, Melissa P not in favor.

Whitefish Planning Board Members and Staff

Comments on the January 21 , 2016 Staff report WZTA-15-01

I see from David's text that I am characterized as an opponent of development—interesting.

In the 26 years that Judy and I have lived here we have both taken an active role in helping the community grow and develop in a meaningful and healthy manner for everyone. I have served on the Planning Board for several years, Board of Adjustment for several years, Bike and Pedestrian committee for many years and several other city committees. Judy has supported me, but also was a member and chairman for the Housing Authority Board for 10 years. We do understand and support the need for affordable housing.

However, I am opposed to the current wording and structure of the WPUD Regulations because I don't believe they support healthy growth for the entire community. I should make it clear that we, as a citizen group, are not opposed to PUDs or to "Blending". When used properly they represent useful development tools in a community such as Whitefish. However, as currently written we do not believe the WPUD Regulations support that kind of usage. I would also add that defining how blended densities are calculated and handled is probably a good idea. I would also note that on the very bottom of page 4 of the staff report I could not find the citing referenced (11-2S-B-1). Either my information is out of date or this citing needs attention.

Before proceeding to address the current proposed amendment and WPUD Regulations some history seems appropriate. In the February 19, 2015 Planning Board meeting David Taylor presented for your approval a very similar proposal. Several citizens testified in opposition with lots of evidence and suggestions. Following all the public comments, as a board you had a spirited discussion-- finally taking the following action:

Rebecca moved that we continue the amendment contained in Staff Report WZA 15-01 with a charge to the Planning Staff to model existing PUD criteria after Flathead County and Kalispell for what similarities we could use in Whitefish. After discussion it was amended to add (after the words Flathead County and Kalispell).. "or better examples from other municipalities". The amended motion passed 6-1. As one listens to the tape and reads the minutes it is clear that the Planning Board requested a rewrite of the entire WPUD Regulations.

Surrounding this motion was lots of discussion with comments from both Ken Meckel and Ken Stein suggesting possible makeups of a group to work on this rewrite.

All of this is well documented in both the minutes and tape of that meeting.

Subsequently in June of 2015 there was a work session on this subject involving David Taylor and the Planning Board. The discussion seemed to focus on excessive staff work load and the need to do a rewrite. A comment or two on work sessions seems important. According to the city staff a work session is *not* a decision making event and as such it is the City's practice to not require minutes or a tape of these sessions. Neither a tape or minutes of the June work session exist so there is no available documentation of what happened in that meeting. Also there is no evidence of any official action to change the nature of your 2/19/2015 directive to the planning staff. Thus, this proposed amendment from the Planning Department can and should be viewed as the official public response to your 2/19/2015 directive. As you can see it is far from a rewrite of the entire WPUD regulation. It is, in fact, essentially the same amendment presented to you on 2/19/2015. Our comments today will again address the problems as we see them with this proposed amendment and with the WPUD Regulations in general.

What is Zoning all about? In both the lead in to the Zoning Regulations and independently in the introduction to the WPUD Regulations there are lists of what they are supposed to accomplish. There are differences as well as similarities. Both address supporting the Growth Policy (or Master Plan), both deal with traffic and streets in different ways, both address preserving the character of neighborhoods in different ways. In the Zoning Regulations (11-1-2-B) it states that the (11-1-2-A) Interpretations and purpose are held to be minimum requirements referencing an ordinance dated in 1982. I think that anyone who reads section 11-1-2 of the Zoning regulations (which apparently haven't been updated in more than 30 years) would agree that that section is badly in need of a tune up. Theoretically, these are the guiding principles for the entire family of Zoning Regulations including the WPUD which we will be focusing on tonight.

I think for this evening's discussion I would propose some reasonable ways to look at Zoning Regulations:

For the Planning Staff—They provide a set of rules along with other relevant regulations which they can use to evaluate and take positions on and make recommendations about development proposals

For the City and general citizenry—There are a set of regulations that help to manage the growth of the city in an orderly , safe manner consistent with the Growth Policy

For the home owner—They are intended to provide a sense of security that the character of their neighborhood and the values of their properties are reasonably protected over time.

For the developer—They represent a set of rules against which he can plan his development activities

In the introduction to Zoning (11-2-1), 22 Zoning Districts are listed and in the WPUD Regulations (11-2S-3B) 16 are listed. Some are residential in nature; some business or commercial and some kind of special purpose.

More are being added. You are, in fact, considering one new Zoning District this evening following our hearing. As the WPUD regulations are currently written any listed zoning district can be combined with any other listed district in a PUD and "blending" can be used across all included (underlying) districts. Certainly judgements would be applied in the planning office but that still leaves the developer infinite possibilities to the potential detriment of home owners, citizens and potentially the city as well. You will hear more on this from other presenters.

In our presentations in the 2/19/2015 Planning Board meeting we looked at how other municipalities deal with the PUD process. We chose two adjoining municipalities to illustrate alternative solutions—Kalispell and Flathead County. Copies of both those municipalities' PUD Regulations are included for the record. You will hear more on this subject this evening.

Who uses the WPUD process today? Almost all the current users of this current WPUD are large developers—knowledgeable and well funded. Let's explore a hypothetical example where this might not work out well for the city with today's WPUD. Developer A presents a plan to the Planning Office for a PUD development. The Planning Office does not like it but it meets the legal requirements of all relevant regulations. In spite of the efforts of the Planning office to get the developer to change his proposal he insists that it go forward for a public hearing, which is his right. It would be likely that the planning office would attach conditions where possible but when submitted to the Planning Board the recommendation is to pass it with conditions and forward that recommendation on to the City Council for approval (all of this because it meets all the legal requirement of the relevant current regulations).

The City Council doesn't like it either and tries to get the developer to change it but if he refuses and if approved it they are approving a development their staff and Planning Board they themselves do not like. If they deny it they expose themselves to undesirable litigation.

We, as a set of concerned citizens, think the best way to deal with all the current WPUD challenges is to rewrite this regulation in a manner that better protects citizens, home owners, the City and makes the job of the Planning office and the development community cleaner and easier to administer. That was the foundation for our recommendations to you on 2/19/2015 and again here this evening.

With your permission I would like to return after our presentations and summarize and suggest possible recommendation(s) to the City Council .

Conclusion and recommendations: (to be used at the end of our group presentations)

Before concluding I would comment that the housing study just getting under way involving the City, Chamber and other interested parties will go a long ways toward helping all of us understand the true nature of the Whitefish housing needs and should also prove helpful as regulation changes are considered in support of helping satisfy those needs.

This evening you have heard many and varied reasons why we as citizens of Whitefish think a total rewrite of the WPUD Regulations is needed. It is the same recommendation we made on 2/19/2015 which you supported then. This evening you have heard even more reasons why that is needed. We hope that you would again choose to support one of the following recommendations:

Forward to council a recommendation that they direct staff to initiate the process of rewriting the entire WPUD Regulations and at the same time issue a moratorium on any further PUD activity until that rewrite is completed.

OR

Forward to Council a recommendation that they direct staff to initiate the process of rewriting the entire WPUD Regulations and at the same time issue a moratorium on the use of "Blending" until that rewrite is completed and there is a better understanding of the need for blending and how and where it is applicable in Whitefish.

OR

Forward to Council a recommend that Council direct staff to explicitly remove "blending" totally from the WPUD Regulations

Respectfully submitted,

Don Spivey

117 Park Knoll Lane, Whitefish, MT, 862-7733

COUNTY

SECTION 3.31 PUD PLANNED UNIT DEVELOPMENT

3.31.010 Definition.

An overlay district to encourage a more efficient use of land and public services by providing a classification which may provide flexibility of architectural design and mixing of land uses while preserving and enhancing the integrity and environmental values of an area. The underlying zoning designation shall establish the uses and density allowable in the PUD area.

3.31.020 General.

The following application and review procedures shall apply to designation and approval of all planned unit developments in the County:

1. Initiation of Application

The landowner shall submit an application to the Planning Board for a change of zoning from the existing district to a proposed PUD district or for creation of a PUD district. The application shall be accompanied by a preliminary plan containing the information required in Section 3.31.030(5). In cases where the development will be executed in increments, a schedule showing the time frame for completion of each increment shall also be included in the application. Any request for a variation from the approved schedule must be approved by the Board of County Commissioners.

2. Review of Application

Upon submission of the application and preliminary plan, the Planning Board shall review such application and plan based on the following:

A. The extent to which the plan departs from zoning and subdivision regulations otherwise applicable to the subject property, including, but not limited to, density, bulk and use, and the reasons why such departures are or are not deemed to be in the public interest;

B. The nature and extent of the common open space in the planned development project, the reliability of the proposals for maintenance and conservation of the common open space and the adequacy or inadequacy of the amount and function of the open space in terms of the land use, densities and dwelling types proposed in the plan;

C. The manner in which said plan does or does not make adequate provision for public services, provide adequate control over vehicular traffic and further the amenities of light or air, recreation and visual enjoyment;

D. The relationship, beneficial or adverse, of the planned development project upon the neighborhood in which it is proposed to be established;

E. In the case of a plan which proposes development over a period of years, the sufficiency of the terms and conditions proposed to protect and maintain the integrity of the plan which finding shall be made only after consultation with the County Attorney;

F. Conformity with all applicable provisions of this chapter.

3. Action by the Planning Board

The Planning Board shall review the plans and shall hold a public hearing on the application pursuant to Section 2.02.040. Within thirty (30) days after the public hearing, the Planning Board shall submit its recommendations to the County Commissioners. The Planning Board may recommend approval in whole or in part, with or without modifications, or recommend disapproval. Such recommendations shall include:

A. Lot area;
B. Permitted and conditional uses;
C. Landscaping and buffering;
D. Area in which structures may be built ("buildable area");
E. Open space;
F. Setback lines and minimum yards;
G. Building separations;
H. Height of structures;
I. Signs;
J. Off-street parking and loading spaces;
K. Design standards;
L. Phasing of development.

4. Action by the County Commissioners

The County Commissioners shall consider the recommendation of the Planning Board and, pursuant to a public hearing called by them, may affirm, modify or deny the PUD plan. If the PUD is approved, the applicant shall submit a final plan in accordance with the approval of the County Commissioners. When the County Commissioners approve the final plan and plat, the area of land involved shall be redesignated as a PUD district by resolution which shall incorporate the final plan, including any conditions or restrictions that may be imposed by the County Commissioners.

5. Effect of Approval

The final plan as approved, 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 plan.

6. Abandonment or Expiration

The Flathead County Planning & Zoning Office shall monitor the Planned Unit Development for compliance with the completion schedule set forth in the

approved development plan and to assure that all improvements have been made in accordance with the approved development plan. Notice of noncompliance with the completion schedule or failure to install improvements in accordance with the approved development plan shall be delivered in writing to the landowner and/or developer. Within ninety (90) days of the notice of noncompliance or notice of failure to complete improvements, the landowner and/or developer may apply to the County Commissioners for an extension of time. Said application shall set forth a proposed completion schedule and/or new timetable for installation of the improvements. Upon the application of the landowner and/or developer, the County Commissioners may grant only one extension, and the extension may not be in excess of the time limit imposed upon the original development plan.

Upon the abandonment of a development authorized under this section, the project area shall revert back to the underlying use district that was in place prior to the approval of the Planned Unit Development. Abandonment shall be deemed to have occurred when no improvements have been made pursuant to the approved development plan for a period of three (3) years or upon the expiration of the completion schedule approved as a part of the development plan for a development, which has not been completed. Improvements as used in this section shall mean those activities, excluding design and obtaining financing, necessary for the orderly development of property including installation of private and public roads, sidewalks and curbs, public and private utilities, street lighting, construction of buildings and landscaping, and other changes in the property described in the approved development plan (see 7-5-2501, et seq, 7-14-2616 and 2617, and 7-14-4114 and 4115, M.C.A.).

7. Limitation on Rezoning

The Planning Board shall not initiate any amendment to the zoning regulations or zoning map concerning the property involved in a planned unit development before the completion of the development as long as development is in conformity with the approved detailed planned unit development and proceeding in accordance with the time requirements imposed therein. After approval of the planned unit development by the County Commissioners under Section 3.31.020.4, the developer is authorized to begin construction of buildings and uses complying with approved plan.

3.31.030 Standards For Planned Unit Development District (PUD).

1. Location of PUD

A PUD district shall be located in an area where public and private facilities and services are available or are to become available by the time development reaches the stage where they will be required.

2. Land Area Requirement

The minimum land area required for a change to or designation as a PUD shall be two acres and shall be under single ownership. In determining whether minimum area requirements for a PUD district have been met, computations shall include the entire area within the boundaries of the district proposed,

including the area of streets. Lands in such districts may be divided into streets, but shall be so located, dimensioned and arranged as to permit unified planning and development, to meet all requirements for PUD districts, and to provide adequate protection for uses within the district and in surrounding areas.

3. Establishment of PUD Districts

The following locational criteria shall govern the type of planned unit developments that may be reviewed and approved by the County Commissioners:

A. Residential PUD Districts:

Residential PUD districts can be established only in R-1 through R-5, RA-1, SAG-5, SAG-10, AG-20 or LS use districts, or in any area designated as "residential" in the Flathead County Master Plan.

B. Commercial PUD Districts:

A commercial PUD district may be established in B-2 through B-5 districts.

C. Industrial PUD Districts:

An industrial PUD may be established in I-1, I-1H and I-2 districts.

D. Marina PUD Districts:

A marina PUD may be established in:
R-4, R-5, RC-1, RA-1, B-2, B-3 CVR, I-1, I-1H, I-2, P and LS.

E. Mixed-use PUD Districts:

Based on a site plan review, and after establishing compatibility with the adjoining land uses and determining that the adverse environmental impacts shall only be minimal, the County Commissioners may allow a Mixed-use PUD in any district which qualifies for a Residential, Commercial, or Industrial PUD.

4. Use Regulations

The following regulations shall apply to permitted uses and densities in various types of Planned Unit Developments:

A. Residential PUD District:

Within a Residential PUD District, the uses and structures permitted or conditionally permitted in the underlying R-1 through R-5 or RA-1 districts shall be allowed. Residential dwelling unit densities within a proposed Residential PUD District shall be as follows:

Residential PUD Created	Maximum Permissible Density
R-1 District	2 dwelling units/acre
R-2 District	3 dwelling units/acre
R-3 District	7 dwelling units/acre
R-4 District	15 dwelling units/acre
LS District	15 dwelling units/acre
R-5 District	15 dwelling units/acre
RA-1 District	33 dwelling units/acre
SAG-5 District	2 dwelling units/5 acres
SAG-10 District	2 dwelling units/10 acres
AG-20 District	2 dwelling units/20 acres

Commercial uses may be allowed in Residential PUD District, provided:

(1) Such establishments and their parking areas shall not occupy more than twenty percent (20%) of the land area of the planned unit development district with a gross area 5.0 acres or more. For those under 5.0 acres in area, the permissible gross commercial area shall be subject to negotiation (up to a maximum of 15% of the total area of the PUD) with the Planning Board and the County Commissioners;

(2) Industrial and non-compatible commercial uses are not permitted. Commercial uses that may be permitted include all uses permitted in B, BR, CCC, and CVR districts (refer to Sections 3.16 to 3.26);

(3) Such establishments shall be so located, designed and operated as to serve the needs of persons within the immediate vicinity of the district;

(4) No building used for a commercial establishment may be opened until fifty-one percent (51%) of the dwelling units contemplated in the development plan have been constructed;

(5) The acreage proposed for commercial use and its parking shall be excluded from the gross acreage when computing total allowable dwelling units.

B. Commercial PUD District:

The uses permitted in a Commercial PUD District shall be the same as those allowed as permitted or conditional uses in the district associated with the PUD created. For example, in a B-3 PUD all uses allowed as permitted or conditional uses in a B-3 district shall be allowed.

C. Industrial PUD District:

The uses permitted in an Industrial PUD District shall be the same as those allowed as permitted or conditional uses in the district associated with the PUD district created. For example, in an I-1 PUD District all uses allowed as permitted or conditional uses in an I-1 district shall be allowed.

D. Marina PUD District:

The uses permitted in a Marina PUD District shall be the same as those allowed as permitted or conditional uses in the district associated with the PUD created. The underlying development standards in the district shall not be varied by the PUD process.

A Marina PUD will require the submittal of an environmental assessment and may be evaluated in accordance with the design guidelines of the Maryland Clean Marina Guide Book, 1998.

A marina development may be regulated by any or all of the following programs: Floodplain, Lakeshore Protection, US Army Corps of Engineers (404 program) and the Flathead County Conservation District (310 program).

E. Mixed Use PUD District:

Commercial/Industrial Mixed Use

A Mixed Use Commercial/Industrial PUD may be located in any district which qualifies for a Commercial or Industrial PUD.

The uses appropriate to a Mixed Use PUD shall be determined by the County Commissioners on the basis of (a) their compatibility with the surrounding land uses, and (b) their compatibility with one another.

Residential Mixed-use:

A Mixed-use PUD proposed in a residential district (refer to Section 3.31.030(3)(A)) may be permitted with both residential and commercial uses as per the following criteria:

Mixed PUD Zoning District	Maximum Permissible Density
R-1 District	2 dwelling units/acre
R-2 District	3 dwelling units/acre
R-3 District	7 dwelling units/acre
R-4 District	15 dwelling units/acre
R-5 District	15 dwelling units/acre
RA-1 District	33 dwelling units/acre
SAG-5 District	2 dwelling units/5 acres
SAG-10 District	2 dwelling units/10 acres
AG-20 District	2 dwelling units/20 acres

(1) The minimum land area for a Mixed-use PUD in a residential district is twenty (20) acres;
(2) The predominant land use character of the district must be residential;

(3) The residential uses appropriate to a Mixed-use PUD in a residential district shall be the same as those allowed as permitted or conditional uses in a Residential PUD;
(4) The maximum permissible building height is 35 feet;
(5) Commercial uses shall not exceed 35% of the gross area in the PUD;
(6) The maximum permissible ground coverage including all roads, buildings, and other areas of impervious coverage must be less than 70%;
(7) Industrial and non-compatible commercial uses are not permitted. Commercial uses that may be permitted include all uses permitted in B, BR, CCC and CVR districts (refer to Sections 3.16 to 3.26);
(8) Vehicular access to all uses and/or activities of the Mixed-use PUD shall be limited to the internal road system of the Mixed-use PUD.

5. PUD Preliminary Plan

The property owner applying for a PUD district classification shall submit sixteen (16) copies of a PUD preliminary plan which shall contain the following information. If a PUD also involves a subdivision, the submittal shall also include the information and documents required for application stated in the Flathead County Subdivision Regulations.

A. Proposed dimensional layout plan superimposed on a two to five foot interval topographic map of the area drawn to a scale not less than one inch equals two hundred feet showing all streets, buildings, open space, lots and other elements basic to the development;

B. Proposed locations, areas, densities and types of residential and non-residential uses and structures within the area proposed to be developed and maximum height of buildings or structures;

C. Proposed plans for handling vehicular traffic, parking, sewage disposal, drainage, water supply, landscaping, berming, fencing, signage, and other pertinent site development features;

D. Elevation drawings which demonstrate visually the general architectural features of each proposed building or architecturally distinct group or type of buildings and the site perimeter treatment;

E. The plan shall show the boundary lines of adjacent subdivided or unsubdivided land and the existing zoning of the area proposed to be changed to PUD as well as the land adjacent thereto;

F. An enumeration of covenants in detail proposed to be made a part of the PUD;

G. A statement expressing the order in which the development shall occur and estimated time for completing the development. In case of a phased development, estimated time schedule for starting and completing each phase of the development shall be provided;

H. Adequate provisions shall be made for a private organization with direct responsibility to, and control by, the property owners involved to provide for the operation and maintenance of all common facilities, including private streets jointly shared by each property owner, if such facilities are a part of the planned unit development, and in such instance, legal assurances shall be provided which show that the private organization is self-perpetuating and adequately funded to accomplish its purposes. Real property taxes of the private streets and common areas shall be assessed as levied pro rata to all privately owned parcels within the district;

I. Adequate provisions shall be made for common facilities, which are not dedicated to the public to be maintained to standards assuring continuous and adequate maintenance at a reasonable and nondiscriminatory rate of charge to the beneficiaries thereof. Common facilities not dedicated to the public shall be operated and maintained by the private organization and at no expense to any governmental unit;

J. All private streets shall be maintained by the aforesaid private organization in such a manner that adequate and safe access is provided at all times to vehicular traffic so that fire, police, health, sanitation and public utility vehicles can serve the properties contiguous or adjacent thereto and so that said vehicles will have adequate turning area;

K. The off-street parking to be provided shall meet the minimum standards for off-street parking as shown in these zoning regulations;

L. Where a PUD also involves a subdivision of land, it shall also meet the requirements of the Flathead County Subdivision Regulations, and the Montana Subdivision and Platting Act;

M. The County Commissioners shall require bonding or any other appropriate collateral to ensure that all required improvements shall be satisfactorily completed in accordance to the approved plans, specifications and time schedule; and

N. Any other information, plans and details which the Planning Board or County Commissioners may desire to fully evaluate the development proposal and its impacts.

6. Preparation of Final Plan:

Upon approval of the preliminary plan by the County Commissioners, the property owner may proceed with the preparation of the PUD Final Plan, which shall:

A. Incorporate all the conditions imposed by the County Commissioners at the time of approval of the preliminary plan;

B. Have the following certification on the face of the plan and/or plat:

I, _____, owner and developer of the property set forth above, do hereby agree that I will develop the above property as a Planned Unit Development in accordance to the submitted PUD Plan.

_____
Signature
Property Owner/Developer

Approved this _____ day of _____, 20 __, by the Flathead County Commissioners.

Attest: _____
Clerk & Recorder

7. Filing and maintenance of final plan: The applicant shall submit four signed copies of the PUD, final plan and related documents to the Flathead County Planning & Zoning Office. Upon approval by the County Commissioners, one signed copy of the plan shall be returned to the applicant, a signed copy shall be retained on file in the Clerk and Recorder's Office, and one signed copy each shall be forwarded to the Flathead County Planning & Zoning Office and the County Commissioners.

8. For developments whose build-out over a number of years is anticipated, the overall development plan will identify and justify the proposed phasing of the project and provide a proposed schedule of phased development.

For all projects, the overall development plan shall serve as the guidelines for development. The implementation of the plan shall be accomplished by the submittal of a Planned Unit Development (PUD) for the entire plan or for each phase of the development.

KALISPELL

CHAPTER 27.19
PLANNED UNIT DEVELOPMENT DISTRICT (PUD)

Sections:

27.19.010: **Intent.** A planned unit development district shall serve as an overlay zoning district. It shall function in concert with one or more of the underlying zones to provide a comprehensive, integrated development plan which will serve to modify the underlying zone and, where appropriate, subdivision standards with the intent of providing flexibility of architectural design and density as well as providing the option to mix land uses and densities while preserving and enhancing the integrity and environmental values of a area.

27.19.020: **General.** The following application and review procedures shall apply to designation and approval of all planned unit developments in the city.

(1) **Initiation of Application:** The land owner(s) or designee(s) shall schedule a pre-application meeting with the planning department prior to official submission of a PUD application. The PUD application shall be submitted on a form provided by the city. Where multiple owners of the property or properties exist, all owners shall either sign the application or submit a letter of consent authorizing submission of the PUD application.

(2) **PUD Application Thresholds:** It is anticipated that PUD applications will be submitted in one of two forms, a PUD full application meeting all the requirements of this section and a PUD Placeholder application which serves as a place marker for a future PUD application. Within any PUD application it is possible to incorporate one or both of the categories listed below:

(a) **PUD Full Application** – This application will be processed in accordance with the full provision of this chapter and will require the submission of all application materials required in Section (3) PUD Application Materials below.

(b) **PUD Placeholder Application** – This submittal typically is involved with annexation and initial zoning or a rezoning in which the applicant requests a PUD designation noting the applicant's intent to develop a PUD and enter into a development agreement with the city, binding the property to a future PUD application but not providing any application materials or development plan nor receiving any entitlements other than a commitment between the city and the applicant that when development is to proceed it will be done via the PUD process.

1. Prior to the use or development of any property within the PUD Placeholder beyond the specifically listed uses and activities within this section, the applicant shall submit an application for and proceed with the full PUD application process as outlined in subsection 3 below.

2. Interim use in a PUD Placeholder prior to development of the full PUD is allowed based on the criteria below:

   a. All proposed uses and activities of the land and existing structures must comply with the underlying zone.

   b. An administrative conditional use permit would be required to document and approve the interim use or activity.

   c. Only the following activities are allowed:

      1. Remodeling/repair/removal of existing structures or buildings;
      2. Parking of vehicles and equipment for storage as long as the purpose is not meant for display from a public right-of-way;
      3. Fencing and lighting; and
      4. Earth work, site leveling and drainage work.

   d. The following new uses and activities are not allowed without the full PUD application process:

      1. Freestanding signs;
      2. Additional access points onto a public road system;
      3. Expansion of existing structures by more than 10%; and
      4. New structures or building development beyond what is otherwise specifically allowed under this section.

   e. Interim use of the property as described above does not relieve the owner from compliance with overall PUD requirements at the time additional development beyond the scope of interim development occurs.

(3) **PUD Application Materials.** The full PUD application submittal shall contain the following information in the form of an overall PUD development plan and supporting text:

(a) A listing of each deviation or class of deviation from the underlying zoning district and a justification of the appropriateness for the deviation;

(b) A listing of each deviation or class of deviation from the city subdivision regulations design standards and a justification of the appropriateness for the deviation;

(c) An existing topo map showing existing building and features and a proposed topo map showing proposed topography using one to five foot intervals drawn to a scale not less than one inch equals 200 feet showing all proposed streets, lots, buildings, open space, wetlands, floodplain,

environmental hazards, storm water facilities and other elements basic to the development;

(d) Proposed locations, areas, densities and types of residential and nonresidential uses and structures within the area proposed to be developed and maximum height of buildings or structure;

(e) Proposed plans for handling:

1. Vehicular traffic;
2. Pedestrian traffic routes & trails including safe routes to school;
3. Sewage disposal; conceptual storm water drainage and water supply;
4. Parks and open space;
5. Parking;
6. Prominent landscaping, buffering, site perimeter and entrance treatment features;
7. Club houses, sales offices;
8. Retaining wall work in excess of 3 feet in height;
9. Common fencing designs and locations where proposed;
10. Commercial, directional and entrance signage;
11. Street lighting and parking lot lighting where applicable;
12. Any other pertinent site development features.

(f) Elevation drawings which demonstrate visually the general architectural features of each proposed building or architecturally distinct group or type of buildings and the site perimeter treatment. Note – This may be waived by the Zoning Administrator on a case specific situation for uses listed below which may include but are not limited to:

1. Single family detached housing when the lots equal or exceed the minimum lot size of the underlying zone; and
2. Two unit townhouse or duplex development which is alley loaded and the lots equal or exceed the minimum lot size of the underlying zone.

(g) The PUD plan shall show the boundary lines of adjacent subdivided or un-subdivided land and the existing zoning of the area proposed for the PUD overlay;

(h) A timeline expressing the order in which the development shall occur and estimated time for completing key components or phases;

(i) Adequate provision for a homeowners association or other public or private management organization to provide for the operation and maintenance of all private (non-governmental) common facilities including any private streets or alley ways, homeowners parks, club houses, sales offices, open

space, trails, recreational facilities and amenities, shared parking facilities, private lighting systems, subdivision entrance signage and common mail receptacles;

(j) Adequate provisions shall be made for maintenance of all public common facilities (e.g. a trail or park) which are developed on public land, but intended to be maintained by a private organization or homeowners association;

(k) Where a PUD also involves a subdivision of land, it shall also meet the application requirements of the Kalispell Subdivision Regulations and the Montana Subdivision and Platting Act at the time the preliminary plat is submitted;

(l) For multi-phase projects to be developed over a long period of time or where project components are proposed which may not be built for many years;

1. The first phase of development must comply with the full application process outlined above.

2. Each phase of a multi-phase PUD must be able to be free standing.

3. Each phase of a PUD shall not exceed the density provisions of the underlying zone as limited by the PUD. Where a phase is proposed that complies with the overall PUD plan but the actual density of the particular phase may exceed the average density allowed by the underlying zone and PUD agreement, the applicant shall either provide the necessary corresponding open space or park facilities or suitably bond for them for development in a latter phase.

4. Future phase or major development components may show conceptual street designs, proposed park and open space areas, trail concepts, proposed residential density, housing types (single family, townhouse, apartment, etc.) and commercial areas versus detailed lot, block, street and park development and building designs. Based on a finding and associated conditions placed on the PUD at time of approval, the applicant may be required to provide more specific information prior to development of succeeding phases based on one of the following processes: (Note: The planning staff, Planning Board or council, at their discretion, may also request additional or more complete information relative to the future phases or components prior to recommending or granting initial PUD approval).

a. A finding that the outstanding items are significant and therefore future phases or components should follow the full PUD application process;

b. A finding that the outstanding items are generally minor and therefore future phases or components should be reviewed under the conditional use permit process; or

c. A finding that the outstanding issues are insignificant and therefore future phases or components should be subject to administrative review by the Kalispell Site Review Committee; or

d. A combination of the above provisions.

(m) Any other information, plans and details which the city staff, Planning Board and/or City Council may request to fully evaluate the development proposal and its impacts.

(4) **Review of Application:** Upon submission of the application the Zoning Commission shall review such application based on the following:

(a) The compliance of the proposed PUD with the city growth policy and in particular the density and use policies of the plan;

(b) The extent to which the PUD departs from the underlying zoning and the reasons why such departures are or are not deemed to be in the public interest, and the mitigating conditions that the PUD provides to address the deviations;

(c) The extent to which the PUD departs from the subdivision regulations (if subdivision is anticipated) and the public works standards for design and construction applicable to the subject property, the reasons why such departures are deemed to be in the public interest, and the mitigating conditions that the PUD provides to address the deviations;

(d) The overall internal integrity of the PUD including the appropriate use of internal design elements, the use of buffers between different land uses, the use of transitions between uses of greater and lesser intensity, the use of enhanced design features to provide connectedness for both vehicle and pedestrian traffic throughout the PUD and the use of innovative and traditional design to foster more livable neighborhoods;

(e) The nature and extent of the public parks and common open space in the PUD, the reliability of the proposal for maintenance and conservation of these areas and the adequacy or inadequacy of the amount and function of

the parks and open space in terms of the land use, densities and dwelling types proposed in the PUD;

(f) The manner in which the PUD plan makes adequate provision for public services, provides adequate control over vehicular traffic and furthers the amenities of recreation and visual enjoyment;

(g) The relationship, beneficial or adverse, of the PUD plan upon the neighborhood in which it is proposed to be established in concert with the underlying zone;

(h) In the case of a plan which proposes development over a period of years, the sufficiency of the terms and conditions proposed to protect and maintain the integrity of the PUD; and

(i) Conformity with all applicable provisions of this chapter.

(5) **Action by the Zoning Commission.**

(a) The Zoning Commission shall hold at least one work session on a proposed PUD plan prior to any public hearing. The work session is intended for information purposes only to inform both the public and the commission about the various aspects of the project. It is not intended to be a public hearing and the commission shall take no formal action on the application. As a courtesy, all adjoining property owners shall be invited to at least one work session. This invitation may be included within the formal public hearing notice or it may be sent separately.

(b) The Zoning Commission shall hold a public hearing on the application pursuant to Section 27.28.030. The Zoning Commission shall submit its recommendations to the City Council. The Zoning Commission may recommend approval in whole or in part, may recommend modification and can impose conditions which will clarify facets of the PUD, implement city standards, regulations or policy, or serve to mitigate potential negative impacts, or the commission may recommend disapproval.

(6) **Action by the City Council.** The City Council shall consider the recommendation of the Zoning Commission and may affirm, modify or deny the PUD. If the PUD is approved, the applicant shall submit a final PUD in accordance with the conditions of approval as adopted by City Council. When the City Council approves the PUD, the area of land involved shall be re-designated as a PUD district by ordinance which shall incorporate the final PUD including any conditions or restrictions that may be imposed by the City Council and shall constitute the zoning for the district.

(7) **Preparation and Filing of Final PUD.** Upon approval of the preliminary PUD by the City Council, the property owner(s) shall proceed with the preparation of the final PUD plan:

(a) The final PUD plan shall incorporate all the conditions imposed by the City Council at the time of approval of the preliminary plan;

(b) The applicant shall submit three signed copies of the PUD, final plan and related documents to the planning department. Upon approval by the Zoning Administrator, one signed copy of the plan shall be returned to the applicant, a signed copy shall be retained on file in the city clerk's office and one signed copy shall be kept on file with the planning department;

(c) Upon receipt of the final PUD plan and related documents by the planning department, the city attorney shall prepare a PUD agreement between the city and the developer(s) binding the developer, his successors, heirs and assigns to the terms and conditions of the PUD;

(d) The final PUD shall be submitted to the planning department in a timely fashion following approval by the City Council but in no case shall a final plat or building permit be issued until the final PUD plan has been submitted and approved and the PUD agreement has been executed;

(e) Where there is a question concerning compliance with a condition of the PUD, by either the applicant or planning staff, the issue will be forwarded to the next available Kalispell Site Review Committee meeting. If the issue cannot be satisfactorily resolved it shall be forwarded to City Council; and

(f) Prior to the approval of a final plat or where a subdivision is not involved prior to issuance of a certificate of occupancy or commencement of a use approved by a PUD, when specific aspects of the PUD are not yet completed that are pertinent to the phase or use, the City Council shall require bonding or any other appropriate collateral to ensure that all required public improvements or conditions of approval specifically required to be in place prior to final plat, occupancy or commencement of use as appropriate shall be satisfactorily completed in accordance to the approved plans, specifications and time schedule.

(8) **Limitation on Rezoning.** The Zoning Commission shall not initiate any amendment to the PUD before the completion of the development as long as development is in conformity with the approved detailed PUD and proceeding in accordance with the time requirements imposed therein by the completion schedule.

(9) **Amending an Approved Final PUD.**

(a) Once approved, a PUD may be amended by the developer(s). Proposed amendments shall be submitted to the Kalispell Site Review Committee. The committee shall make one of the following findings:

1. The change(s) is deemed minor in scope and may be granted or denied with or without conditions by the Kalispell Site Review Committee; or

2. The change(s) is deemed major, in which case the amendment(s) is forwarded to the City Council for consideration and final action.

   Note: Any action of the Kalispell Site Review Committee is appealable to the City Council.

(b) Individual property owners within the PUD may bring forth amendments, which shall be processed as an amendment to the official zoning map in accordance with Chapter 27.29.

(10) **Abandonment or Expiration.**

The Zoning Administrator shall monitor the PUD for compliance with the completion schedule set forth in the approved development plan and to assure that all improvements have been made in accordance with the approved development plan. The following procedures are to be following when the PUD fails to comply with the completion schedule:

(a) PUD's or portions thereof which do not involve or require a subdivision:

1. If a PUD project falls out of compliance with its approved completion schedule, notice of noncompliance with the completion schedule shall be delivered in writing to the landowner and/or developer;

2. No later than 30 days after the notice of noncompliance is delivered the landowner and/or developer may request from the City Council an extension of time. Said request shall set forth a proposed completion schedule and/or new timetable for installation of the improvements. The City Council may grant one or more extension(s) but each extension is a matter of grace which, if approved, may be subject to additional conditions imposed by the City Council which may be deemed necessary to address issues that have arisen due to the lapse in time;

3. Abandonment shall be deemed by the City Council to have occurred when the landowner/developer is deemed to be out of compliance

with the approved completion schedule and has failed to secure an extension as provided for in (2) above;

4. Upon the abandonment of a development authorized under this section the City Council shall direct the Zoning Administrator to do the following;

   a. If a portion of the PUD site was developed in accordance with the PUD, the PUD shall stay in force for that portion already developed; and

   b. For that portion of the PUD which was not developed under the terms of the PUD, the provisions of the PUD shall lapse and the site shall revert back to a PUD Placeholder designation as provided for in Section 27.19.020(2)(b).

(b) PUD's which are implemented by or subject to a subdivision application the developer has the option to request the PUD approval coincide with the preliminary plat approval and any phasing thereof or the PUD approval may exceed the time frame approvals of the underlying preliminary plat. In this case the developer shall provide reasons the PUD approval should extend beyond any preliminary plat approvals for the Planning Board and City Council to consider:

1. If the PUD approval coincides with the underlying preliminary plat and the preliminary plat lapses, the PUD conditions of approval for that area shall lapse.

   a. In such case the city shall notify the property owner of the lapse of the preliminary plat and associated PUD conditions of approval;
   b. The Zoning Administrator shall modify the PUD designation on the official zoning maintaining the underlying zoning classification but classifying the property as a PUD Placeholder as provided for in Section 27.19.020(2)(b).

2. If the PUD approval extends beyond the underlying preliminary plat approval, the developer shall request extensions of the PUD on a yearly basis after expiration of the underlying preliminary plat.

   a. At least 30 days prior to the expiration of the PUD approval the landowner and/or developer may request from the City Council an additional one year extension. Said request shall set forth a revised completion schedule and/or new timetable for installation of the improvements and completion of the project. The City Council may grant one or more extensions

but each extension is a matter of grace which, if approved, may be subject to additional conditions imposed by the City Council which may be deemed necessary to address issues that have arisen due to the lapse in time;

b. If the PUD project fails to secure an extension or falls out of compliance with its approved completion schedule provided for in 2.a. above, the project will be considered abandoned.

c. Upon the abandonment of a development authorized under this section, the City Council shall direct the Zoning Administrator to do the following:

I. If a portion of the PUD site was developed in accordance with the PUD, the PUD shall stay in force for that portion already developed;

II. For that portion of the PUD which was not developed under the terms of the PUD, the provisions of the PUD shall lapse and the site shall revert back to a PUD Placeholder designation as provided for in 27.19.020(2)(b).

27.19.030: Standards for Planned Unit Development District (PUD).

(1) **General Standards.**

(a) **Developable area** of a PUD shall be defined as all land that could potentially be available for development including land in existing or potential lots, streets, open space and parks. **Undevelopable area** is defined as land within un-buildable areas including land in a 100 year floodplain, BPA power line easements, federally designated wetlands, and slopes in excess of 30% unless satisfactory geotechnical information is submitted by a licensed engineer.

(b) Both the permitted and conditionally permitted uses of the underlying zone shall be deemed to be eligible for inclusion as permitted uses in a PUD however not all such uses may be deemed appropriate within the overall design of a particular PUD and may be limited or modified by the PUD plan.

(2) **Establishment of PUD Districts.**

(a) **Residential PUD District.**

1. Minimum size is two acres including both developable and undevelopable area. For PUD's less than 2 acres in size, a PUD

application may be submitted; however, such site will not be eligible for a density bonus as provided for in table 1 below.

2. A residential PUD district may be established in areas zoned R-1 through R-5, RA-1, RA-2 and the H-1.

3. Housing types within a residential PUD may include single family, duplex and multi-family housing arranged in attached, detached, townhouse, apartment or condominium configurations.

4. Residential dwelling unit density: Within a proposed residential PUD district residential densities are set forth below:

Table 1
PUD Density Allocation

Underlying Residential District	Max # Dwelling Units/Developable Acre
R-1 District	1 dwelling unit
R-2 District	3 dwelling units
R-3 District	4 dwelling units
R-4 District	7 dwelling units
R-5 District	10 dwelling units
RA-1 District	10 dwelling units
RA-2 District	20 dwelling units
H-1 District	20 dwelling units

a. Table 1 provides for the maximum # of dwelling units per developable acre. Developable acres are based on land in developable area and exclude undevelopable land as defined in 27.19.030(1)(a) above;

b. PUD's are not entitled automatically to the maximum density allowed in Table 1 above. Density shall be established based upon:

I. An analysis of the environmental factors affecting the land;

II. Compatibility with surrounding land uses and impact on adjacent neighborhood;

III. Availability of public infrastructure and services; and

IV. Consistency with the Kalispell Growth Policy.

c. Residential density bonuses: The maximum PUD residential density provided for in Table 1 may be increased in the following situations:

I. Up to a 20% increase in residential units for projects which exceed the minimum park and open space requirements as follows:

i. A 5% increase in density for each 10% increase over and above the minimum required developed park lands.

ii. A 5% increase in density for each 10% increase of open space over and above the minimum park land requirement.

iii. Up to a 20% bonus density (at a rate of two additional housing units for each affordable unit created) for projects which advance long term work force housing opportunities (rental or owner occupied housing available to people earning up to 80% of median income). For lots/units to be eligible they must be associated with such organizations as Habitat For Humanity, a local housing authority, a single or multi-county housing assistance organization or an incorporated land trust.

5. Commercial uses and their associated parking may be allowed in a residential PUD district, provided:

a. Lots devoted to commercial uses and their associated parking shall not occupy more than 10% of the developable land area of the PUD district;

b. Commercial uses shall be so located, designed and operated as to serve primarily the needs of persons within the district and secondarily persons residing elsewhere; and

c. The acreage proposed for commercial use and its parking shall be excluded from the gross acreage when computing total allowable dwelling units.

6. Residential park/open space requirements:

a. The minimum park land required is based on a ratio of .03 acres per residential unit. Residential units are defined as both owner and renter occupied units and includes single family and multi-family attached and detached construction but specifically excludes licensed retirement, assisted living or nursing home units.

b. Lands considered undevelopable as provided for in 27.19.030 (1)(a) shall not be considered as meeting the minimum park land and open space requirements.

c. The applicant shall submit a plan for development of each of the park areas. The approved plans shall be fully implemented by the applicant.

d. In addition to developed park lands, the PUD shall incorporate open space features, where and when appropriate to enhance the overall development, to serve as a necessary noise or visual barrier or to protect sensitive areas such as stream setbacks, floodplains, areas of steep slopes or other fragile areas.

e. The first 20 feet of width of a required pedestrian trail system (trail and associated easement) shall be considered a transportation facility and shall not be counted towards any open space of park land requirement.

(2) **Commercial PUD District.**

(a) Minimum size is two acres of developable area.

(b) A commercial PUD district may be established in areas zoned B-1 through B-5, P-1 and H-1.

(3) **Industrial PUD District.**

(a) Minimum size is two acres of developable area.

(b) An industrial PUD district may be established in areas zoned I-1, I-2, P-1 and B-5.

(4) **Residential Mixed Use PUD.**

(a) The minimum size is 5 acres of developable area.

(b) A residential mixed use PUD may be established in areas zoned R-1 through R-5, RA-1, RA-2, B-1, P-1 and H-1.

(c) The predominant land use character of the PUD must be residential; commercial uses should primarily be sized and located to address the needs of the immediate neighborhood.

(d) The residential uses and densities appropriate to a mixed use PUD are the same as those permitted in a residential PUD.

(e) Commercial uses appropriate to a mixed use PUD are the same as those permitted in a commercial PUD.

(f) Incompatible industrial and commercial uses are not permitted.

(g) The combined area of all commercial/industrial lots cannot exceed 35% of the developable area.

(5) **Non-Residential Mixed Use PUD.**

(a) Minimum size is two acres of developable area.

(b) A non-residential mixed use PUD may be established in any zoning district which would allow a commercial or industrial PUD.

(c) Uses allowed under either a commercial or industrial PUD are allowed.

To: Whitefish City Planning Board

Re: PROPOSED CODE AMENDMENTS PUD AVERAGE DENSITY CLARIFICATION STAFF REPORT #WZTA-15-01

Date: Jan. 21, 2016

WPUD Proposed Amendment – Comments to Planning Board 1/21/2016

I have commented previously regarding the earlier version of this proposed code amendment and feel, as do other presenters that the proposed amendment still leaves the PUD code unclear and Whitefish property homeowners vulnerable. Beyond the lingering legal questions that have been raised here, a fundamental concern remains: The PUD code allows development to be proposed that is greatly inconsistent with the present densities and character of existing neighborhoods. This issue is not broadly understood by homeowners and leaves everyone with vacant lots near them exposed to development that is totally out of their range of future expectations at the time of their initial investment. A similar concern exists in any areas undergoing redevelopment. That cannot be a good thing for those homeowners nor those members of this board nor the City Council. Surely there must be a way to recast the WPUD code in a better form that promotes healthy development outcomes for the community.

This ties back into my earliest comments here in October of 2014 regarding a proposed PUD in which parcels zoned WLR (single family) with normal densities of 2.5 units/Acre were increased to 14.7 units/Acre. Clearly, from the perspective of homeowners in adjacent properties, a six-fold increase in density would never be in their realm of expectations when they purchased a home or lot in a similar WLR property. Yet, despite numerous comments at the time regarding both the legal questions and changes in home owner expectations regarding development of an adjacent property, the proposal was passed by this body in a single session, as it was, other than the legal question, interpreted as possible within the code. To any homeowners in Whitefish whose single family property is adjacent to undeveloped parcels with similar zones, this should send an alarming message. Despite the fact that most homeowners review zoning of adjacent parcels with their real estate agents as part of their due diligence to protect their future investment, they are likely unaware that the Whitefish PUD code has been in the past interpreted to allow dramatic increases in density and the blending of uses not permitted in the underlying zone. This code amendment now attempts to make this interpretation legal. Making this legal enables developers to essentially rezone the neighboring parcels on the fly and build projects with densities far beyond anything homeowners ever imagined. From a homeowner's perspective, it is as though existing zoning has no meaning as it can so easily be modified through the PUD overlay.

Known Problem

The potential for the WPUD code to amplify exiting zoning problems and change the character of existing neighborhoods is a known problem, appearing on page 50 of the City's Growth Policy Document. There, in conjunction with an example where zoning does not match existing neighborhoods

near City Beach, it is highlighted that "through the use of the planned unit development (PUD), densities up to 12 units/acre and up to 18 units/acre with affordable housing are possible by code." It continues "while such densities are not usually granted in a predominantly single-family area, the threat of erosion of the existing scale and character remain very real."

Contrasting examples in Flathead County and Kalispell

In an attempt to provide some possible paths to improve this situation we previously presented and discussed examples of how Flathead County and the City of Kalispell zoning codes limit PUDs to "like zoned" properties within PUD Categories including Residential PUD, Commercial PUD, Industrial PUD and Mixed Use PUD. As an example, Flathead County Regulations clearly specify in 3.31.030 - Standards for Planned Unit Development District (PUD):

A. Residential PUD Districts:
Residential PUD districts can be established only in R-1 through R-5, RA-1, R-2.5, SAG-5, SAG-10, AG-20 or LS use districts, or in any area designated as "residential" in the Flathead County Growth Policy.

B. Commercial PUD Districts:
A commercial PUD district may be established in B-2 through B-5 districts. (Note: not all Business zones)

These specifications makes it clear that the PUD can be applied to zones that are similar in use, for example, residential or commercial. It therefore restricts the blending of residential and commercial zones via the PUD overlay. Also, it clearly states which zones may be combined within a PUD.

Kalispell has similar designations for PUD types and enumerates clearly which zones may be within a PUD. Kalispell code also contains a limitation that would also seem useful:

> "PUD's are not entitled automatically to the maximum density allowed ..."
> "Density shall be established based upon:
> I. An analysis of the environmental factors affecting the land;
> II. Compatibility with surrounding land uses and impact on adjacent neighborhood; ..."

Examples of past blended PUDs

The staff report includes five examples of approved PUDs where "blending" had been used. Without considering legality of past approvals, in three of these examples (Lookout Ridge, 93 LLC, Second Street Residences) the underlying zones are highly compatible; residential or agricultural transitioning to residential use and would readily fit within the Flathead County PUD requirements. The resulting densities of those PUDs are significantly lower than the density example (Whitefish Crossing) I covered earlier which was approved at 14.7 units/acre:

1. Lookout Ridge - Approved Density is 1.9 units/acre and now foreclosed
2. 93 LLC - Approved Density is 2.97 units/acre

3. Second Street Residences - Approved Density is 2.6 units/acre. Originally proposed as 174 apartment units, rejected twice by City Council before approval as 62 SFR.

Railtown Gardens is a mixed use application with both business and residential zones and uses remaining as part of the PUD. This would fit into the Mixed Use PUD examples in the Flathead County code. Approved Density is 5.2 units/acre. Approved in 2008 – nothing happening since.

The Hampton Inn project has no development in the WLR portion of the PUD other than a small amount of parking.

So while the PUD involved blending of WLR and WB2 parcels, the developers advised us personally that they had no intentions to develop the WLR property and the Staff placed appropriate restrictions including an amended PUD and clear emphasis on preservation of the character of "heavily wooded" area to the west.

In essence, these PUD examples have been done on properties in which the underlying zones are inherently more compatible, resulting densities are very low or appropriate restrictions were considered to protect the character of existing neighborhoods. That is not always the case and the existing code seems wide open for proposals which can significantly change the character of existing neighborhoods.

Recommendations

I again recommend that the Board not approve this proposed amendment and request that a more deliberate study be undertaken to develop clear and unambiguous PUD code that works for the City, developers and residents. I recommend that such effort considers the following:

1. Develop categories of PUD by use (Residential, Business, Mixed Use, etc.)
2. Clear specification of the underlying zones to which a PUD may apply within each category.
3. If blending is to be allowed,
    a. Clear and non-conflicting code that addresses blending of density within a PUD.
    b. Consider restrictions of PUD use across vastly different zones. For example, why allow WLR single family to be blended with WR-4 where densities can be as high as 57 rental or condominium units or 31 townhouse units/gross acre?

I would encourage collaboration between the Planning Staff, residents and others as this process moves forward.

Thank you for your time and attention.

David Hunt
113 Park Knoll Lane
Whitefish, MT

End of Exhibit C

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

To: Whitefish City-County Planning Board
From: David Taylor, AICP, Director of Planning & Building
Date: June 18, 2015
RE: Planned Unit Development Work Session

Attached is some information to assist with preliminary discussions with regard to the City of Whitefish's polices in relation to Planned Unit Developments (PUD's). PUD's are all about flexibility and providing some sort of major public benefit in exchange for that increased flexibility on design standards.

Earlier this year, the Planning Board reviewed an amendment to the PUD zoning overlay district that clarified how density and uses can be blended across property that had multiple underlying zoning districts. Such blending is common with PUD's across the country, especially blended uses, since PUD's in general foster a mixed-use environment. Not all PUD codes allow blended density. Some, like Missoula, allow density higher than the underlying zoning allows to be negotiated as one of the deviations of a PUD. That is also common. One area our PUD ordinance can be improved is with the addition of conditions for phasing and expiration. Another is the normal PUD density allowed without affordable housing is much higher in some instances than the normal underlying zoning. The ordinance should give large incentives for both affordable housing and parks and open space. Some ordinances, like the Minnesota model attached, give a density bonus for sustainable design such as LEED certified buildings, on-site renewable energy, and active transportation facilities.

Attached are the PUD ordinances for Whitefish, Kalispell, and Missoula, as well as a 'model ordinance' that encourages sustainable development from Minnesota and a similar one from Georgia.

We will review these and discuss some of the best parts of each, and then ask the Board for direction with regard to whether to pursue amendments to our existing ordinance. It should be noted that because of short staffing and workload, it may be several months before staff can bring back any recommended changes in the form of a zoning text amendment.

PROPOSED CODE AMENDMENTS
BLENDED DENSITY IN WPUD ZONES
STAFF REPORT #WZTA-15-01
JANUARY 15, 2015

This is a report to the Whitefish City Planning Board and the Whitefish City Council regarding a request by the City of Whitefish to amend Section 11-2S-3, WPUD, Planned Unit Development District, Standards of Development, to clarify the blending of uses and density where a PUD overlays multiple underlying zones. WZTA 15-01

A public hearing is scheduled before the Whitefish City Planning Board on January 15, 2015 and a subsequent hearing is set before the City Council on February 2, 2015. Draft regulations are below for Board review and action.

BACKGROUND INFORMATION

This amendment addresses Section 11-2-S-3 of the zoning code, WPUD Planned Unit Development District, Standards of Development, to clarify that blending uses and density may be allowed by the City Council when a proposed Planned Unit Development (PUD) overlay spans multiple underlying zoning districts. A recent appeal highlighted the lack of specificity regarding blending density in the code. Staff has drafted an amendment that addresses the topic and eliminates any confusion.

According to Section 11-2S-1, the intent and purpose of the WPUD overlay is to provide a mechanism to allow the developer the flexibility to respond to the environmental characteristics of a site, neighborhood character, and community housing demands. The developer gets increased flexibility and the opportunity to vary standards of the underlying zone, and the city gets some community benefit such as increased critical area buffering, trails, affordable housing, infill, transportation network improvements, etc.

While the PUD chapter does not specifically mention blending densities, blending allowed uses and densities has been a common practice with PUD's with multiple zoning districts approved by the City Council over the years. It is inferred in the intent of PUD's, as they are a 'planned unit', an overlay zone that encompasses an entire site with one set of applicable development requirements, superseding the underlying zoning and its standards, including allowed uses and density.

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.

A PUD gives the governing body flexibility to accommodate good development that responds appropriately to environmental constraints and other characteristics of the site. Using such blending, many approved projects have moved higher density development away from critical areas such as streams or wetlands to flatter, less impactful areas of a site. Blending can also help better provide a variety of residential products types across a development site, which PUD's call for.

A memo justifying allowing a PUD with blended uses over multiple zoning districts was recently appealed to the Board of Adjustment. The section that has caused confusion is Section 11-2S-5-B. It states that density standards established in 11-2S-3-B may not be deviated from with a PUD.

Blending the uses and densities from two zoning districts was not considered a deviation of density by past councils since it was averaged across a site. In the PUD's approved where density was blended, the final density was basically an average of the maximum density between the two underlying zoning districts. For example, if one part of the PUD had two acres of WB-2, which allows 20 dwelling units per acre with affordable housing, and one acre of WLR, which allows 5 units per acre, the total 3 acre site would qualify for 45 units, blended across the site. The final blended density would be 15 dwelling units/acre with an affordable housing component.

We are proposing to carry that basic formula into this text amendment: (maximum density zone A multiplied by acreage of zone A) plus (maximum density of zone B multiplied by acreage of zone B) divided by (total combined acreage of PUD). The text amendment provides standards for a blended density proposal. A sentence was also added that would give the council the power to deny a project that proposed blending incompatible commercial or industrial uses into residential areas.

RECOMMENDED CODE AMENDMENT

1. Section 11-2S-3 of WPUD PLANNED UNIT DEVELOPMENT DISTRICT be amended to add the following subsection as follows:

11-2S-3

I. Sites developed as a PUD that include two or more underlying zoning districts may be approved with blended density and permitted uses. When so developed, the maximum density of the underlying zoning districts may be distributed within the PUD boundary without regard to the precise boundary lines of the underlying zoning. It is up to the applicant to demonstrate the following: an equivalency of development rights; improvement in the overall master plan; and consistency with the goals and objectives of the Growth Policy. In no case shall the blending of densities allow more residential units to be approved than the maximum blended density. Maximum blended density per acre is calculated as follows: (maximum density zoning district A multiplied by acreage of zoning district A) + (maximum density of zoning district B multiplied by acreage of zoning district B) divided by (total combined acreage of property within proposed PUD boundary). When the calculation of density results in a fraction, the density allowed is rounded down to the next whole number (for example, 4.65 would equal 4 units per acre). A project may be denied on the basis of incompatibility with neighborhood character if commercial or industrial uses are insensitively blended into predominantly residential areas.

REVIEW OF ZONING TEXT AMENDMENT REQUIREMENTS

The following considerations from Section 11-7-10(E) are required to be addressed in order to guide both the Planning Board and the City Council when considering an amendment to the zoning regulations or the official map:

CONSIDERATIONS FROM SECTION 11-7-10E.	Staff Analysis/Comments
Conformity to the Growth Policy	The 2007 Whitefish City-County Growth Policy Future Land Use Goal 5 states: Protect and preserve the special character, scale, and qualities of existing neighborhoods while supporting and encouraging attractive, well-designed, neighborhood compatible infill development. PUD's allow the city council input into all of those things, giving developers the flexibility to protect special places.

CONSIDERATIONS FROM SECTION 11-7-10E.	Staff Analysis/Comments
Project Designed to Lessen Congestion in the Streets	Not applicable.
Historical and established use patterns and recent change in use trends weighed equally, not one to the exclusion of the other.	This amendment supports historic code interpretations and use patterns .
Security from Fire, Panic, and Disasters	Not applicable.
Promote Health and General Welfare	Health and general welfare are subjective, but the amendment will promote good design and the protection of sensitive areas.
Provide Adequate Light and Air	This criterion is not applicable to this code amendment.
Prevent Overcrowding of Land and Avoid Undue Concentration of People	This amendment will help development spread density evenly across a site rather than concentrating it. With careful site review, stipulations for approval, and other existing regulations, overcrowding of land and undue concentration of people can be avoided.
Facilitate Adequate Provisions for Transportation, Water, Sewerage, Schools, Parks and Other Public Requirement	Not applicable to this amendment
Reasonable Consideration to the Character of the District	Each PUD is reviewed on a case by case basis, and neighborhood character and compatibility is critical to approval of them.
Reasonable Consideration to the Peculiar Suitability of the Property for Particular Uses	Since each use will be reviewed on a case-by-case basis and given conditional approval, each site can be reviewed individually for suitability.

Conserve the Value of Buildings	Not applicable.
Encourage the Most Appropriate Use of the Land throughout the Municipality	Allowing the council more flexibility allows them to decide on appropriate land uses proposed with a PUD

FINDINGS:

1. Whereas the city council has approved numerous PUD's that included the blending of density and/or uses across multiple underlying zoning districts; and

2. Whereas questions have arisen about the PUD chapter and lack of clarity on this issue; and

3. Whereas adding the proposed amendment clarifies the issue and establishes a formula for density blending;

4. We find that it is in the best interest of the City of Whitefish to amend Section 11-2S-3 of the zoning code to add a new subsection I concerning density and use blending.

OVERALL RECOMMENDATION

Staff recommends that the Whitefish City Planning Board ***approve*** recommended code changes set forth in this staff report, subject to the above findings, and transmit same to the Whitefish City Council for further action.

February 18, 2015

Whitefish Planning Board & staff

Comments on Proposed Code Amendment (#WZTA-15-01)

The Staff Report on this proposed code amendment (#WZTA-15-01) indicates the amendment is proposed in response to "a recent appeal [which] highlighted the lack of specificity regarding blending density in the code." While we as the appellants understand full well the need for clarity, we feel that the proposed amendment still leaves the code unclear as to blending densities and more importantly, it does not address more fundamental gaps in the code which need to be addressed to set forth clear and unambiguous guidelines as to when and how PUDs may be used and which underlying zones may be overlaid by the PUD and essentially rezoned in the process.

The proposed code amendment inserts a new paragraph which states that "a PUD that includes two or more underlying zoning districts may be approved with blended density and permitted uses." It continues to define a formula with illustration to show blended density calculation across multiple zones. While this is a positive step, it still leaves in place Section 11-2S-5(B)(1) which lists Standards which may not be deviated from through a PUD specifically,

1. Density standards as set forth in this chapter

Hence, there is still conflicting language within the code and we recommend that a more deliberate approach be taken to fix the code in a balanced way that provides a needed tool for the City and developers to encourage creative designs while appropriately protecting character of existing neighborhoods and open spaces.

Background

The proposed PUD which initiated our appeal involved a parcel zoned WB2 (Secondary Business District) and two sections zoned WLR (One-Family Limited Residential District). By application of the PUD, properties zoned WLR were proposed to be developed as apartments at a density of 14.7 DU/Acre rather than at the normal density limit of 5 DU/Acre for WLR with density bonus. This has occurred because the present code does not prevent the PUD overlay from application across zones as different as WLR (residential) and WB2(commercial). Thus, without the transparency of rezoning, the WLR zoned properties can be developed with densities several times greater than adjacent land owners ever expected when they invested in their own WLR properties.

Contrasting examples in Flathead County and Kalispell

In contrast, both Flathead County and the City of Kalispell zoning codes, limit PUDs to "like zoned" properties and have designations which include Residential PUD, Commercial PUD,

Industrial PUD and Mixed Use PUD. As an example, Flathead County Regulations clearly specify in 3.31.030 - Standards for Planned Unit Development District (PUD):

3. Establishment of PUD Districts
The following locational criteria shall govern the type of planned unit developments that may be reviewed and approved by the County Commissioners

A. Residential PUD Districts:
Residential PUD districts can be established only in R-1 through R-5, RA-1, R-2.5, SAG-5, SAG-10, AG-20 or LS use districts, or in any area designated as "residential" in the Flathead County Growth Policy.

B. Commercial PUD Districts:
A commercial PUD district may be established in B-2 through B-5 districts.

This specification makes it clear that the PUD can be applied to zones that are similar in use, for example, residential or commercial. It therefore restricts the blending of residential and commercial zones via the PUD overlay. Where appropriate, properties could be explicitly rezoned to allow such blending but it would be a far more transparent process from the outset than the Whitefish code allows now.

Examples of past blended PUDs

The staff report includes five examples of approved PUDs where "blending" had been used. In three of these examples (Lookout Ridge, 93 LLC, Second Street Residences) the underlying zones are highly compatible; residential or agricultural transitioning to residential use and would readily fit within the Flathead County PUD requirements. The resulting densities of those PUDs are <u>significantly lower</u> than the density proposed for Whitefish Crossing (14.7 units/acre):

1. Lookout Ridge - Approved Density is 1.9 units/acre <u>and now foreclosed</u>
2. 93 LLC - Approved Density is 2.97 units/acre
3. Second Street Residences - Approved Density is 2.6 units/acre.

Railtown Gardens is a mixed use application with both business and residential zones and uses remaining as part of the PUD. This would fit into the Mixed Use PUD examples in the Flathead County code. Approved Density <u>is 5.2 units/acre</u>. Approved in 2008 – nothing happening since.

The Hampton Inn project has no development in the WLR portion of the PUD other than a small amount of parking. The Staff report in support of that PUD says in Finding 4:

> <u>D. Preserve and protect the character and qualities of existing neighborhoods.</u> The character of this neighborhood is larger commercial buildings with very large parking areas to accommodate users of the buildings or provide a location to store merchandise and/or equipment. This property

is adjacent to a single family neighborhood to the west. The area to the west is heavily wooded, which is part of its character.

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

So while the PUD involved blending of WLR and WB2 parcels, the developers advised us personally that they had no intentions of developing on the WLR property and the Staff placed appropriate restrictions including an amended PUD and clear emphasis on preservation of the character of "heavily wooded" area to the west.

In essence, these PUD examples have been done in on properties in which the underlying zones are inherently more compatible, resulting densities are very low or appropriate restrictions were considered to protect the character of existing neighborhoods.

Recommendations

We recommend that the Board not move this proposed amendment forward to council as is. Instead we would recommend you forward to council a recommendation that a more deliberate study be undertaken to develop clear and unambiguous PUD code that works for the City, developers and residents. We recommend that such effort considers the following:

1. Develop categories of PUD by use (Residential, Business, Mixed Use, etc.)
2. Clear specification of the underlying zones to which a PUD may apply within each category.
3. Clear and non-conflicting code that addresses blending of density within a PUD.

We encourage collaboration between the Planning Staff and residents as this process moves forward.

Respectfully,

David Hunt

113 Park Knoll Lane

Whitefish, MT

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ORDINANCE NO. 16___

An Ordinance of the City Council of the City of Whitefish, Montana, amending Title 11, Zoning Regulations, Title 12, Subdivision Regulations, Title 13, Lake and Lakeshore Protection Regulations, and Title 14, Flood Control, in the Whitefish City.

WHEREAS, the Whitefish Planning & Building Department initiated an effort to amend the Zoning Regulations to:

A. Change the term "servant" to "domestic worker" in the list of Conditional Uses in §11-2A-2, Agricultural District, §11-2B-2, Country Residential District, §11-2C-2, Suburban Residential District, §11-2D-2, Estate Residential District, §11-2E-2, One-Family Limited Residential District, §11-2F-2, One-Family Residential District, §11-2G-2, Two-Family Residential District, §11-2H-2, Low-Density Multi-Family Residential District, §11-2I-2, High Density Multi-Family Residential District, §11-2L-2, General Business District, §11-2N-2, Low Density Resort Residential District, §11-2O-2, Medium Density Resort Residential District, §11-2P-2, Limited Resort Business District, and §11-2Q-2, General Resort Business District;

B. Define the terms "domestic worker" and "building footprint" in §11-9-2, Definitions;

C. Add new sections regarding an overall burden of proof statement to §11-1, General Zoning Provisions (Zoning); §12-1, General Provisions (Subdivisions); §13-1, General Lake and Lakeshore Protection Provisions (Lakeshore); §14-1, General Floodplain Regulations (Floodplain);

D. Amend §11-2-3B(5), Use Regulations, to provide standards for screening of external rooftop mechanical equipment and to cross-reference the exempt items with §11-2L-4, Property Development Standards;

E. Add a new review criterion to §12-3-7A, Preliminary Plat Review Process; Minor Subdivisions, Waiver of Preliminary Plat; and

WHEREAS, in response to the proposal to amend Titles 11, 12, 13, and 14 in the Whitefish City Code, the Planning and Building Department prepared Staff Report WZTA 16-01, dated January 14, 2016; and

WHEREAS, at a lawfully noticed public hearing on January 21, 2016, the Whitefish Planning Board received an oral report from Planning staff, reviewed Staff Report WZTA 16-01, invited public comment, and thereafter voted to recommend approval of the proposed text amendments; and

WHEREAS, at a lawfully noticed public hearing on February 1, 2016, the Whitefish City Council received an oral report and a written report from Planning staff, reviewed Staff Report

WZTA 16-01, and letter of transmittal, invited public input, and approved the text amendments, attached as Exhibit "A;" and

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

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

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

Section 2: Staff Report WZTA 16-01 dated January 14, 2016, together with the January 26, 2016 letter of transmittal from the Whitefish Planning & Building Department, are hereby adopted as Findings of Fact.

Section 3: Amendments to Whitefish City Code Sections §11-1, §11-2-3B(5), §11-2A-2, §11-2B-2, §11-2C-2, §11-2D-2, §11-2E-2, §11-2F-2, §11-2G-2, §11-2H-2, §11-2I-2, §11-2L-2, §11-2N-2, §11-2O-2, §11-2P-2, §11-2Q-2, §11-9-2, §12-1, §12-3-7A, §13-1, and §14-1, amending the language as provided in the attached Exhibit "A", with insertions shown in red and underlined, and deletions shown in red with strikethrough, are hereby adopted.

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

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

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, THIS _____ DAY OF _____, 2016.

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

EXHIBIT "A"

Whitefish City Code Title 11 – Zoning Regulations

Chapter 1 – General Zoning Provisions

11-1-4: BURDEN OF PROOF: In all proceedings and hearings, and in all application and submittal materials, the burden of proof shall rest with the applicant, permittee or appellant, as applicable.

Chapter 2 – Zoning Districts

11-2-3B(5): USE REGULATIONS:
The following types of structures or structural parts are not subject to the building height limitations of this title: chimneys, tanks, church spires, belfries, domes, monuments, fire and hose towers, transmission towers, smokestacks, flagpoles, masts, aerials, cooling towers, elevator shafts, rooftop equipment screening that is no taller than the equipment (such screening shall not be used to create additional exterior wall height) and other similar projections. Building height and permitted exemptions in the WB-3 District shall meet the standards in §11-2L-4.

Article A. Agricultural District

11-2A-2: PERMITTED USES:

- Agriculture/silviculture.
- Campgrounds and recreational vehicle parks.
- Cemeteries and mausoleums.
- Home occupations (see special provisions in section 11-3-13 of this title).
- Livestock (see special provisions in subsection 11-3-22B of this title).
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings or uses, or recreational facilities, including parks and playgrounds.
- Residential:
- Class A manufactured homes.
- Daycare (registered home, 5 to 12 individuals).
- Guest and ~~servant~~ domestic worker quarters.
- Single-family dwellings.
- Sales stands for the sale of farm or ranch products produced on the premises or items similar to those products (minimum 10 foot setback from side and rear property lines).

Article B. Country Residential District

11-2B-2: PERMITTED USES:

- Agriculture/silviculture.
- Cemeteries and mausoleums.
- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' park.

- Livestock (see special provisions in subsection 11-3-22B of this title).
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).
  - Guest and ~~servant~~ domestic worker quarters.
  - Single-family dwellings.
- Sales stands for the sales of farm or ranch products produced on the premises or items similar to those products. (Minimum 10 foot setback from side and rear property lines.)

Article C. Suburban Residential District

11-2C-2: PERMITTED USES:

- Cemeteries and mausoleums.
- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.
- Livestock (see special provisions in subsection 11-3-22B of this title).
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).
  - Guest and ~~servant~~ domestic worker quarters.
  - Single-family dwellings.

Article D. Estate Residential District

11-2D-2: PERMITTED USES:

- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.
- Livestock (see special provisions in subsection 11-3-22B of this title).
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).

- Guest and ~~servant~~ domestic worker quarters.
- Single-family dwellings.

Article E. One-Family Limited Residential District

11-2E-2: PERMITTED USES

- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.
- Livestock (see special provisions in subsection 11-3-22B of this title).
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).
  - Guest and ~~servant~~ domestic worker quarters.
  - Single-family dwellings.

Article F. One-Family Residential District

11-2F-2: PERMITTED USES

- Home occupations (see special provisions in section 11-3-13 of this title).
- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.
- Livestock (see special provisions in subsection 11-3-22B of this title).
- Manufactured home subdivisions (5 acre minimum size).
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).
  - Guest and ~~servant~~ domestic worker quarters.
  - Single-family dwellings.

Article G. Two-Family Residential District

11-2G-2: PERMITTED USES

- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.

- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).
  - Guest and ~~servant~~ domestic worker quarters.
  - Manufactured home subdivisions (5 acre minimum size).
  - Single-family or two-family (duplex) dwellings.
- Sublots (see special provisions in subsection 11-3-14C of this title).

Article H. Low Density Multi-Family Residential District

11-2H-2: PERMITTED USES

- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).
  - Guest and ~~servant~~ domestic worker quarters.
  - Manufactured home subdivisions (5 acre minimum size).
  - One-family, two-family, triplex and fourplex dwellings.
- Sublots (see special provisions in subsection 11-3-14C of this title).

Article I. High Density Multi-Family Residential District

11-2I-2: PERMITTED USES

- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses or recreational facilities including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).
  - Fraternity and sorority houses.
  - Guest and ~~servant~~ domestic worker quarters.

- Manufactured home subdivisions (5 acre minimum size).
  - Single-family, duplex, triplex, fourplex and larger multi-family dwellings.
- Sublots (see special provisions in subsection 11-3-14C of this title).

Article L. General Business District

11-2L-2: PERMITTED USES

- Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).
- Colleges, business and trade schools, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Convention centers.
- Daycare (registered home, 5 to 12 individuals), with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Dry cleaning and cleaning agencies, with the exception of the Old Town central district.
- Financial institutions and professional offices, with the exception that on Central Avenue between Third and Railway, such uses must be located on floors other than the ground floor or else be ancillary to the retail use, covering no more than thirty percent (30%) of the ground floor area and not visible from Central Avenue nor located within the retail storefront area.
- Governmental, cultural and institutional facilities.
- Home occupations (see special provisions in section 11-3-13 of this title).
- Hotels, motels, and other hospitality and entertainment uses.
- Music and dance studios, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor unless associated with a performing arts center.
- Newspaper publishing and printing establishments, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround any unmanned building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor:
  - Boarding houses, fraternity and sorority houses
  - Class A manufactured homes
  - Foster and group homes
  - Guest and ~~servant~~ domestic worker quarters
  - Guesthouse, when an accessory use to a one-family dwelling
  - Single-family, duplex, triplex and fourplex multi-family dwellings
- Restaurants, with the exception of formula restaurants (see definition of "formula retail" in section 11-9-2 of this title).
- Retail sales and service, with the exception of "formula retail" (see definition in section 11-9-2 of this title).
- Shopping malls.
- Upholstery and drapery shops, with the exception of Central Avenue between Third and Railway.
- Vendors (see special provisions in section 11-3-23 of this title).

- Veterinarian office, small animal, with the exception of the Old Town central district.

Article N. Low Density Resort Residential District

11-2N-2: PERMITTED USES

- Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).
- Home occupations (see special provisions in section 11-3-13 of this title).
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 children).
  - Guest and ~~servant~~ domestic worker quarters.
  - Single-family through fourplex dwelling units including resort and recreational condominiums, townhouses, time sharing and interval ownership residences, vacation units or other multiple ownership arrangement residential uses, allowing overnight accommodations and ancillary services for the use of occupants and guests.
- Sublots (see special provisions in subsection 11-3-14C of this title).

Article O. Medium Density Resort Residential District

11-2O-2: PERMITTED USES

- Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).
- Home occupations (see special provisions in section 11-3-13 of this title).
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 children).
  - Fraternity and sorority houses.
  - Guest and ~~servant~~ domestic worker quarters.
  - Single-family through fourplex dwelling units including resort and recreational condominiums, townhouses, time sharing and interval ownership residences, vacation units or other multiple ownership arrangement residential uses, allowing overnight accommodations and ancillary services for the use of occupants and guests.
- Sublots (see special provisions in subsection 11-3-14C of this title).

Article P. Limited Resort Business District

11-2P-2: PERMITTED USES

- Ancillary commercial and retail facilities in an established resort complex which meet the following conditions:
  - A. The total floor area devoted to such commercial or retail uses shall not exceed ten percent (10%) of the total floor area of the main building situated on the lot.
  - B. No such commercial or retail use shall have an outside entrance intended for the use of the public and shall be located within the main building. No individual shop shall exceed five hundred (500) square feet of floor space.
  - C. No exterior signs.
  - D. No variance to this permitted use shall be granted by the board of adjustment.
  - E. The commercial or retail facilities shall be as listed below or of a similar nature:
    - Art galleries.
    - Bakery shops.
    - Barber and beautician shops.
    - Bars/lounges/casinos in conjunction with and ancillary to established lodging facilities. (Note: Requires a conditional use permit.)
    - Candy shops.
    - Coffee shops and restaurant facilities.
    - Florist shops.
    - Game rooms.
    - Garment shops.
    - Gift, curio and hobby shops.
    - Grocery stores.
    - Health studios.
    - Ice cream shops.
    - Laundry and cleaning pick up stations.
    - Sporting goods shops.
    - Travel agencies.
- Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).
- Daycare (registered home, 5 to 12 individuals).
- Home occupations (see special provisions in section 11-3-13 of this title).
- Hotels and motels.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses or recreational facilities including parks and playgrounds.
- Residential:
  - Boarding houses, fraternity and sorority houses.
  - Class A manufactured homes.
  - Guest and ~~servant~~ domestic worker quarters.
  - One through fourplex dwelling units, including resort and recreational condominiums, townhouses, time sharing and interval ownership residences or vacation units and other

multiple ownership arrangement residential uses, allowing overnight accommodations and ancillary services for the use of occupants and guests.

- Sublots (see special provisions in subsection 11-3-14C of this title).

Article Q. General Resort Business District

11-2Q-2: PERMITTED USES

- Ancillary commercial and retail facilities in an established resort complex which meet the following conditions:
  A. The total floor area devoted to such commercial or retail uses shall not exceed ten percent (10%) of the total floor area of the main building situated on the lot.
  B. No such commercial or retail use shall have an outside entrance intended for the use of the public and shall be located within the main building. No individual shop shall exceed five hundred (500) square feet of floor space.
  C. No exterior signs.
  D. No variance to this permitted use shall be granted by the board of adjustment.
  E. The commercial or retail facilities shall be as listed below or of a similar nature:
    - Art galleries.
    - Automotive service stations.
    - Bakery shops.
    - Barber and beautician shops.
    - Bars/lounges/casinos in conjunction with and ancillary to established lodging facilities. (Note: Requires a conditional use permit.)
    - Candy shops.
    - Coffee shops and restaurant facilities.
    - Florist shops.
    - Game rooms.
    - Garment shops.
    - Gift, curio and hobby shops.
    - Grocery stores.
    - Health studios.
    - Ice cream shops.
    - Laundry and cleaning pick up stations.
    - Sporting goods shops.
    - Travel agencies.
- Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).
- Daycare (registered home, 5 to 12 individuals).
- Home occupations (see special provisions in section 11-3-13 of this title).
- Hotels and motels.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses or recreational facilities including parks and playgrounds.
- Residential:
  - Boarding houses, fraternity and sorority houses.

- Class A manufactured homes.
- Fraternity and sorority houses.
- Guest and ~~servant~~ domestic worker quarters.
- One through fourplex dwelling units, including resort and recreational condominiums, townhouses, time sharing and interval ownership residences or vacation units and other multiple ownership arrangement residential uses, allowing overnight accommodations and ancillary services for the use of occupants and guests.

- Sublots (see special provisions in subsection 11-3-14C of this title).

Chapter 9 – Definitions

11-9-2: DEFINITIONS:

BUILDING FOOTPRINT: The area within the perimeter of a building measured at the exterior foundation including any patios with a roof and covered or uncovered decks and stairs.

DOMESTIC WORKER: A person who works within the employer's household and performs a variety of household services for an individual or a family, including, but not limited to, housekeeping, care of children, cooking, building maintenance, and landscaping maintenance.

Whitefish City Code Title 12 – Subdivision Regulations

Chapter 1 – General Zoning Provisions

12-1-4: BURDEN OF PROOF: In all proceedings and hearings, and in all application and submittal materials, the burden of proof shall rest with the applicant, permittee or appellant, as applicable.

Chapter 3 – Subdivision Application and Review Procedures

12-3-7A: PRELIMINARY PLAT REVIEW PROCESS; MINOR SUBDIVISIONS, WAIVER OF PRELIMINARY PLAT:

A. Preliminary Plat Waiver Request: Based on information and discussion at the preapplication conference, the requirement for a preliminary plat may be waived by the planning director. The subdivider must request the waiver in writing, along with the applicable fee and site plan, and the planning director must determine:

1. The plat contains three (3) or fewer lots;
2. There is no public dedication of streets or other public infrastructure;
3. All lots have legal and physical access conforming to these regulations;
4. Each lot has a suitable building site and there are no environmental hazards present;
5. Municipal sewer, water and other utilities are adequate and in place;
6. The subdivision complies with these regulations and current zoning regulations;
7. No subdivision variance is needed in order to comply with the Whitefish Subdivision Regulations. No subdivision variance may be requested or granted through this Waiver Approval process;

~~7.~~8. No significant effects are anticipated on agriculture and agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat and the public health and safety; and

~~8.~~9. Verification that the property is within the city limits. If recently annexed into city limits, an application for zoning map amendment shall accompany the preliminary plat application.

Whitefish City Code Title 13 – Lake and lakeshore Protection Regulations

Chapter 1 – General Lake and Lakeshore Protection Provisions

13-1-6: BURDEN OF PROOF: In all proceedings and hearings, and in all application and submittal materials, the burden of proof shall rest with the applicant, permittee or appellant, as applicable.

Whitefish City Code Title 14 – Flood Control

Chapter 1 – General Floodplain Regulations

14-1-7: BURDEN OF PROOF: In all proceedings and hearings, and in all application and submittal materials, the burden of proof shall rest with the applicant, permittee or appellant, as applicable.

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

January 26, 2016

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

Re: Zoning Text Amendment: WZTA 16-01

Honorable Mayor and Council:

Summary of Requested Action: This application is a request by the city of Whitefish to amend the zoning regulations for housekeeping items in Titles 11, 12, 13 and 14.

Specifically:

- Amend building height standards in §11-2-3B(5) & cross reference to §11-2L-4;
- Change the term 'servant' to 'domestic worker' in the list of Permitted Uses in §11-2A-2, Agricultural District, §11-2B-2, Country Residential District, §11-2C-2, Suburban Residential District, §11-2D-2, Estate Residential District, §11-2E-2, One-Family Limited Residential District, §11-2F-2, One-Family Residential District, §11-2G-2, Two-Family Residential District, §11-2H-2, Low-Density Multi-Family Residential District, §11-2I-2, High Density Multi-Family Residential District, §11-2L-2, General Business District, §11-2N-2, Low Density Resort Residential District, §11-2O-2, Medium Density Resort Residential District, §11-2P-2, Limited Resort Business District, §11-2Q-2, General Resort Business District; §11-9-2;
- Add new definitions: 'building footprint' and 'domestic worker';
- Add new subsections §11-1-4, General Zoning Provisions, §12-1-4, General Provisions, §13-1-6, General Lake and Lakeshore Protection Provisions, §14-1-7, General Floodplain Regulations to add a burden of proof standard; and
- New review criterion in §12-3-7A Preliminary Plat Review Process; Minor Subdivisions, Waiver of Preliminary Plat.

Planning & Building Department Recommendation: Staff recommended approval of the text amendment attached to the staff report.

Public Hearing: At the public hearing, two representatives spoke in favor of the text amendments and encouraged the Planning Board to remove outdated terms. The draft minutes of the Planning Board hearing are included.

Planning Board Recommendation: The Whitefish Planning Board held a public hearing on January 21, 2016. Following this hearing, the Planning Board recommended approval (5-1, Ellis voting in opposition) of the amendments and adopted the supporting findings of fact in the staff report.

As part of the recommendation, the Planning Board directed staff to provide definitions of the terms in §11-2-3B(5), as they felt some of the terms might be outdated. They requested the Council review these terms and, if appropriate, delete the ones that are outdated. This list of terms is located within Exhibit B.

Proposed Motion:

> I move to approve WZTA16-01 along with the Findings of Fact in the staff report, as recommended by the Whitefish Planning Board.

This item has been placed on the agenda for your regularly scheduled meeting on February 1, 2016. Should Council have questions or need further information on this matter, please contact the Whitefish Planning Board or the Planning & Building Department.

Respectfully,

Wendy Compton-Ring, AICP
Senior Planner

Att: Exhibit A, Planning Board recommendation, 1-21-16
Exhibit B, list of terms associated with §11-2-3B(5), Building Height
Draft minutes of the 1-21-16 Planning Board meeting

Exhibits from 1-21-16 Staff Packet to Planning Board

1. Staff Report, WZTA 16-01, 1-14-16
2. Advisory Agency Notice, 12-31-15

c: w/att Necile Lorang, City Clerk

EXHIBIT 'A'
Whitefish Planning Board Recommendation
WZTA 16-01
JANUARY 21, 2016

1. **§11-2A-2, Agricultural District:**
   - Agriculture/silviculture.
   - Campgrounds and recreational vehicle parks.
   - Cemeteries and mausoleums.
   - Home occupations (see special provisions in section 11-3-13 of this title).
   - Livestock (see special provisions in subsection 11-3-22B of this title).
   - Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum five feet (5') of landscaped area shall surround such a building or structure.
   - Publicly owned or operated buildings or uses, or recreational facilities, including parks and playgrounds.
   - Residential:
     - Class A manufactured homes.
     - Daycare (registered home, 5 to 12 individuals).
     - Guest and ~~servant~~ domestic worker quarters.
     - Single-family dwellings.
   - Sales stands for the sale of farm or ranch products produced on the premises or items similar to those products (minimum 10 foot setback from side and rear property lines).

   §11-2B-2, Country Residential District:
   - Agriculture/silviculture.
   - Cemeteries and mausoleums.
   - Home occupations (see special provisions in section 11-3-13 of this title).
   - Homeowners' park.
   - Livestock (see special provisions in subsection 11-3-22B of this title).
   - Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum five feet (5') of landscaped area shall surround such a building or structure.
   - Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
   - Residential:
     - Class A manufactured homes.
     - Daycare (registered home, 5 to 12 individuals).
     - Guest and ~~servant~~ domestic worker quarters.
     - Single-family dwellings.
   - Sales stands for the sales of farm or ranch products produced on the premises or items similar to those products. (Minimum 10 foot setback from side and rear property lines.)

§11-2C-2, Suburban Residential District:

- Cemeteries and mausoleums.
- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.
- Livestock (see special provisions in subsection 11-3-22B of this title).
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).
  - Guest and ~~servant~~ domestic worker quarters.
  - Single-family dwellings.

§11-2D-2, Estate Residential District:

- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.
- Livestock (see special provisions in subsection 11-3-22B of this title).
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).
  - Guest and ~~servant~~ domestic worker quarters.
  - Single-family dwellings.

§11-2E-2, One-Family Limited Residential District:

- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.
- Livestock (see special provisions in subsection 11-3-22B of this title).
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).
  - Guest and ~~servant~~ domestic worker quarters.
  - Single-family dwellings.

§11-2F-2, One-Family Residential District:

- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.
- Livestock (see special provisions in subsection 11-3-22B of this title).
- Manufactured home subdivisions (5 acre minimum size).
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).
  - Guest and ~~servant~~ domestic worker quarters.
  - Single-family dwellings.

§11-2G-2, Two-Family Residential District:

- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).
  - Guest and ~~servant~~ domestic worker quarters.
  - Manufactured home subdivisions (5 acre minimum size).
  - Single-family or two-family (duplex) dwellings.
  - Sublots (see special provisions in subsection 11-3-14C of this title).

§11-2H-2, Low-Density Multi-Family Residential District:

- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).
  - Guest and ~~servant~~ domestic worker quarters.

- Manufactured home subdivisions (5 acre minimum size).
- One-family, two-family, triplex and fourplex dwellings.
- Sublots (see special provisions in subsection 11-3-14C of this title).

§11-2I-2, High Density Multi-Family Residential District:

- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses or recreational facilities including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).
  - Fraternity and sorority houses.
  - Guest and ~~servant~~ domestic worker quarters.
  - Manufactured home subdivisions (5 acre minimum size).
  - Single-family, duplex, triplex, fourplex and larger multi-family dwellings.
  - Sublots (see special provisions in subsection 11-3-14C of this title).

§11-2L-2, General Business District:

- Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).
- Colleges, business and trade schools, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Convention centers.
- Daycare (registered home, 5 to 12 individuals), with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Dry cleaning and cleaning agencies, with the exception of the Old Town central district.
- Financial institutions and professional offices, with the exception that on Central Avenue between Third and Railway, such uses must be located on floors other than the ground floor or else be ancillary to the retail use, covering no more than thirty percent (30%) of the ground floor area and not visible from Central Avenue nor located within the retail storefront area.
- Governmental, cultural and institutional facilities.
- Home occupations (see special provisions in section 11-3-13 of this title).
- Hotels, motels, and other hospitality and entertainment uses.
- Music and dance studios, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor unless associated with a performing arts center.
- Newspaper publishing and printing establishments, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.

- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround any unmanned building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor:
  - Boarding houses, fraternity and sorority houses
  - Class A manufactured homes
  - Foster and group homes
  - Guest and ~~servant~~ domestic worker quarters
  - Guesthouse, when an accessory use to a one-family dwelling
  - Single-family, duplex, triplex and fourplex multi-family dwellings
- Restaurants, with the exception of formula restaurants (see definition of "formula retail" in section 11-9-2 of this title).
- Retail sales and service, with the exception of "formula retail" (see definition in section 11-9-2 of this title).
- Shopping malls.
- Upholstery and drapery shops, with the exception of Central Avenue between Third and Railway.
- Vendors (see special provisions in section 11-3-23 of this title).
- Veterinarian office, small animal, with the exception of the Old Town central district.

§11-2N-2, Low Density Resort Residential District:

- Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).
- Home occupations (see special provisions in section 11-3-13 of this title).
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 children).
  - Guest and ~~servant~~ domestic worker quarters.
  - Single-family through fourplex dwelling units including resort and recreational condominiums, townhouses, time sharing and interval ownership residences, vacation units or other multiple ownership arrangement residential uses, allowing overnight accommodations and ancillary services for the use of occupants and guests.
  - Sublots (see special provisions in subsection 11-3-14C of this title).

§11-2O-2, Medium Density Resort Residential District:

- Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).
- Home occupations (see special provisions in section 11-3-13 of this title).
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 children).
  - Fraternity and sorority houses.
  - Guest and ~~servant~~ domestic worker quarters.
  - Single-family through fourplex dwelling units including resort and recreational condominiums, townhouses, time sharing and interval ownership residences, vacation units or other multiple ownership arrangement residential uses, allowing overnight accommodations and ancillary services for the use of occupants and guests.
- Sublots (see special provisions in subsection 11-3-14C of this title).

§11-2P-2, Limited Resort Business District:

- Ancillary commercial and retail facilities in an established resort complex which meet the following conditions:
  A. The total floor area devoted to such commercial or retail uses shall not exceed ten percent (10%) of the total floor area of the main building situated on the lot.
  B. No such commercial or retail use shall have an outside entrance intended for the use of the public and shall be located within the main building. No individual shop shall exceed five hundred (500) square feet of floor space.
  C. No exterior signs.
  D. No variance to this permitted use shall be granted by the board of adjustment.
  E. The commercial or retail facilities shall be as listed below or of a similar nature:
     - Art galleries.
     - Bakery shops.
     - Barber and beautician shops.
     - Bars/lounges/casinos in conjunction with and ancillary to established lodging facilities. (Note: Requires a conditional use permit.)
     - Candy shops.
     - Coffee shops and restaurant facilities.
     - Florist shops.
     - Game rooms.
     - Garment shops.
     - Gift, curio and hobby shops.

    - Grocery stores.
    - Health studios.
    - Ice cream shops.
    - Laundry and cleaning pick up stations.
    - Sporting goods shops.
    - Travel agencies.
- Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).
- Daycare (registered home, 5 to 12 individuals).
- Home occupations (see special provisions in section 11-3-13 of this title).
- Hotels and motels.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses or recreational facilities including parks and playgrounds.
- Residential:
    - Boarding houses, fraternity and sorority houses.
    - Class A manufactured homes.
    - Guest and ~~servant~~ domestic worker quarters.
    - One through fourplex dwelling units, including resort and recreational condominiums, townhouses, time sharing and interval ownership residences or vacation units and other multiple ownership arrangement residential uses, allowing overnight accommodations and ancillary services for the use of occupants and guests.
    - Sublots (see special provisions in subsection 11-3-14C of this title).

§11-2Q-2, General Resort Business District:

- Ancillary commercial and retail facilities in an established resort complex which meet the following conditions:
    A. The total floor area devoted to such commercial or retail uses shall not exceed ten percent (10%) of the total floor area of the main building situated on the lot.
    B. No such commercial or retail use shall have an outside entrance intended for the use of the public and shall be located within the main building. No individual shop shall exceed five hundred (500) square feet of floor space.
    C. No exterior signs.
    D. No variance to this permitted use shall be granted by the board of adjustment.
    E. The commercial or retail facilities shall be as listed below or of a similar nature:
        - Art galleries.
        - Automotive service stations.
        - Bakery shops.
        - Barber and beautician shops.

    - Bars/lounges/casinos in conjunction with and ancillary to established lodging facilities. (Note: Requires a conditional use permit.)
    - Candy shops.
    - Coffee shops and restaurant facilities.
    - Florist shops.
    - Game rooms.
    - Garment shops.
    - Gift, curio and hobby shops.
    - Grocery stores.
    - Health studios.
    - Ice cream shops.
    - Laundry and cleaning pick up stations.
    - Sporting goods shops.
    - Travel agencies.
- Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).
- Daycare (registered home, 5 to 12 individuals).
- Home occupations (see special provisions in section 11-3-13 of this title).
- Hotels and motels.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses or recreational facilities including parks and playgrounds.
- Residential:
    - Boarding houses, fraternity and sorority houses.
    - Class A manufactured homes.
    - Fraternity and sorority houses.
    - Guest and ~~servant~~ domestic worker quarters.
    - One through fourplex dwelling units, including resort and recreational condominiums, townhouses, time sharing and interval ownership residences or vacation units and other multiple ownership arrangement residential uses, allowing overnight accommodations and ancillary services for the use of occupants and guests.

Sublots (see special provisions in subsection 11-3-14C of this title)..

2. §11-9-2, Definitions:

BUILDING FOOTPRINT: The area within the perimeter of a building measured at the exterior foundation including any patios with a roof and covered or uncovered decks and stairs.

DOMESTIC WORKER: A person who works within the employer's household and performs a variety of household services for an individual or a family, including, but not limited to,

housekeeping, care of children, cooking, building maintenance, and landscaping maintenance.

3. **§11-1-4, Burden of Proof, General Zoning Provisions (Zoning):**
   In all proceedings and hearings, and in all application and submittal materials, the burden of proof shall rest with the applicant, permittee or appellant, as applicable.

   §12-1-4, Burden of Proof, General Provisions (Subdivision):
   In all proceedings and hearings, and in all application and submittal materials, the burden of proof shall rest with the applicant, permittee or appellant, as applicable.

   §13-1-6, Burden of Proof, General Lake and Lakeshore Protection Provisions (Lakeshore):
   In all proceedings and hearings, and in all application and submittal materials, the burden of proof shall rest with the applicant, permittee or appellant, as applicable.

   §14-1-7, Burden of Proof, General Floodplain Regulations (Floodplain):
   In all proceedings and hearings, and in all application and submittal materials, the burden of proof shall rest with the applicant, permittee or appellant, as applicable.

4. **§11-2-3B(5) Use Regulations:**
   The following types of structures or structural parts are not subject to the building height limitations of this title: chimneys, tanks, church spires, belfries, domes, monuments, fire and hose towers, transmission towers, smokestacks, flagpoles, masts, aerials, cooling towers, elevator shafts, rooftop equipment screening that is no taller than the equipment (such screening shall not be used to create additional exterior wall height) and other similar projections. Building height and permitted exemptions in the WB-3 District shall meet the standards in §11-2L-4.

5. **§12-3-7A, Preliminary Plat Review Process; Minor Subdivisions, Waiver of Preliminary Plat:**
   Preliminary Plat Waiver Request: Based on information and discussion at the preapplication conference, the requirement for a preliminary plat may be waived by the planning director. The subdivider must request the waiver in writing, along with the applicable fee and site plan, and the planning director must determine:
   1. The plat contains three (3) or fewer lots;
   2. There is no public dedication of streets or other public infrastructure;
   3. All lots have legal and physical access conforming to these regulations;
   4. Each lot has a suitable building site and there are no environmental hazards
   5. present;
   6. Municipal sewer, water and other utilities are adequate and in place;
   7. The subdivision complies with these regulations and current zoning regulations;
   8. No subdivision variance is needed in order to comply with the Whitefish Subdivision Regulations. No subdivision variance may be requested or granted through this Waiver Approval process;

9. No significant effects are anticipated on agriculture and agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat and the public health and safety; and
10. Verification that the property is within the city limits. If recently annexed into city limits, an application for zoning map amendment shall accompany the preliminary plat application.

EXHIBIT 'B'
Building Height Exemptions: §11-2-3B(5)

The following is the exact language out of the zoning regulations describing the types of appurtenances are exempt from building height. As requested by the Planning Board, a definition of the terms follows the text. None of these terms are within the Zoning Regulations, but are common terms from the dictionary.

> The following types of structures or structural parts are not subject to the building height limitations of this title: chimneys, tanks, church spires, belfries, domes, monuments, fire and hose towers, transmission towers, smokestacks, flagpoles, masts, aerials, cooling towers, elevator shafts, rooftop equipment screening that is no taller than the equipment (such screening shall not be used to create additional exterior wall height) and other similar projections. Building height and permitted exemptions in the WB-3 District shall meet the standards in §11-2L-4

Definitions (combination of dictionary & Building Code):

Chimneys: is a vertical structure which provides ventilation for hot flue gases or smoke from a boiler, stove, furnace or fireplace to the outside atmosphere

Tanks: is a container for storing liquid – most likely water in this instance. Can be on top of a building or be freestanding. There are water tanks on Grouse Mountain

Church Spires: a tapering conical or pyramidal structure on the top of a building

Belfries: is a structure enclosing bells for ringing as part of building, usually as part of a bell tower or steeple – can also refer to the entire tower

Domes: is an architectural element that resembles the hollow upper half of a sphere. A dome can rest on a rotunda or columns (or piers)

Monuments: is a type of structure explicitly created to commemorate a person or important event (e.g., Washington Monument)

Fire & Hose Towers: is a structure designed for fire department personnel training and hose drying

Transmission Towers: is a steel lattice tower used to support overhead power lines

Smokestacks: a type of chimney used in industrial applications.

Flagpoles: is a pole designed to display a flag. It can be constructed out of wood or metal.

Masts: may refer to a flagpole or a structure designed to hold antennas/aerials (such as radio towers)

Aerials: a radio/TV antenna

Cooling Towers: is a device that expels waste heat into the atmosphere through the cooling of a water stream to a lower temperature

Elevator Shafts: is the structure that houses an elevator and may protrude above the roofline

Staff Analysis:
The Planning Board noted, during their review, that some of these terms seem outdated or unnecessary. Staff has reviewed them, and can see no justification for their removal from the height exemptions. Some are architectural features, but others are necessary for HVAC, fire safety, roof access or telecommunications.

PUBLIC HEARING 3: AMENDMENT OF WHITEFISH CITY CODE TITLES 11, 12, 13 AND 14 ZONING, SUBDIVISION, LAKE AND LAKESHORE PROTECTION REGULATIONS, AND FLOOD CONTROL
8:20 pm

A request by the City of Whitefish for a variety of housekeeping amendments in §11-2-3B(5) and §11-2L-4, building height; change the term 'servant' to 'domestic worker' in the list of Permitted Uses in §11-2A-2, Agricultural District, §11-2B-2, Country Residential District, §11-2C-2, Suburban Residential District, §11-2D-2, Estate Residential District, §11-2E-2, One-Family Limited Residential District, §11-2F-2, One-Family Residential District, §11-2G-2, Two-Family Residential District, §11-2H-2, Low-Density Multi-Family Residential District, §11-2I-2, High Density Multi-Family Residential District, §11-2L-2, General Business District, §11-2N-2, Low Density Resort Residential District, §11-2O-2, Medium Density Resort Residential District, §11-2P-2, Limited Resort Business District, §11-2Q-2, General Resort Business District; §11-9-2, definitions add 'domestic worker' and 'building footprint;' add new subsections §11-1-4, General Zoning Provisions, §12-1-4, General Provisions, §13-1-6, General Lake and Lakeshore Protection Provisions, §14-1-7, General Floodplain Regulations to add a burden of proof standard; §12-3-7A, Preliminary Plat Review Process; Minor Subdivisions, Waiver of Preliminary Plat, review criterion.

STAFF REPORT WZTA 16-01 (Compton-Ring)

Senior Planner Compton-Ring reviewed her staff report and findings, which included five (5) different housekeeping text amendments.

Staff recommended adoption of the findings of fact within staff report WZTA 16-01 and for **approval** to the Whitefish City Council.

BOARD QUESTIONS OF STAFF

John asked about the fourth amendment concerning height limitations. He understands what a "chimney" is, but what about a "tank"? What if the brewery downtown wanted to put a 20' high tank on top of their building to hold grain, does this allow them to do that? Compton-Ring replied she was not sure what a "tank" is, and John said he did not know either. John asked what if someone downtown wanted to take a building that is currently within the height limitations and put a big gold dome on it that goes up 20'. Does this allow them to do that? Compton-Ring said she thought domes, belfries, spires, etc., might be for churches. John said his problem is he thinks it is so vague that someone can make pretty much anything fit. Compton-Ring said they are not proposing to add or change anything, but they just want to see equipment screened.

Richard said the current Code allows for tanks, so we are not adding anything and asked if tanks would have to meet the building height restrictions and now the screening. Compton-Ring said these are the things that are **exempt** from building height, and "tank" is one of them. She said it is probably a throwback from something long ago, and the Planning Board could certainly vote to take it out. She pointed out that

no one has ever asked for it though.

APPLICANT / AGENCIES

None.

PUBLIC COMMENT

Rhonda Fitzgerald, 412 Lupfer Avenue in Whitefish, suggested the Planning Board could cross out all those things in §11-2-3B(5) that no longer fit. She said the whole Zoning document needs a rewrite, parts of it are over 30 years old. Parts of it were cut and pasted from other communities and the idea was that at some point someone would go in and say, "What's a tank", and she thinks it is awesome that John brought it up. She suggested they just cross certain things out.

Mayre Flowers, 35 4th Street West in Kalispell, appreciates these are important areas to clean up and would second what Ms. Fitzgerald just said to take the time right now to also clean up terms that are not applicable and in current use. She appreciated the fact that "servant" has been removed but wonders if "domestic worker" is the best term. She had no other suggestion. She also thinks clarifying the responsibility for the burden of proof is a very important clarification to make and she encourages and appreciates those efforts.

MOTION / BOARD DISCUSSION

Rebecca moved to accept the proposed Code amendments to Titles 11, 12, 13 and 14 contained in staff report WZC 16-01, with one correction to remove "tanks" from Page 11 under 11-2-3B(5), Use Regulations. Melissa seconded.

Richard offered a friendly amendment to include in the exclusions "fire and hose towers" and "monuments". He is not sure what is meant by "aerials", but he is concerned that if we keep that, we could be into cellphone towers. Taylor said "aerial" could include "antennae", and City Hall and the Fire Department have antennas that exceed the height limitation because it is exempt. Chairman Meckel asked if "aerials" will be a problem and Richard said he wanted to leave "aerials" in. Jim seconded the amendment.

John urged the Board to delete the whole section, not just pick items that seem bad tonight. Take "masts", for example. What if someone wanted to put a mast on their building that has sails on it and a big pirate flag on top of it? This would approve them doing that. He urged the Board to strike the fourth amendment in its entirety and let the Planning staff review it.

DRAFT

Richard withdrew his friendly amendment and Jim withdrew his second.

Now we are just back to voting on "tanks". Rebecca withdrew her motion and Melissa withdrew her second.

MOTION / BOARD DISCUSSION

John made a motion to approve staff report WZTA 16-01, but limit it to Sections 1, 2, 3 and 5 only, along with its review, findings of fact and recommendations. Rebecca seconded.

Compton-Ring said the reason this text amendment was added is because we had a project, but no application, where they were looking at a way to add more building height and they said it was "screening" the rooftop air conditioning equipment. Instead of just tightly screening the equipment so it was blocked from view, it was 8' tall and 50' long, so Planning staff wanted to make sure that is not considered acceptable equipment screening. The Architectural Standards say you have to screen mechanical equipment, but you cannot come in and add height under the guise of equipment screening. They felt it was a gap in zoning. They also had an instance with a project in the WB-3 zoning district where the architect did not realize the WB-3 zoning district had a different list of building height exemptions. They misunderstood that elevators could go above the building height because they are clearly exempt in this section, but not in the WB-3. The purpose of this code amendment is to cross-reference sections. If someone is building in the downtown, they will know they also need to look at the specific criteria in the WB-3.

Rebecca asked just to clarify, right now we are voting on eliminating this whole section but accepting everything else.

Richard said sees a danger in eliminating this section as he feels it is fraught with danger, and others agreed. He felt the Planning Board was at risk of doing something in haste. He asked for suggestions from Planning staff.

Compton-Ring said they could go through these terms and define them for the Council when this comes before the Council. Or they could do it and bring it back to the Planning Board. Melissa would like to table it until next month because she would like to see a definition of a "mast". Rebecca thinks the Council could probably go through the definitions and make that decision rather than holding it up for another month.

Richard wanted to be sure that if we vote against this then we can come back around and take another look at it. Chairman Meckel said what he

	thinks is that John wrapped an amendment to the motion, to eliminate this paragraph.
VOTE	The motion failed with John voting in favor, and Melissa, Chair Meckel, Rebecca, Jim and Richard voting in opposition.
MOTION / BOARD DISCUSSION	Rebecca made a motion to accept staff report WZTA 16-01 with a requirement to include definitions of the language under the amendment to Section 11-2-3B(5) starting at "chimneys" and ending at "rooftop equipment" for the Council to review. Jim seconded.
VOTE	The motion passed five to one, with Melissa, Chairman Meckel, Rebecca, Richard and Jim voting in favor, and John voting in opposition. The matter is scheduled to go before the Council on February 1, 2016.

DRAFT

PROPOSED CODE AMENDMENTS
TITLES 11, 12, 13 & 14 – various sections
STAFF REPORT WZTA 16-01
January 14, 2016

This is a staff report to the Whitefish Planning Board and Whitefish City Council amending the Whitefish City Code with a variety of housekeeping amendments in Titles 11, 12, 13 and 14. The Planning Board public hearing is scheduled for **January 21, 2016** and a subsequent hearing is scheduled before the City Council on **February 1, 2016**.

BACKGROUND

Staff maintains a list of housekeeping zoning text amendments to get to when we have time. These housekeeping items are related to mechanical equipment screening, domestic worker housing, adding definitions for building footprint and domestic worker, adding a burden of proof section to the zoning, subdivision, lakeshore and floodplain regulations, and adding a review criterion for waivers of preliminary plat.

PROPOSAL

1. This amendment is at the request of the Planning Board to update an outdated term. The residential zoning districts, permit 'guest or servant quarters' these are spaces inside a home that may or may not have a kitchen. These are intended to be used for an aging parent or someone providing care or a service for the resident of the home or the home itself. It was pointed out by the Board last year that the term was a bit dated and we agree. We are suggesting changing the term 'servant' to 'domestic worker' and offering a definition of domestic worker.

   Amend §11-2A-2, Agricultural District:
   - Agriculture/silviculture.
   - Campgrounds and recreational vehicle parks.
   - Cemeteries and mausoleums.
   - Home occupations (see special provisions in section 11-3-13 of this title).
   - Livestock (see special provisions in subsection 11-3-22B of this title).
   - Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum five feet (5') of landscaped area shall surround such a building or structure.
   - Publicly owned or operated buildings or uses, or recreational facilities, including parks and playgrounds.
   - Residential:
     - Class A manufactured homes.
     - Daycare (registered home, 5 to 12 individuals).

    - Guest and ~~servant~~ domestic worker quarters.
    - Single-family dwellings.
- Sales stands for the sale of farm or ranch products produced on the premises or items similar to those products (minimum 10 foot setback from side and rear property lines).

Amend §11-2B-2, Country Residential District:

- Agriculture/silviculture.
- Cemeteries and mausoleums.
- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' park.
- Livestock (see special provisions in subsection 11-3-22B of this title).
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
    - Class A manufactured homes.
    - Daycare (registered home, 5 to 12 individuals).
    - Guest and ~~servant~~ domestic worker quarters.
    - Single-family dwellings.
- Sales stands for the sales of farm or ranch products produced on the premises or items similar to those products. (Minimum 10 foot setback from side and rear property lines.)

Amend §11-2C-2, Suburban Residential District:

- Cemeteries and mausoleums.
- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.
- Livestock (see special provisions in subsection 11-3-22B of this title).
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
    - Class A manufactured homes.
    - Daycare (registered home, 5 to 12 individuals).
    - Guest and ~~servant~~ domestic worker quarters.
    - Single-family dwellings.

Amend §11-2D-2, Estate Residential District:

- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.
- Livestock (see special provisions in subsection 11-3-22B of this title).
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).
  - Guest and ~~servant~~ domestic worker quarters.
  - Single-family dwellings.

Amend §11-2E-2, One-Family Limited Residential District:

- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.
- Livestock (see special provisions in subsection 11-3-22B of this title).
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).
  - Guest and ~~servant~~ domestic worker quarters.
  - Single-family dwellings.

Amend §11-2F-2, One-Family Residential District:

- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.
- Livestock (see special provisions in subsection 11-3-22B of this title).
- Manufactured home subdivisions (5 acre minimum size).
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).

- Guest and ~~servant~~ domestic worker quarters.
- Single-family dwellings.

Amend §11-2G-2, Two-Family Residential District:

- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).
  - Guest and ~~servant~~ domestic worker quarters.
  - Manufactured home subdivisions (5 acre minimum size).
  - Single-family or two-family (duplex) dwellings.
  - Sublots (see special provisions in subsection 11-3-14C of this title).

Amend §11-2H-2, Low-Density Multi-Family Residential District:

- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).
  - Guest and ~~servant~~ domestic worker quarters.
  - Manufactured home subdivisions (5 acre minimum size).
  - One-family, two-family, triplex and fourplex dwellings.
  - Sublots (see special provisions in subsection 11-3-14C of this title).

Amend §11-2I-2, High Density Multi-Family Residential District:

- Home occupations (see special provisions in section 11-3-13 of this title).
- Homeowners' parks.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.

- Publicly owned or operated buildings, uses or recreational facilities including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 individuals).
  - Fraternity and sorority houses.
  - Guest and ~~servant~~ domestic worker quarters.
  - Manufactured home subdivisions (5 acre minimum size).
  - Single-family, duplex, triplex, fourplex and larger multi-family dwellings.
  - Sublots (see special provisions in subsection 11-3-14C of this title).

Amend §11-2L-2, General Business District:

- Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).
- Colleges, business and trade schools, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Convention centers.
- Daycare (registered home, 5 to 12 individuals), with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Dry cleaning and cleaning agencies, with the exception of the Old Town central district.
- Financial institutions and professional offices, with the exception that on Central Avenue between Third and Railway, such uses must be located on floors other than the ground floor or else be ancillary to the retail use, covering no more than thirty percent (30%) of the ground floor area and not visible from Central Avenue nor located within the retail storefront area.
- Governmental, cultural and institutional facilities.
- Home occupations (see special provisions in section 11-3-13 of this title).
- Hotels, motels, and other hospitality and entertainment uses.
- Music and dance studios, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor unless associated with a performing arts center.
- Newspaper publishing and printing establishments, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround any unmanned building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.

- Residential, with the exception that in the Old Town central district, such use is limited to floors other than the ground floor:
  - Boarding houses, fraternity and sorority houses
  - Class A manufactured homes
  - Foster and group homes
  - Guest and ~~servant~~ domestic worker quarters
  - Guesthouse, when an accessory use to a one-family dwelling
  - Single-family, duplex, triplex and fourplex multi-family dwellings
- Restaurants, with the exception of formula restaurants (see definition of "formula retail" in section 11-9-2 of this title).
- Retail sales and service, with the exception of "formula retail" (see definition in section 11-9-2 of this title).
- Shopping malls.
- Upholstery and drapery shops, with the exception of Central Avenue between Third and Railway.
- Vendors (see special provisions in section 11-3-23 of this title).
- Veterinarian office, small animal, with the exception of the Old Town central district.

Amend §11-2N-2, Low Density Resort Residential District:

- Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).
- Home occupations (see special provisions in section 11-3-13 of this title).
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 children).
  - Guest and ~~servant~~ domestic worker quarters.
  - Single-family through fourplex dwelling units including resort and recreational condominiums, townhouses, time sharing and interval ownership residences, vacation units or other multiple ownership arrangement residential uses, allowing overnight accommodations and ancillary services for the use of occupants and guests.
  - Sublots (see special provisions in subsection 11-3-14C of this title).

Amend §11-2O-2, Medium Density Resort Residential District:

- Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).
- Home occupations (see special provisions in section 11-3-13 of this title).

- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses, or recreational facilities, including parks and playgrounds.
- Residential:
  - Class A manufactured homes.
  - Daycare (registered home, 5 to 12 children).
  - Fraternity and sorority houses.
  - Guest and ~~servant~~ domestic worker quarters.
  - Single-family through fourplex dwelling units including resort and recreational condominiums, townhouses, time sharing and interval ownership residences, vacation units or other multiple ownership arrangement residential uses, allowing overnight accommodations and ancillary services for the use of occupants and guests.
- Sublots (see special provisions in subsection 11-3-14C of this title).

Amend §11-2P-2, Limited Resort Business District:

- Ancillary commercial and retail facilities in an established resort complex which meet the following conditions:
  A. The total floor area devoted to such commercial or retail uses shall not exceed ten percent (10%) of the total floor area of the main building situated on the lot.
  B. No such commercial or retail use shall have an outside entrance intended for the use of the public and shall be located within the main building. No individual shop shall exceed five hundred (500) square feet of floor space.
  C. No exterior signs.
  D. No variance to this permitted use shall be granted by the board of adjustment.
  E. The commercial or retail facilities shall be as listed below or of a similar nature:
    - Art galleries.
    - Bakery shops.
    - Barber and beautician shops.
    - Bars/lounges/casinos in conjunction with and ancillary to established lodging facilities. (Note: Requires a conditional use permit.)
    - Candy shops.
    - Coffee shops and restaurant facilities.
    - Florist shops.
    - Game rooms.
    - Garment shops.
    - Gift, curio and hobby shops.

    - Grocery stores.
    - Health studios.
    - Ice cream shops.
    - Laundry and cleaning pick up stations.
    - Sporting goods shops.
    - Travel agencies.
- Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).
- Daycare (registered home, 5 to 12 individuals).
- Home occupations (see special provisions in section 11-3-13 of this title).
- Hotels and motels.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses or recreational facilities including parks and playgrounds.
- Residential:
    - Boarding houses, fraternity and sorority houses.
    - Class A manufactured homes.
    - Guest and ~~servant~~ domestic worker quarters.
    - One through fourplex dwelling units, including resort and recreational condominiums, townhouses, time sharing and interval ownership residences or vacation units and other multiple ownership arrangement residential uses, allowing overnight accommodations and ancillary services for the use of occupants and guests.
    - Sublots (see special provisions in subsection 11-3-14C of this title).

Amend §11-2Q-2, General Resort Business District:

- Ancillary commercial and retail facilities in an established resort complex which meet the following conditions:
    A. The total floor area devoted to such commercial or retail uses shall not exceed ten percent (10%) of the total floor area of the main building situated on the lot.
    B. No such commercial or retail use shall have an outside entrance intended for the use of the public and shall be located within the main building. No individual shop shall exceed five hundred (500) square feet of floor space.
    C. No exterior signs.
    D. No variance to this permitted use shall be granted by the board of adjustment.
    E. The commercial or retail facilities shall be as listed below or of a similar nature:
        - Art galleries.
        - Automotive service stations.

    - Bakery shops.
    - Barber and beautician shops.
    - Bars/lounges/casinos in conjunction with and ancillary to established lodging facilities. (Note: Requires a conditional use permit.)
    - Candy shops.
    - Coffee shops and restaurant facilities.
    - Florist shops.
    - Game rooms.
    - Garment shops.
    - Gift, curio and hobby shops.
    - Grocery stores.
    - Health studios.
    - Ice cream shops.
    - Laundry and cleaning pick up stations.
    - Sporting goods shops.
    - Travel agencies.
- Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).
- Daycare (registered home, 5 to 12 individuals).
- Home occupations (see special provisions in section 11-3-13 of this title).
- Hotels and motels.
- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.
- Publicly owned or operated buildings, uses or recreational facilities including parks and playgrounds.
- Residential:
    - Boarding houses, fraternity and sorority houses.
    - Class A manufactured homes.
    - Fraternity and sorority houses.
    - Guest and ~~servant~~ domestic worker quarters.
    - One through fourplex dwelling units, including resort and recreational condominiums, townhouses, time sharing and interval ownership residences or vacation units and other multiple ownership arrangement residential uses, allowing overnight accommodations and ancillary services for the use of occupants and guests.
    - Sublots (see special provisions in subsection 11-3-14C of this title).

2. In light of eliminating the term ‘servant’, staff felt it would be good to have a definition of ‘domestic worker’.

   In addition, we have had a number of questions from applicants that questions the term ‘building footprint’. We use the building footprint, which is

the measurement around the foundation of a building, to calculate lot coverage percentage. Lot coverage is a development standard within the zoning regulations that is reviewed at the time of building permit. For example, the WR-2 zoning has a maximum Lot Coverage of 40%. This means that no more than 40% of the lot can be covered by buildings. However, the term 'building footprint' has not been defined.

Add §11-9-2, Definitions:

BUILDING FOOTPRINT:	The area within the perimeter of a building measured at the exterior foundation including any patios with a roof and covered or uncovered decks and stairs.
DOMESTIC WORKER:	A person who works within the employer's household and performs a variety of household services for an individual or a family, including, but not limited to, housekeeping, care of children, cooking, building maintenance, and landscaping maintenance.

3. It was recently pointed out to the Planning Office that zoning regulations did not contain an overall burden of proof statement indicating it's the applicant's responsibility to prove they are meeting City regulations. Upon review of the regulations and conversations among staff, we agreed that this should be a section within the Zoning Code and it should also be added to the Subdivision, Lakeshore and Floodplain regulations.

   Add new §11-1-4, General Zoning Provisions (Zoning):
   In all proceedings and hearings, and in all application and submittal materials, the burden of proof shall rest with the applicant, permittee or appellant, as applicable.

   Add new §12-1-4, General Provisions (Subdivision):
   In all proceedings and hearings, and in all application and submittal materials, the burden of proof shall rest with the applicant, permittee or appellant, as applicable.

   Add new §13-1-6, General Lake and Lakeshore Protection Provisions (Lakeshore):
   In all proceedings and hearings, and in all application and submittal materials, the burden of proof shall rest with the applicant, permittee or appellant, as applicable.

   Add new §14-1-7, General Floodplain Regulations (Floodplain):

In all proceedings and hearings, and in all application and submittal materials, the burden of proof shall rest with the applicant, permittee or appellant, as applicable.

4. The building height exempts certain items from the maximum height standards and the Architectural Review Standards require exterior mechanical equipment to be screened from view; however, mechanical equipment screening is not an item that is exempt from the building height. We would like to make sure mechanical equipment is screened from view, but we do not want to see it be used as an excuse to obtain more building height. So we are providing standards below for the screening.

   In addition, the building height standards for the WB-3 zoning district (downtown) do not permit all the exempt items in §11-2-3B(5). We would like to cross-reference these items within §11-2-3B(5).

   Amend §11-2-3B(5) Use Regulations:
   The following types of structures or structural parts are not subject to the building height limitations of this title: chimneys, tanks, church spires, belfries, domes, monuments, fire and hose towers, transmission towers, smokestacks, flagpoles, masts, aerials, cooling towers, elevator shafts<u>, rooftop equipment screening that is no taller than the equipment (such screening shall not be used to create additional exterior wall height)</u> and other similar projections. <u>Building height and permitted exemptions in the WB-3 District shall meet the standards in §11-2L-4.</u>

5. In certain circumstances, for very minor subdivisions that meet the criteria listed below, the City can administratively issue a preliminary plat approval, after notice to immediate neighbors. Once criteria that should be included is no request for a variance to the subdivision standards. This is important for two reasons: 1) a minor waiver subdivision should have very little impact to the community and should be meeting all the city standards. If a project requires a variance, it is not meeting all the city standards; and 2) a variance requires a public hearing and approval by the City Council. A minor waiver does not require any public meetings or hearings. This would require a public hearing on a variance item that would not include the project itself. One could argue that criterion #7 implies that a variance and waiver cannot be requested at the same time, but we would like to make very clear in our regulations. Staff found the following language in the Flathead County Subdivision Regulations.

   Add a new review criterion to §12-3-7A, Preliminary Plat Review Process; Minor Subdivisions, Waiver of Preliminary Plat:
   Preliminary Plat Waiver Request: Based on information and discussion at the preapplication conference, the requirement for a preliminary plat may be waived by the planning director. The subdivider must request the waiver in

writing, along with the applicable fee and site plan, and the planning director must determine:

1. The plat contains three (3) or fewer lots;
2. There is no public dedication of streets or other public infrastructure;
3. All lots have legal and physical access conforming to these regulations;
4. Each lot has a suitable building site and there are no environmental hazards present;
5. Municipal sewer, water and other utilities are adequate and in place;
6. The subdivision complies with these regulations and current zoning regulations;
7. <u>No subdivision variance is needed in order to comply with the Whitefish Subdivision Regulations. No subdivision variance may be requested or granted through this Waiver Approval process;</u>
8. No significant effects are anticipated on agriculture and agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat and the public health and safety; and
9. Verification that the property is within the city limits. If recently annexed into city limits, an application for zoning map amendment shall accompany the preliminary plat application.

REVIEW AND FINDINGS OF FACT

The proposed changes shall be evaluated based on the criteria for consideration for amendments to the provisions of the Zoning Regulations per Section 11-7-12E.

1. Zoning Regulations Must Be:

a. Made in Accordance with a Growth Policy

Finding 1: The proposed text amendments are made in accordance with the Growth Policy because the housekeeping items are keeping the development regulations current and pertinent.

b. Designed to:

i. Secure safety from fire and other dangers

Finding 2: The proposed code amendment is unrelated to securing safety from fire and other dangers because it is a housekeeping matter.

ii. Promote public health, public safety and general welfare

Finding 3: The proposed amendments promote public health, public safety and general welfare because the housekeeping amendments are keeping the development regulations current and pertinent.

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

Finding 4: The proposed code amendment has no impact on the adequate provision of transportation, water, sewerage, schools, parks and other public requirements because these are housekeeping amendments.

2. In the adoption of zoning regulations, the city shall consider:

a. Reasonable provision of adequate light and air

Finding 5: The proposed code amendment is unrelated to reasonable provisions of adequate light and air because these are housekeeping amendments.

b. The effect on motorized and nonmotorized transportation systems

Finding 6: The proposed code amendment has no impact on motorized and nonmotorized transportation systems because these are housekeeping amendments.

c. Promotion of compatible urban growth

Finding 7: The proposed code amendment has no impact on compatible urban growth because these are housekeeping amendments.

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

Finding 8: This criterion is not applicable to this code amendment as it pertains more to site development than community wide development regulations.

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

Finding 9: The proposed code amendments do not affect the value of buildings.

f. That historical uses and established uses patterns and recent change in use trends will be weighed equally and consideration not be given one to the exclusion of the other.

Finding 10: This criterion is not applicable to this code amendment as it pertains more to site development than community wide development regulations.

ADDITIONAL FINDINGS

Finding 11: Staff finds the considerations in Section 11-7-12(E) are either met or are not applicable;

Finding 12: Whereas, legal public notice according to the Whitefish City Code was published in the *Whitefish Pilot* on January 6, 2016;

Finding 13: Whereas, staff sent a notice on December 31, 2015 to twenty-three (23) reviewing agencies, departments and other service providers regarding the zoning regulation update.

We find it is in the best interest of the City of Whitefish to amend Titles 11, 12, 13 and 14.

OVERALL RECOMMENDATION

Staff recommends the Planning Board **approve** the recommendations set forth in the staff report to amend Titles 11, 12, 13 and 14 of the Whitefish City Code and adopt the findings of fact and transmit same to the Whitefish City Council for further action.

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

Date: December 31, 2015

To: Advisory Agencies & Interested Parties

From: Whitefish Planning & Building Department

The regular meeting of the Whitefish Planning Board will be held on Thursday, January 21, 2016 at 6:00 pm in the Whitefish City Council Chambers at **1005 Baker Avenue**. During the meeting, the Board will hold a public hearing on the items listed below. Upon receipt of the recommendation by the Planning Board, the Whitefish City Council will also hold subsequent public hearing on Monday February 1, 2016 for items 1-3 and a public hearing for item 4 on Tuesday, February 16, 2016. City Council meetings start at 7:10 pm at **1005 Baker Avenue** in the Whitefish City Council Chambers.

1. A request by Reisch Family Partnership for a Conditional Use Permit to operate a Bar/Tavern. The subject property is zoned WB-1 and is developed with an existing commercial building. The subject property is located at 845 Wisconsin Avenue, and can be legally described as Lot 3 in Kramer Add Amd Subdivision in Section 25, Township 31N, Range 22W. WCUP 15-20 (Minnich)

2. A request by the City of Whitefish for a variety of housekeeping amendments in §11-2-3B(5) & §11-2L-4, building height; change the term 'servant' to 'domestic worker' in the list of Permitted Uses in §11-2A-2, Agricultural District, §11-2B-2, Country Residential District, §11-2C-2, Suburban Residential District, §11-2D-2, Estate Residential District, §11-2E-2, One-Family Limited Residential District, §11-2F-2, One-Family Residential District, §11-2G-2, Two-Family Residential District, §11-2H-2, Low-Density Multi-Family Residential District, §11-2I-2, High Density Multi-Family Residential District, §11-2L-2, General Business District, §11-2N-2, Low Density Resort Residential District, §11-2O-2, Medium Density Resort Residential District, §11-2P-2, Limited Resort Business District, §11-2Q-2, General Resort Business District; §11-9-2, definitions add 'domestic worker' and 'building footprint'; add new subsections §11-1-4, General Zoning Provisions, §12-1-4, General Provisions, §13-1-6, General Lake and Lakeshore Protection Provisions, §14-1-7, General Floodplain Regulations to add a burden of proof standard; §12-3-7A, Preliminary Plat Review Process; Minor Subdivisions, Waiver of Preliminary Plat, review criterion. WZTA 16-01 (Compton-Ring)

3. A request by the City of Whitefish for an amendment to Section 11-2S, WPUD, Planned Unit Development District, to clarify allowed density where a PUD overlays multiple underlying zones. WZTA 15-01 (Taylor)

4. A request for a Zoning Text Amendment by the City of Whitefish to amend Section 11-2 of the City Code to create a Whitefish Neighborhood Mixed Use Transition zone and a Whitefish Industrial Transition zone, Section 11-3 to provide development standards for Artisan Manufacturing, Live/Work Units, and Micro-Breweries and Micro-Distilleries; and Section 11-9 to add definitions of Business Incubators, Coffee Shops/Sandwich Shops, Live/Work Units, Artisan Manufacturing, Micro-brewery, Micro-distillery, Mixed-Use Environment, Mixed-Use Building, and Research Facilities as part of the implementation of the Highway 93 West Corridor Plan. WZTA 16-02 (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.

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RESOLUTION NO. 16-___

A Resolution of the City Council of the City of Whitefish, Montana, to revise fees currently charged and establish new fees for various services provided by the Whitefish Planning & Building Department.

WHEREAS, Subsection 7-1-4123(7), MCA, empowers municipalities to impose a fee for the provision of a service; and

WHEREAS, the Whitefish City Planning & Building Department currently charges various fees for a number of different land use applications; and

WHEREAS, the City Planning & Building Department has been subsidized by the City's General Fund for some time because the fees charged did not completely cover the cost of providing services to the public; and

WHEREAS, because of increasing costs and expenses experienced by the City Planning & Building Department, and the need to make the Department self-supporting, it is necessary that the fees charged be increased; and

WHEREAS, because Flathead County now requires the City of Whitefish to pay the cost of obtaining adjacent property owner lists at $75 per request; and

WHEREAS, the City of Whitefish needs to increase the fee for various permits and land use requests to cover the additional $75 fees charged by the County; and

WHEREAS, as required by Section 7-6-4013, MCA, public notice on the City's proposed fee increases fees for the Whitefish Planning & Building Department was published on January 20 and January 27, 2016; and

WHEREAS, at a lawfully noticed public hearing on February 1, 2016, the City Council received a report from Planning Department staff and reviewed staff recommendations concerning the proposed fee changes, solicited and received public comment, and determined the fee changes proposed by the Whitefish Planning & Building Department to be reasonable and directly related to the cost of providing services; and

WHEREAS, it will be in the best interests of the City of Whitefish and its inhabitants to approve the fees proposed by the Whitefish Planning & Building Department.

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

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

Section 2: The fees set forth on Exhibit "A", attached hereto and incorporated herein by reference, are hereby approved, and the City Planning & Building Department is authorized to begin charging such fees on any applications received after adoption of this Resolution. Unless

listed, the current fees remain unchanged.

Section 3: This Resolution shall take effect immediately upon its adoption by the City Council and signing by the Mayor thereof.

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

_____
John M. Muhlfeld, Mayor

ATTEST:

_____
Necile Lorang, City Clerk

CITY OF WHITEFISH
FEE SCHEDULE

Fee	Current	Proposed
Major Subdivision (6 or more lots)	$2,970 + $200/lot	$3,045 + $200/lot
Minor Subdivision (5 or fewer lots)	$990 + $200/lot	$1065 + $200/lot
Minor Subdivision (Waiver)	$250	$325
Minor Subdivision (Waiver, referred to Council)	$740	$810
Request to Council to delete required condition	$500	$575
Request by council to extend Preliminary Plat	$750	$825
Growth Policy Plan Amendment	$5,940 +40/acre	$6,015 + $40/acre
Growth Policy Text Amendment	$3,300	$3,375
Zoning Map Amendment	$2,310	$2,385
Zoning Map Amendment county to city where formerly zoned with city zoning for annexation	$500	$575
PUD, Residential	$2,970 + $100/acre	$3,045 + $100/acre
PUD, Commercial	$3,300 + $200/acre	$3,375 + $200/acre
PUD, Mixed Use (including short term rental)	$3,300 + $130/acre	$3,375 + $130/acre
PUD Amendment (Major) Residential	$660	$735
PUD Amendment (Major) Commercial/Mixed Use	$1,980	$2,055
Variance, Residential	$660	$735
Variance, Multi-family/Commercial/Industrial	$1,980	$2,055
Sign Variance, Residential	$600	$675
Sign Variance, Churches/Schools/Nonprofit	$660	$735
Sign Variance, Commercial/Industrial	$660 + $200/sign (not to exceed $1,980)	$735 + $200/sign (not to exceed $2,055)
Conditional Use Permit, Single-family	$990	$1065
Conditional Use Permit, Minor Residential (2-4 units)	$1,056 + $65/unit	$1,131 + $65/unit
Conditional Use Permit, Major Residential (5+ units)	$1,980 + $65/unit	$2,055 + $65/unit
Conditional Use Permit, Churches/Schools/ Public/Quasi-public	$990	$1,065
Conditional Use Permit, Commercial/Industrial/Medical/golf courses, etc.	$1,980	$2,055
Food Vendor Permit (30 day)	$150	$225
Food Vendor Permit, Commercial (365 days)	$300	$375
Food Vendor Permit, Non-profit (365 days)	$200	$275
Flood Plain Development Permit	$200	$275
Flood Plain Permit, After the Fact	$1,980	$2,055
Flood Plain Permit Appeal and Variance, Residential	$660	$735
Flood Plain Permit Appeal and Variance, Multi-family/Commercial	$1,980	$2,055

EXHIBIT A

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

February 1, 2015

Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

Mayor Muhlfeld and City Councilors:

PROPOSED PLANNING FEE CHANGES

Introduction

Flathead County notified us last month that State Law no longer allows them to provide "address lists" to the general public, but they will continue to provide them to public agencies. State Law also requires notification of adjacent property owners when the public applies for various land use permits such as Conditional Use Permits, Variances, Subdivisions, etc. In the past, applicants would pay the fee and get the adjacent property owner lists directly from the County. Now the City of Whitefish must pay the $75 fee and obtain the lists directly from the County. Because of that increased cost, staff is requesting to increase the required application fees for all items where property owner lists are required by $75 each.

Current Report

The city proposes to amend several fees required for various services provided by the Planning and Building Department where property owner notifications are required. If not listed, then the current fees remain the same. Proposed new fees are as follows:

Fee	Current	Proposed
Major Subdivision (6 or more lots)	$2,970 + $200/lot	$3,045 + $200/lot
Minor Subdivision (5 or fewer lots)	$990 + $200/lot	$1065 + $200/lot
Minor Subdivision (Waiver)	$250	$325
Minor Subdivision (Waiver, referred to Council)	$740	$810
Request to Council to delete required condition	$500	$575
Request by council to extend Preliminary Plat	$750	$825
Growth Policy Plan Amendment	$5,940 +40/acre	$6,015 + $40/acre
Growth Policy Text Amendment	$3,300	$3,375

Zoning Map Amendment	$2,310	$2,385
Zoning Map Amendment county to city where formerly zoned with city zoning for annexation	$500	$575
PUD, Residential	$2,970 + $100/acre	$3,045 + $100/acre
PUD, Commercial	$3,300 + $200/acre	$3,375 + $200/acre
PUD, Mixed Use (including short term rental)	$3,300 + $130/acre	$3,375 + $130/acre
PUD Amendment (Major) Residential	$660	$735
PUD Amendment (Major) Commercial/Mixed Use	$1,980	$2,055
Variance, Residential	$660	$735
Variance, Multi-family/Commercial/Industrial	$1,980	$2,055
Sign Variance, Residential	$600	$675
Sign Variance, Churches/Schools/Nonprofit	$660	$735
Sign Variance, Commercial/Industrial	$660 + $200/sign (not to exceed $1,980)	$735 + $200/sign (not to exceed $2,055)
Conditional Use Permit, Single-family	$990	$1065
Conditional Use Permit, Minor Residential (2-4 units)	$1,056 + $65/unit	$1,131 + $65/unit
Conditional Use Permit, Major Residential (5+ units)	$1,980 + $65/unit	$2,055 + $65/unit
Conditional Use Permit, Churches/Schools/ Public/Quasi-public	$990	$1,065
Conditional Use Permit, Commercial/Industrial/Medical/golf courses, etc	$1,980	$2,055
Food Vendor Permit (30 day)	$150	$225
Food Vendor Permit, Commercial (365 days)	$300	$375
Food Vendor Permit, Non-profit (365 days)	$200	$275
Flood Plain Development Permit	$200	$275
Flood Plain Permit, After the Fact	$1,980	$2,055
Flood Plain Permit Appeal and Variance, Residential	$660	$735
Flood Plain Permit Appeal and Variance, Multi-family/Commercial	$1,980	$2,055

Recommendation

Staff recommends the City Council adopt the attached resolution amending the Planning and Building fee schedule as proposed.

David Taylor, AICP

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

January 26, 2016

Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

W 7th Street Reconstruction Project - Resort Tax

Authorization to Approve RPA Contract Amendment #3
& Proceed with Bidding

Introduction/History

The Public Works Staff has completed our review of the final designs for the West 7th Reconstruction Project. This important project will reconstruct West 7th Street from Baker Ave. to Fairway Dr. One of the highest priorities of this job is the enhancements to driver and pedestrian safety that will be realized through intersection improvements, roadway alignment changes, the addition of an off-street shared use path for a portion of the project, and an 8' sidewalk for the remainder.

Maintaining the culture of the four "neighborhoods" that exist within the project area was also paramount during the design of this job and the City has held a total of 3 Public Information Meetings thus far in the project. The first meeting was held on 12/10/2014 where local residents were essentially shown a "blank canvas" of the West 7th Street corridor. Time was spent during this meeting discussing the goals of the project with residents and how these objectives would mesh with past planning efforts which had been completed by the City.

These discussions carried into the second Public Information Meeting, which was held on 2/11/2015. During this meeting, residents were shown two options for each of the four neighborhoods. One option included sidewalks on each side of the road, and the second option included a larger pedestrian path on the north side of the road. Residents were encouraged to comment on the design options, weigh in on certain design alternatives, and give feedback on how the project would affect them directly.

As the plans developed, a third Public Information Meeting was held on 3/25/2015, where residents were presented with a refined set of conceptual options. Attendees of the meeting were asked to vote on their preference of the design options during this third meeting.

The votes were compiled, along with the myriad of comments that were made by the public, and the final conceptual designs were presented to City Council on 4/20/2015. Council was also presented with the option to complete a full underground conversion on the existing overhead utilities during the 4/20/2015 meeting. Based on the additional cost that would be incurred to bury utilities, and the extra year of construction it would create, Council authorized RPA to proceed with the final project designs without burying the existing overhead utilities.

Assuming staff is authorized to proceed with bidding, and the contract is awarded according to the proposed schedule discussed later in this memo, a final Public Information Meeting will be held in April, 2016. This meeting will bring residents up to speed on the final project designs, the proposed construction schedule, and what they can expect to happen as construction begins.

Current Report

Attached to this report are several figures which provide an overview of the final designs for the project. These designs incorporate the preferences of West 7th Street neighborhoods to the best of our ability. The following sections describe the highlights of the final designs which are depicted on the enclosed sheets.

Final Plan Profiles – It should be noted that reconstruction of existing roadways poses a number of difficulties that are not encountered during the construction of new roads. These types of projects often require additional excavation in order to accommodate existing features such as homes, landscaping, fencing, etc. Often times the conversion of a rural road section into an urban section with curb and gutter can serve as a means to mitigate some of these challenges. Although this requires lowering the roadway in most areas to collect water, and the added cost of storm sewer, this solution typically results in less overall disturbance to private property than the alternative of installing properly graded open ditches on either side of the road.

Based on community input, City goals, and project budget, the following chart describes the specific design elements to each segment of the project.

Road Segment	Curb/ Gutter & Storm	Asphalt Road Width	Off-Street Path	Water	Sewer
Fairway to Karrow	No	22'	None	Replace	Extension
Karrow to Geddes	Yes	25'	10' Asphalt-North	Existing	Extension
Geddes to O'Brien	Yes	25'	8' Concrete-North	Replace	Extension
O'Brien to Baker	Yes	25'	8' Concrete-North	Replace	Replace
Gully Path	--	--	10' Asphalt	None	Extension

Intersection Improvements – Specific attention was paid to the safety of each intersection throughout the project. Currently, vehicles traveling eastbound on West 7th (downhill) during the winter have difficulty stopping at each of the three stop signs. With this in mind, "Landing Areas" were created at each stop sign with the intent of reducing the grade just prior to the intersection. These areas are intended to improve stopping conditions and promote increased intersection safety. Another major change that is proposed is making O'Brien one-way northbound between 7th and 8th Streets. This change was incorporated partly at the request of the adjacent property owners, and also serves to mitigate difficulties with the vision triangle at this intersection. Police, Fire, and rescue have also endorsed this concept, and the intersection has been designed to accommodate the turning movement of the City's largest fire truck.

Easements & Property Acquisition – In order to reconstruct the roadway, and install new infrastructure along the gully, a number of easements and property acquisitions were required. The following is a brief summary of these negotiated transactions:

Location	Owner	Agreement Type	Other
O'Brien-South	Zampieri	Easement	O'Brien one-way requirement
O'Brien-North	Niles	Acquisition	Fencing & Retaining Wall
Gully Path	Thompson	Easement	Retaining Wall, sewer/septic work

Lighting – As with past road reconstruction projects, the City will be upgrading this corridor to include decorative lighting. The current design is depicted with the City's standard 50W High Pressure Sodium (HPS) luminaries. However, another lighting alternative that the City will be experimenting with on this project is the inclusion of Light Emitting Diode (LED) technology. The inclusion of some LED fixtures on West 7th Street will likely lead to significant energy savings as we design future projects. However, since the physics behind LED lighting technology differs from that of HPS technology, it will require some experimentation before finalizing it for a future design. With this in mind, staff is requesting some leeway to add a few LED fixtures on this project in order to pave the way for future LED lighting projects.

We are also planning to add some lighting along the gully path and would like to incorporate some pedestrian scale bollards. The design for these bollards has not been finalized with our lighting vendor, but we anticipate that we will have the fixtures finalized, ordered, and delivered to meet the installation schedule.

Traffic Control & Construction Routes – The City has experienced some issues with construction traffic patterns and traffic related control issues on past projects. With this in mind, the West 7th Project will be bid with specific traffic control plans which must be adhered to, as well as a few sheets depicting preferred construction traffic routing. West 7th Street will be open to local traffic throughout the project in order for residents living within the construction zone to access their homes. However, there will be a six-week period when the gully will be closed to any through traffic. This proposed road closure has been discussed in advance with the Fire Marshall and has been endorsed. During this period residents living west of the gully will have to travel west to Karrow, and residents living east of the gully will have to travel east to Baker. Prior notice will be given to emergency response staff and residents before the closure goes into place. It should also be anticipated that staff will be recommending Council approve a future resolution outlawing on-street parking on West 7th Street. This will be discussed at a future meeting during the recommendation of a contract award.

Schedule: The first phase of the project, which included relocation of the gas line by Northwestern Energy, began last fall. The second phase of the project, which includes the completion of the utility relocations, will take place this spring. The final phase of the project includes water and sewer work, reconstruction of the roadway, construction of a pedestrian path and sidewalk, and installation of boulevard lighting is proposed to take place as follows:

2/1/2016 - Council Authorization to Bid
3/10/2016 - Bid Opening
3/21/2016 - Council Contract Award
April 2016 - Final Public Information Meeting
5/2/2016 - Start Construction
September 2016 - Construction Completion

RPA Contract Amendment #3 - Now that the Design Phase for this project has concluded, we need to look at the remaining phases of engineering work to complete the reconstruction of W 7th Street. With that, RPA has prepared the attached Contract Amendment No. 3, which is intended to cover the remaining tasks required to complete the project. This contract amendment includes services for Advertising and Bidding, ¾ Time Construction Observation, and Post-Construction Services. The following is a breakdown of the anticipated total engineering costs for the project, including the proposed Amendment #3:

Document	Approved	Description of Work	Cost
Initial Agreement	7/22/2014	Surveying, Preliminary Engineering, Preliminary Public Outreach	$78,600
Amendment #1	5/3/2015	Land Acquisition, Final Design	$212,600
Amendment #2	9/21/2015	Utility Relocates	$23,200
Amendment #3	Pending	Bidding, Construction Administration	$122,700
Total Project Engineering Cost			$437,100

Financial Requirement

This project is slated to be paid by the Resort Tax Fund. The original overall project cost estimate, which was competed in 2014, was $2,436,200. The current overall project cost estimate is $2,817,620. A comparison of the changes are as follows:

Estimate #	Utility Relocation	Construction	Easements	Professional Fees	Total
Original	$25,000	$2,000,000	$0	$411,200	$2,436,200
March 2015	$25,000	$2,390,000	$0	$411,200	$2,826,200
January 2016	$29,420	$2,331,000	$20,100	$437,100	$2,817,620

As you can see from these numbers, the estimated construction costs have increased since the original estimate, which was put together in 2014. A significant portion of this increase can be attributed to cast iron water main that was discovered within the project limits. It should also be noted that the original $2M construction estimate was put together before any preliminary conceptual drawings were completed. That said, we are optimistic that the scale of the project along with the timing of the bid, will attract lots of competition.

Request for Authorization

Based on the guidance and direction received from Council to date, and the public outreach that has been conducted, I respectfully request authorization to proceed with the bidding of the West 7th Street Reconstruction Project as presented in the preliminary design layout. I believe these final designs meet the objectives of the City, and represent an effective use of Resort Fund revenues.

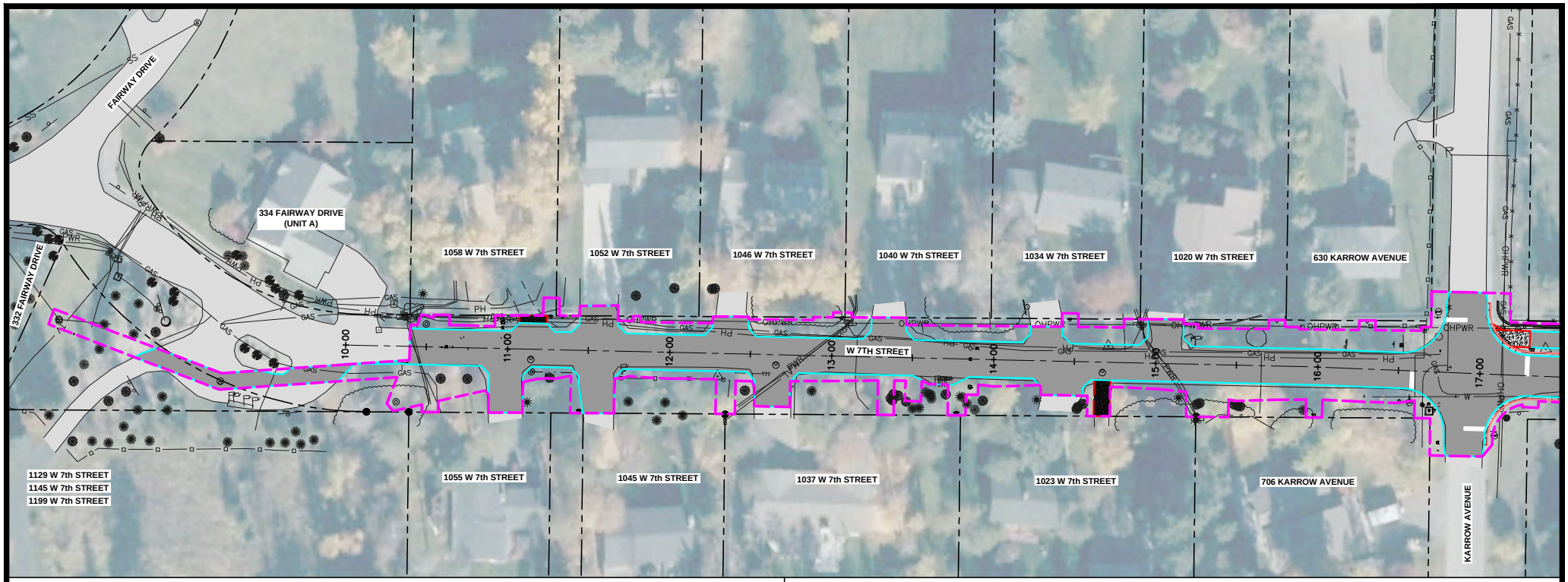
I furthermore recommend that City Council authorize the City Manager to execute Contract Amendment #3 with RPA for the West 7th Reconstruction

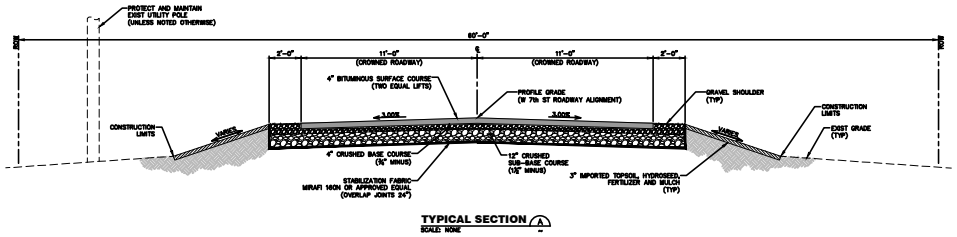
Project. RPA has done an outstanding job on this project to date, and I am confident that they will provide sound engineering services necessary to see the project through construction.

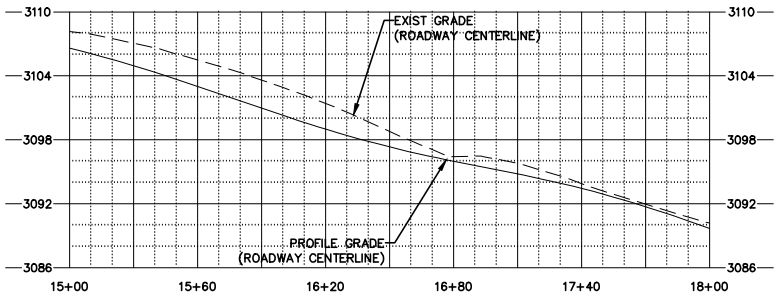
Upon completion of the bidding process, a recommendation will be made to the Council regarding the award of a construction contract.

Sincerely,

Craig Workman, P.E.
Public Works Director







RPA

Prepared By:
ROBERT PECCIA &
ASSOCIATES

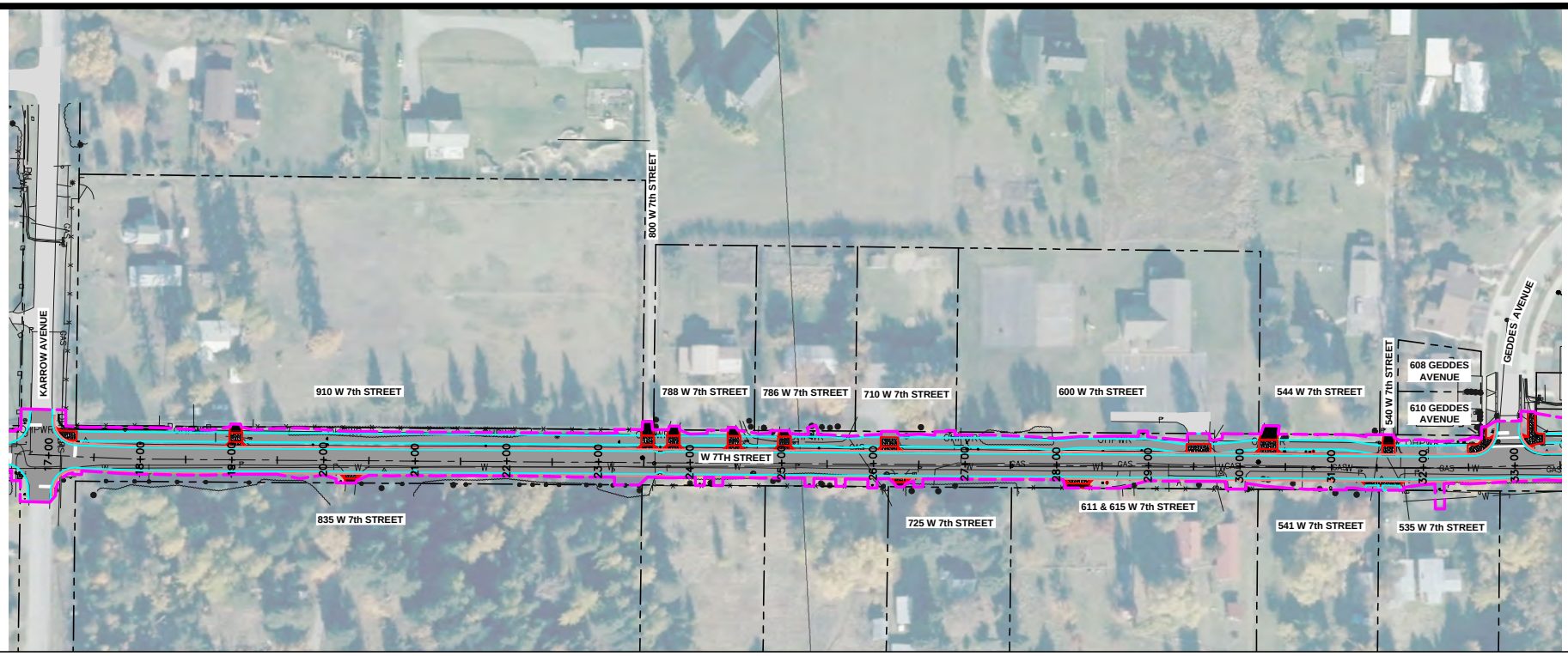
Figures 1-6_W7ST.dwg

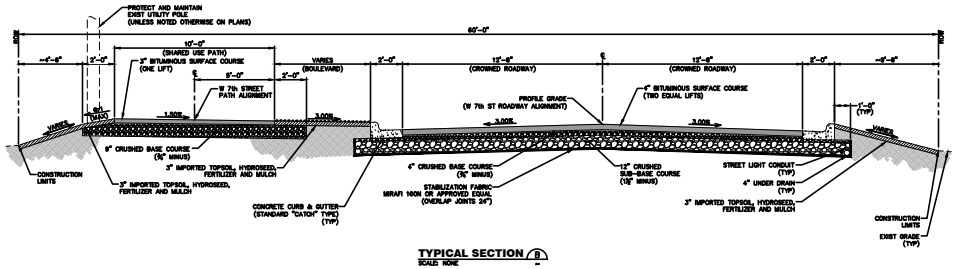
(NORTH ARROW AND SCALE APPLY ONLY TO PLAN VIEW)

West Seventh Street Reconstruction
Whitefish, Montana

FAIRWAY TO KARROW

Figure#1





TYPICAL SECTION B
SCALE: NONE

RPA

Prepared By:
ROBERT PECCIA & ASSOCIATES

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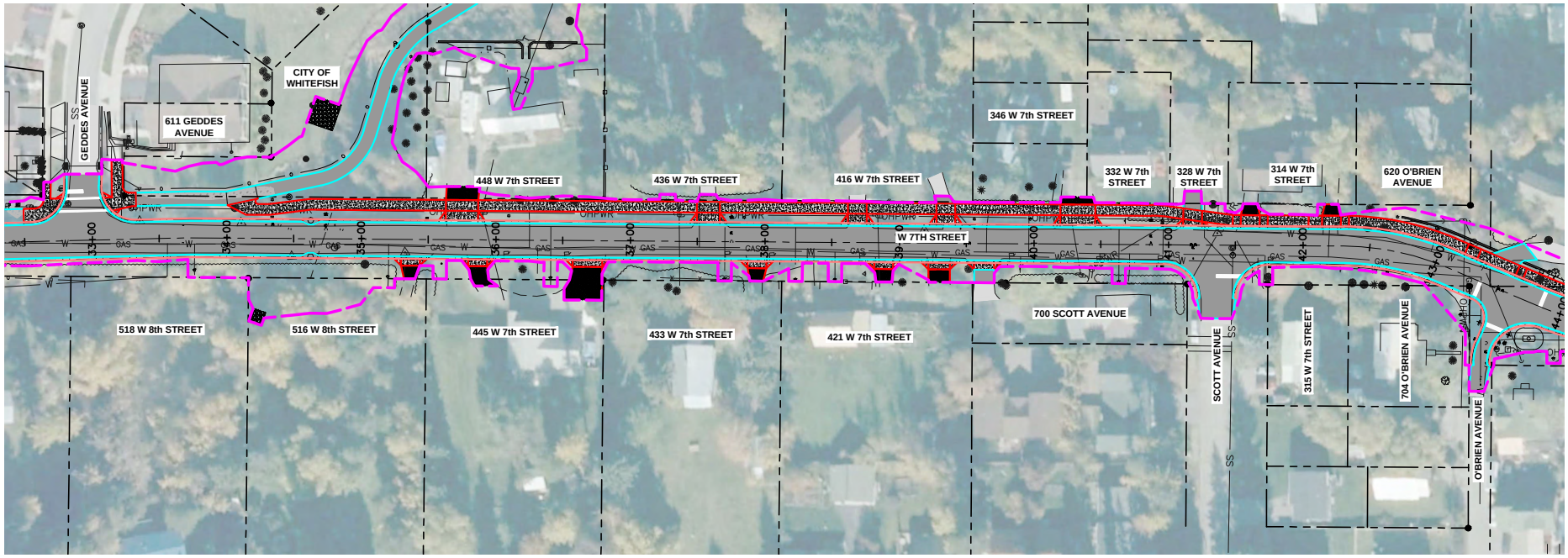
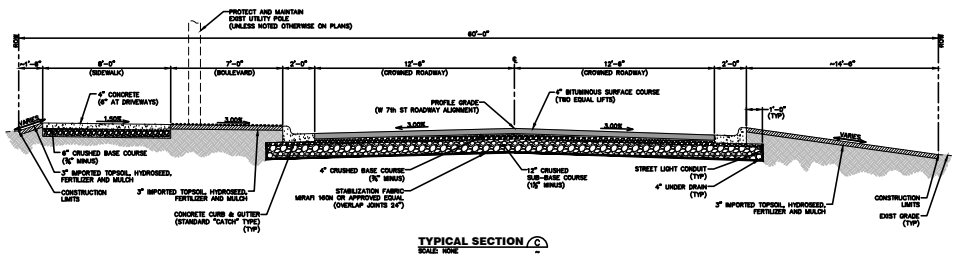
(NORTH ARROW AND SCALE APPLY ONLY TO PLAN VIEW)

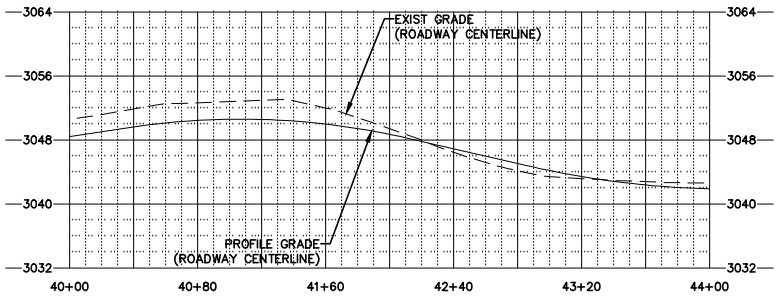
West Seventh Street Reconstruction
Whitefish, Montana

KARROW TO GEDDES

Figure#2







RPA

Prepared By:
ROBERT PECCIA & ASSOCIATES

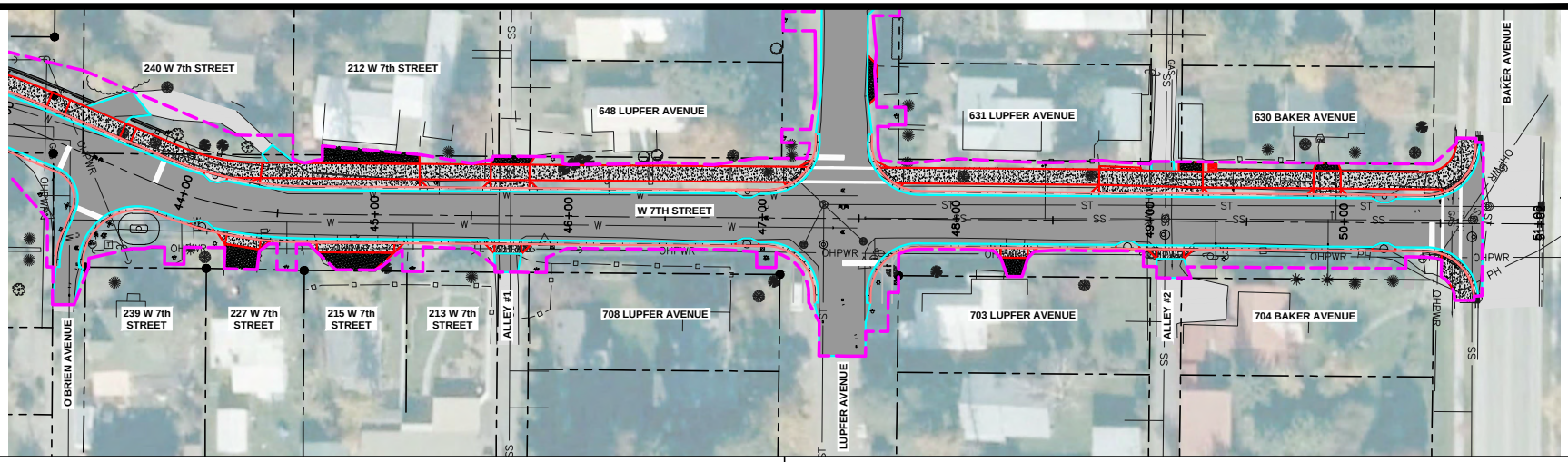
Figures 1-6_W7ST.dwg

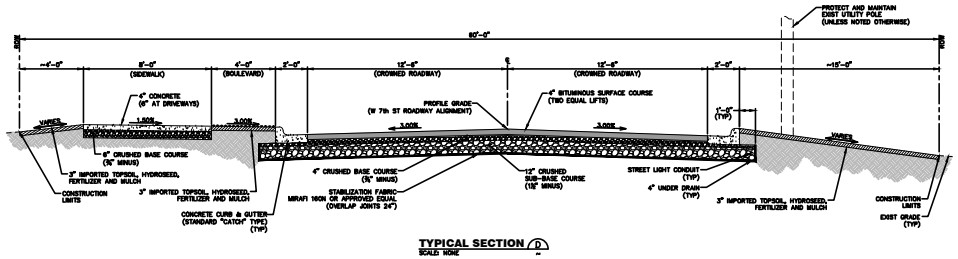
(NORTH ARROW AND SCALE APPLY ONLY TO PLAN VIEW)

West Seventh Street Reconstruction
Whitefish, Montana

GEDDES TO O'BRIEN

Figure#3





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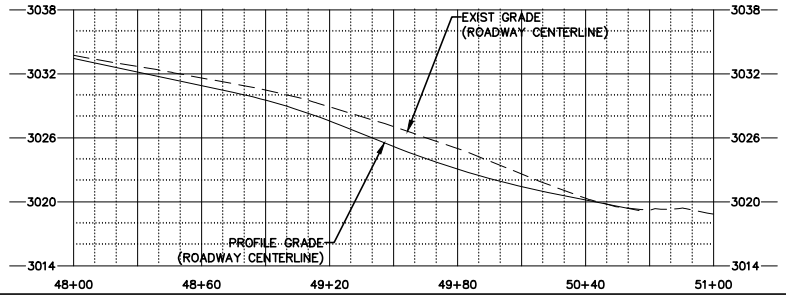

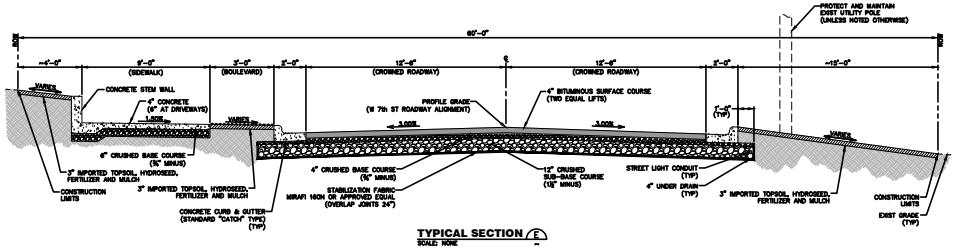

TYPICAL SECTION E
SCALE NONE

RPA

Prepared By:
ROBERT PECCIA & ASSOCIATES

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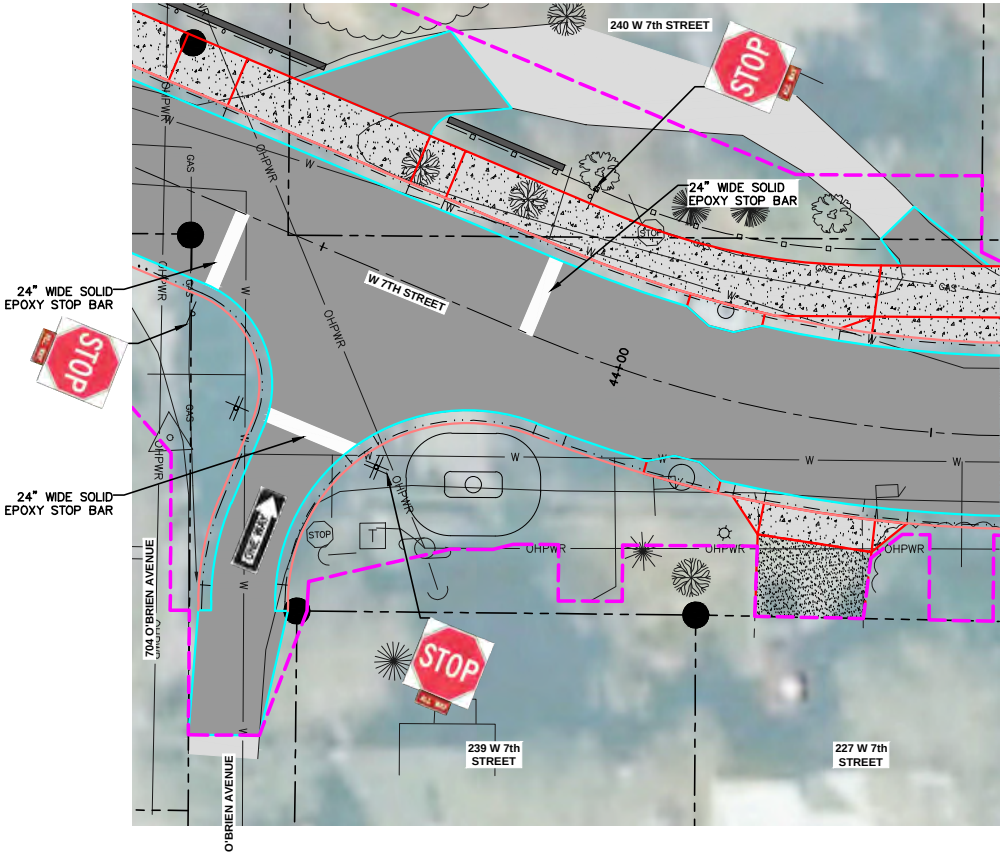
(NORTH ARROW AND SCALE APPLY ONLY TO PLAN VIEW)

West Seventh Street Reconstruction
Whitefish, Montana

ALLEY #1 TO BAKER

Figure#4



RPA

Prepared By:
ROBERT PECCIA &
ASSOCIATES

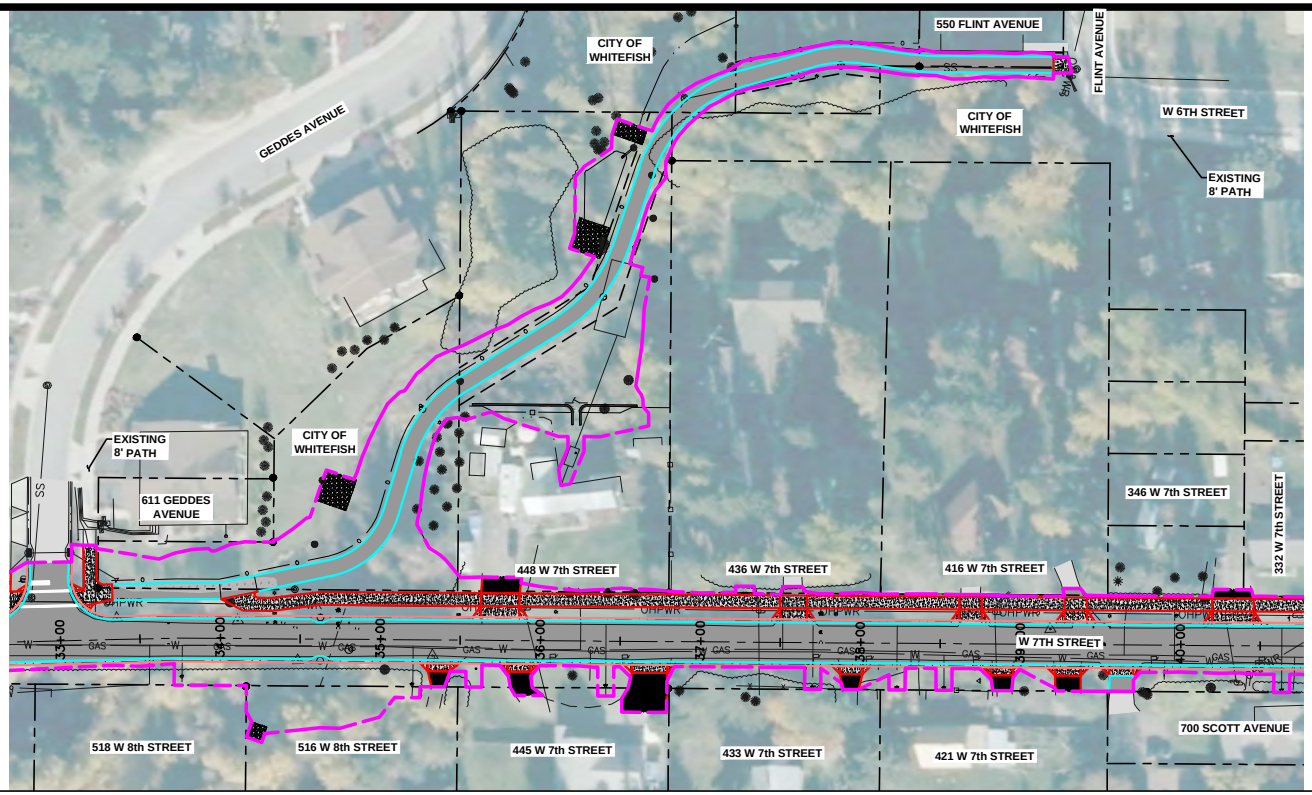
Figures 1-6_W7ST.dwg

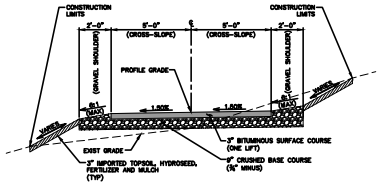
(NORTH ARROW AND SCALE APPLY ONLY TO PLAN VIEW)

West Seventh Street Reconstruction
Whitefish, Montana

O'Brien Ave (ONEWAY)

Figure#5





SHARED USE PATH

TYPICAL SECTION G

SCALE: NONE

RPA

Prepared By:
ROBERT PECCIA & ASSOCIATES

Figures 1-6_W7ST.dwg

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(SCALE IN FEET)

(NORTH ARROW AND SCALE APPLY ONLY TO PLAN VIEW)

West Seventh Street Reconstruction
Whitefish, Montana

GULLY PATH

Figure#6

Engineers Opinion of Probable Cost
WEST SEVENTH STREET RECONSTRUCTION PROJECT
Revised 1/26/16 by BMT

SUMMARY OF PROJECT COSTS

Utility Relocations			**Notes**
Northwestern Energy (Gas)		$0.00	
Flathead Electric (Power)		$19,420.00	Estimated
CenturyLink (Phone)		$5,000.00	Estimated
Optimum (Cable)		$5,000.00	Estimated
	Subtotal =	**$29,420.00**	
Construction Costs			
Base Bid		$2,280,000.00	Estimated
Owner Supplied Street Lights & Piers		$51,000.00	Estimated
	Subtotal =	**$2,331,000.00**	
Easements			
Zampieri Easement		$9,100.00	Secured
Niles Easement		$11,000.00	Estimated/Ongoing
	Subtotal =	**$20,100.00**	
Professional Fees			
Task Order No. 1 - Surveying		$15,800.00	Complete
Task Order No. 2 - Preliminary Engineering		$45,400.00	Complete
Task Order No. 3 - Preliminary Public Outreach		$17,400.00	Complete
Task Order No. 4 - Land Acquistion		$6,000.00	Ongoing
Task Order No. 5 - Design Phase		$206,600.00	Ongoing
Task Order No. 6 - Utility Relocates		$23,200.00	Ongoing
Task Order No. 7 - Bid to Award Phase		$10,800.00	Estimated
Task Order No. 8 - Construction Phase		$99,000.00	Estimated
Task Order No. 9 - Post Construction Phase		$12,900.00	Estimated
	Subtotal =	**$437,100.00**	
Total Project Costs		**$2,817,620.00**	

Engineers Opinion of Probable Cost
WEST SEVENTH STREET RECONSTRUCTION PROJECT
Revised 1/26/16 by BMT

Robert Peccia & Associates, Inc.
*825 Custer Avenue * Helena * Montana * (406) 447-5000*
*102 Cooperative Way, Suite 300 * Kalispell * Montana * (406) 752-5025*

Item No.	Quantity	Unit	Unit Description	Engineer's Estimate Unit Price (Figures)	Engineer's Estimate Total Price (Figures)
Base Bid					
1	**6.0**	ACRE	Site Preparation	$7,000.00	$42,000.00
2	**1**	LS	Excavation and Embankment	$135,000.00	$135,000.00
3	**40**	HOUR	Exploratory Excavation	$250.00	$10,000.00
4	**500**	TON	Sub-Excavation and Stabilization	$20.00	$10,000.00
5	**14,700**	SY	Stabilization Fabric	$1.50	$22,050.00
6	**4,950**	CY	Crushed Subbase Course - 1 1/2" Minus	$28.00	$138,600.00
7	**2,850**	CY	Crushed Base Course - 3/4" Minus	$30.00	$85,500.00
8	**2.6**	TON	Asphalt Tack Coat (Undiluted, SS-1)	$1,500.00	$3,900.00
9	**3,780**	TON	Asphalt Concrete Pavement	$80.00	$302,400.00
10	**6,880**	LF	Concrete Curb and Gutter	$14.00	$96,320.00
11	**8,000**	GAL	Dust Control - Magnesium Chloride	$0.80	$6,400.00
12	**1,200**	SY	4" Concrete Sidewalk	$45.00	$54,000.00
13	**100**	SY	4" Concrete Sidewalk with Stem Wall	$200.00	$20,000.00
14	**950**	SY	6" Concrete Driveway	$75.00	$71,250.00
15	**1**	LS	Concrete Stairs with Handrail	$2,500.00	$2,500.00
16	**24**	EA	New Sign - Roadway	$350.00	$8,400.00
17	**2**	EA	Radar Feedback Speed Limit Sign	$4,500.00	$9,000.00
18	**210**	LF	Epoxy Striping - 8" Solid	$3.50	$735.00
19	**165**	LF	Epoxy Striping - 24" Solid	$12.00	$1,980.00
20	**11**	EA	Manhole - 48" Sanitary Sewer	$3,800.00	$41,800.00
21	**3**	EA	Manhole - 60" Sanitary Sewer with Interior Drop	$5,000.00	$15,000.00
22	**2,080**	LF	Pipe - Buried: 8" Sanitary Sewer Main - SDR 35 PVC Pipe	$45.00	$93,600.00
23	**450**	LF	Pipe - Buried: 10" Sanitary Sewer Main - SDR 35 PVC Pipe	$50.00	$22,500.00
24	**25**	EA	Sanitary Sewer Service - Sch. 40 PVC Pipe	$1,400.00	$35,000.00
25	**870**	LF	Pressurized Sanitary Sewer Service - 1-1/4" IPS HDPE SDIR 7	$24.00	$20,880.00
26	**1**	EA	Septic System Abandonment	$2,500.00	$2,500.00
27	**360**	LF	Pipe - Buried: 6" Water Main - C-900 CL150 PVC Pipe	$50.00	$18,000.00
28	**400**	LF	Pipe - Buried: 8" Water Main - C-900 CL150 PVC Pipe	$52.00	$20,800.00
29	**1,700**	LF	Pipe - Buried: 12" Water Main - C-900 CL150 PVC Pipe	$55.00	$93,500.00
30	**3**	EA	Gate Valve - 6"	$1,600.00	$4,800.00
31	**6**	EA	Gate Valve - 8"	$1,800.00	$10,800.00
32	**11**	EA	Gate Valve - 12"	$2,800.00	$30,800.00
33	**9**	EA	Existing Water Main Connection	$2,500.00	$22,500.00
34	**57**	EA	Water Service - 1" IPS HDPE SDIR 7	$1,500.00	$85,500.00
35	**1**	EA	Water Meter Pit - 2"	$5,000.00	$5,000.00
36	**12**	EA	Fire Hydrant Assembly	$5,500.00	$66,000.00
37	**2**	EA	Manhole - 48" Storm Drain Manhole	$3,000.00	$6,000.00
38	**10**	EA	Manhole - 48" Combination Manhole Inlet	$3,200.00	$32,000.00
39	**3**	EA	Inlet - 48" Slotted Drain Inlet	$2,500.00	$7,500.00
40	**8**	EA	Inlet - 30" Storm Drain Inlet	$1,600.00	$12,800.00
41	**2,680**	LF	Pipe - Buried: 12" Storm Drain - SDR 35 PVC Pipe	$35.00	$93,800.00
42	**36**	LF	Pipe - Buried: 12" Storm Culvert - CMP Pipe	$40.00	$1,440.00
43	**154**	LF	Pipe - Buried: 36" Storm Drain - Corrugated PVC Pipe with Smooth Interior	$140.00	$21,560.00
44	**6,880**	LF	4" Curb Underdrains	$2.80	$19,264.00
45	**500**	TON	Imported Trench Backfill	$16.00	$8,000.00
46	**2,320**	LF	Conduit - 1-1/4" PVC Sch 40	$2.50	$5,800.00
47	**1,870**	LF	Conduit - 2" PVC Sch 40	$3.50	$6,545.00
48	**16**	EA	Pull Box - Type I	$275.00	$4,400.00
49	**23**	EA	Street Light Base	$850.00	$19,550.00
50	**1**	EA	Street Light Service Assembly Complete	$4,000.00	$4,000.00
51	**1**	LS	Electrical Wiring and Misc. Items	$18,000.00	$18,000.00
52	**25**	EA	New Mailbox	$200.00	$5,000.00
53	**345**	LF	Retaining Wall	$150.00	$51,750.00
54	**650**	LF	Hand Rail	$50.00	$32,500.00
55	**160**	LF	Wood Fence	$30.00	$4,800.00
56	**150**	LF	Straw Wattle	$5.00	$750.00
57	**4**	EA	Straw Bale Check Dam	$200.00	$800.00
58	**1,510**	SY	Erosion Control Blanket with Seed and Fertilzer	$6.00	$9,060.00
59	**1**	LS	Rip Rap	$3,000.00	$3,000.00
60	**1**	LS	Imported Topsoil (3" Thick)	$24,000.00	$24,000.00
61	**1**	LS	Hydroseeding, Fertilizer and Mulch	$7,500.00	$7,500.00
62	**3**	EA	Survey Monument - Asphalt	$500.00	$1,500.00
63	**2**	EA	Survey Monument - Non-Asphalt	$300.00	$600.00
64	**120**	DAY	Traffic Control - Devices	$300.00	$36,000.00
65	**80**	DAY	Traffic Control - Flagger Pairing	$800.00	$64,000.00
66	**1**	LS	Construction Surveys	$40,200.00	$40,200.00
67	**1**	LS	Material Testing	$20,100.00	$20,100.00
68	**1**	LS	Mobilization, Bonding and Submittals (5% Max)	$108,600.00	$108,600.00
TOTAL ESTIMATED CONSTRUCTION COST (ROUNDED):					**$2,280,000.00**

EXHIBIT "A"
AMENDMENT No. 3
SCOPE OF SERVICES

WEST 7TH STREET RECONSTRUCTION, CITY OF WHITEFISH
TASK 7 – BID TO AWARD PHASE
TASK 8 – CONSTRUCTION PHASE
TASK 9 – POST CONSTRUCTION PHASE

This contract amendment includes additional services to complete the West 7th Street Reconstruction Project.

Project Description (Updated): The West 7th Street Reconstruction project, the "Project", consists of reconstructing West 7th Street from approximately 700 linear feet west of Karrow Avenue (eastern boundary of the Grouse Mountain Subdivision) to Baker Avenue. The total length of the project is approximately 4,100 feet in length. The project includes a full reconstruction of the street. There will be a bicycle/pedestrian path along the north side of the street from Karrow Avenue to approximately Geddes Avenue and in the "Gully" from Geddes Avenue to Flint Avenue. There will be sidewalk along the north side of the street from Geddes Avenue to Baker Avenue. Other improvements not located within the West 7th Street corridor include replacing the water main in Lupfer Avenue from West 7th Street to West 6th Street.

Scope of Work Description (This Amendment): This contract amendment includes services for Advertising and Bidding; Construction Administration and Observation, and Post-Construction Services for the West 7th Street Reconstruction Project.

TASK 7 – BID TO AWARD PHASE

Task Description: This task order is for completing the bid to award phase. This includes preparing the Contract Documents for bidding, advertising the project, bidding the project, awarding the project to the lowest responsible bidder, and completing the executed contract documents.

Preparing Contract Documents

The Consultant will print and produce fifteen (15) complete paper sets and a complete .PDF set of the Contract Documents. The .PDF set will be posted on RPA's website for viewing by potential bidders. The City will receive three (3) paper sets of the Contract Documents. The Consultant will receive three (3) paper sets of the Contract Documents. Four (4) paper sets will be retained to give to the successful low bidder. The remaining paper sets will be available for potential bidders to purchase, if they do not wish to print their own sets from RPA's website.

Preparing Official Bid Proposal

The Consultant will print and produce fifteen (15) complete paper sets of the Official Bid Proposal. Any Contractor wishing to submit a bid for the project must purchase an Official Bid Proposal and be on the Plan Holders List.

Advertise for Bids

The Consultant will coordinate the advertisement for bids in the Daily Interlake for three (3) consecutive weekly advertisements. The advertisement will run on the same day once a week, for three consecutive weeks.

Invitations to Bid

In addition to the Advertisements for Bid, the Consultant will send out personal *Invitations to Bid* to a list of Contractors who may be interested in bidding on the project. The Consultant maintains a current listing of Contractors who perform certain types of work within the State.

A copy of the *Invitation to Bid* list will be provided to the City so they can review the list of Contractors who have been personally invited to bid on their project. The Consultant will also ask the City if there are any other Contractors to whom an Invitation to Bid should be sent.

Pre-Bid Conference

The Consultant shall schedule and conduct a Pre-Bid Conference for the project. The location and time for the Pre-Bid Conference will be clearly stated in the *Invitation for Bids* and/or *Information for Bidders* sections of the Contract Documents. The intent of this conference is to make the Contractors fully aware of the project requirements.

The Consultant is responsible for conducting the meeting and taking meeting notes and answering

any technical questions. A *Pre-Bid Conference Sign-In Sheet* shall be circulated amongst the attendees for a record of those persons present.

The Consultant will send the City a copy of the *Pre-Bid Conference Sign-In Sheet*, the *Pre-Bid Conference Agenda*, and the conference meeting notes.

Planholder's List

The Consultant will distribute the Official Bid Proposal to those Contractors who request them. No Official Bid Proposal shall be sent to any Contractor who has not supplied the proper deposit. Each Official Bid Proposal shall be numbered sequentially in the order in which they are transmitted. The Consultant will maintain a *Planholder's List* which identifies all Contractors which have received an Official Bid Proposal. This record shall include writing down the Contractor's name and address, bid proposal number, and deposit received.

Issuing Addenda

On some projects it becomes necessary to send out a written addenda to the plans and/or specifications. The addenda serves to make clarifications or changes in the *Contract Documents* prior to the bid opening. All written addenda issued will become part of the *Contract Documents* and all bidders shall be bound by such addenda, therefore a copy of the addenda shall be sent to everyone on the *Planholder's List.*

Bid Opening

The Consultant shall attend the Bid Opening. When the City requests that we open and read the bids aloud, it shall be the Consultant's responsibility to do so.

Unless otherwise directed by the City, the only bid information that will be read aloud at the bid opening will be the Contractor's name and address, Contractor's registration number, confirmation of Addenda (if any), confirmation of a Bid Bond and the Contractor's base bid, and additive alternate bids if applicable. A *Summary of Bids* form shall be distributed to all persons at the Bid Opening. The Consultant shall inform all persons attending the Bid Opening about the information that will be read aloud. Bids which are received after the scheduled Bid Opening time shall not be opened and shall be returned to the Contractor unopened. The Consultant shall ask the City to determine when the scheduled time for receiving proposals has closed.

The Consultant will review all bids received for bid irregularities. Items to be reviewed include the Bid Bond, math errors in the bid, acknowledgment of receipt of any and all addenda, Contractor's registration number and proper completion of all bid document forms. If irregularities are discovered in the low bidder's package, the Consultant shall bring it to the attention of the City and encourage them to consult their attorney.

Bid Tabulations

The Consultant shall return from the Bid Opening with all the Contractor's Official Bid Proposals so the Consultant can prepare the bid tabulations. The Consultant is responsible for transferring the unit bid prices and total bid prices shown in the Contractor's bid onto a *Bid Tabulation Sheet*. Any math errors in the Contractor's bid will be noted on the bid tabulations and the correct figure shown.

Award Recommendation

After the *Bid Tabulations* have been prepared and approved, the Consultant shall write a *Recommendation of Award* e-mail to the Client. A copy of the *Bid Tabulations* shall be attached to this e-mail.

The *Recommendation of Award* shall be based on the lowest responsive bid, the absence of any bid irregularities (or in accordance with an Attorney's opinion in the case of bid irregularities), and the ability of the Contractor to perform the work. If the Contractor's qualifications are not known, a Pre-Award Conference may be required prior to the *Recommendation of Award*.

The intent of a Pre-Award Conference is to determine if the Contractor is qualified to properly complete the work within the allotted construction time. The following topics will be considered in particular:

1. The Contractor's organization and equipment available for the project.
2. The Contractor's proposed construction schedule.
3. The Contractor's past performance on similar projects.
4. The Contractor's proposed wage rates for use on the project.
5. The Contractor's understanding of the plans and specifications.

If after the Pre-Award Conference it appears the Contractor is qualified to complete the project, the Consultant shall recommend award to the Contractor. If the Contractor does not appear to be qualified, the Consultant shall recommend to the City the Contractor's bid be disqualified and the next lowest bidder be considered - or that all bids be rejected and the project be re-bid, whichever their Attorney believes to be appropriate. The Consultant does not have the authority to make these decisions for the City.

Notice of Award and Executed Contract Documents

Once a Contractor has been approved by the City, the Consultant shall complete and transmit three copies of a *Notice of Award* to the City for their signature. The City shall be asked to sign the Notices and return to the Consultant for them to transmit all of them to the Contractor for their signature.

After the Contractor signs the *Notice of Award*, the Consultant shall transmit three copies of the *Agreement Between City and Contractor* to the Contractor. The Contractor should be asked to sign all three copies and return them to our office, along with the required *Performance* and *Payment*

Bonds, *Certificates of Insurance*, and *Power of Attorney*. This set of documents constitutes the Contract Documents.

Upon receipt of the Contract Documents from the Contractor, the Consultant shall review the Agreement, Performance Bond, Payment Bond, Certificates of Insurance, Power of Attorney, and Workers' Compensation Certificate for conformance with the project requirements.

The Consultant will bind all of the Contract Documents together, along with copies of the Bid Proposal, Bid Bond and Bid Tabulations, and send to the City for review and signatures. Once executed, this bound book will be the *Executed Contract Documents*.

TASK 8 – CONSTRUCTION PHASE

Task Description: This task order is for providing construction management and administration during the construction of the project.

Project Newsletter

The Consultant will prepare and distribute a project information newsletters to all property owners along the Project. The newsletter will focus on what to expect during construction. This mailing will be sent to all residents along the Project as well as those residents on Geddes Avenue (from 5th Street to 7th Street).

Public Meeting

The Consultant will attend a public meeting with the Public Works Department to discuss what to expect during construction with the residents/citizens. The Consultant will prepare a presentation for the meeting.

Preconstruction Conference

The Consultant shall schedule a Preconstruction Conference (Pre-Con) with the City, Contractor, subcontractors, and any other applicable representatives. The Consultant will provide the Contractor with four (4) sets of the Contract Documents for use in constructing the project. The Consultant is responsible for conducting the Pre-Con and recording accurate minutes of the items discussed. The Consultant shall prepare a *Preconstruction Conference Agenda* which lists the topics of discussion applicable to the project.

The main purpose of the Preconstruction Conference is to introduce and designate responsible personnel, establish the Contractor's proposed construction schedule, clarify the submittal and pay request process, and discuss the major project requirements.

Minutes of Pre-Con

The Consultant shall prepare and send minutes of the Preconstruction Conference to all conference participants that request them. In addition, the Consultant shall transmit a copy of the *Preconstruction Conference Agenda* and the *Persons Attending* form to all that request them.

Submittal Review Process

The Supplemental Conditions contain a detailed description of what submittals are required of the Contractor, how they shall be submitted, how the Consultant will review and respond to the submittals, and who is responsible for the submittals.

The Consultant is responsible for ensuring the submittals received from the Contractor are reviewed and returned well within the time frame allowed. A *Submittal Log* shall be maintained and kept current during the course of the Submittal Review process. This *Submittal Log* will provide a permanent record of when submittals were received, when submittals were returned, and what actions are required of the Contractor.

Each individual submittal received from the Contractor shall be reviewed and recorded on a *Submittal Review Form*. This form will be returned to the Contractor with the appropriate number of reviewed submittals attached. If additional comments are required for a particular submittal they should be written down on the *Submittal Review Form*.

Construction Administration and Observation (120 Calendar Days)

The Consultant will assign an On-site Representative (OSR) to act as the construction observer and project administrator for the project. This Representative will be on-site six (6) hours per day during construction activities and will observe the Contractor's performance in comparison to plans and specifications. The OSR will be budgeted to be on-site 30 hours/week and will have an additional 10 hours/week of travel time and office time. Additionally, other members of the Consultant's team will periodically be needed to assist during construction either in the office or on-site.

The construction is not anticipated to exceed **120 calendar days**. **OSR time is anticipated not to exceed eighty six (86) working days**. Should the Contractor decide to do work requiring observation on weekends or beyond the scheduled project completion date, he could be assessed for reimbursed engineering fees to compensate for the additional time. Additionally, if the scope of work changes significantly enough to warrant an extension of time for the Contractor, the Consultant will be compensated for additional time and expenses as well.

No quality control testing of material is included in this agreement. Such independent testing laboratory work will be required to be contracted through the selected Contractor with the laboratory test results being submitted simultaneously to the Contractor and Consultant for review.

Partial Pay Requests

Partial Pay Requests are processed periodically throughout the course of the construction project. Normal projects allow the Contractor to request partial payments every 30-days. The Consultant is responsible for certifying each pay request.

Unless otherwise provided for in the Project Specifications, it shall be the Consultant's policy to withhold the full 5% retainage allowed by State law on each of the Contractor's Pay Requests until

the Final Pay Request.

Change Orders

During the course of construction it may become necessary to add, modify, or delete work items and/or contract time. These changes are normally initiated by the City or Consultant, or requested by the Contractor. Any changes in the original Contract Documents shall be handled through the issuance of a *Change Order*.

In the event a *Change Order* is required, the Consultant shall process the *Change Order*. The Consultant shall notify the City of the potential *Change Order* prior to negotiating the change with the Contractor so as to obtain the City's approval of the need for the change.

The Consultant will negotiate with the Contractor to derive a reasonable change in cost for the work changes requested. A detailed cost breakdown must be provided by the Contractor so we may review it for reasonableness.

The Consultant is responsible for executing the *Change Order* and providing it to the Contractor for their acceptance signature. The Consultant shall transmit all three signed copies to the City for their review, approval and signature.

The Consultant shall transmit a signed copy of the *Change Order* to the Contractor which will serve as their notice to proceed with the changes.

Contractor's Certificate of Completion

When it is the Contractor's opinion that the project is substantially completed, the Consultant shall have the Contractor complete the Contractor's Certificate of Completion.

Project Punchlist

After the Contractor has submitted the Contractor's Certificate of Completion, it shall be the Consultant's responsibility to perform a thorough review of the project and prepare and issue the Contractor a Project Punchlist. The Punchlist should detail the remaining work items and site cleanup the Contractor has to complete prior to the Final Project Inspection. The Punchlist should be signed by the Consultant and copies should be given to the Contractor and the City. The Contractor's satisfactory completion of the Punchlist items does not constitute final acceptance of the project, it merely means that the Contractor is ready for Final Inspection with the City.

Final Project Inspection

Representatives of the City, the Contractor, and the Consultant shall visit the project site for a Final Project Inspection. A thorough walk-through inspection shall be conducted to provide the City the opportunity to comment on the quality of the finished project, to point out work items or cleanup which require additional work, or accept the project as complete.

If the City requires the Contractor to perform additional work, the Consultant shall document the work items in a Final Project Punchlist. Copies of this Final Project Punchlist shall be transmitted to the Contractor, the City, and the Consultant.

If the City determines that the project is substantially complete, then the Consultant shall prepare and obtain the necessary signatures on the *Certificate of Substantial Completion*. The date of "substantial completions" triggers the end of contract time and the start of the warranty period

TASK 9 – POST - CONSTRUCTION PHASE

Task Description: This task order is for providing construction management and administration after the Contractor has completed the construction of the project and substantial completion has been granted.

Final Quantities

The Consultant shall update all quantities and provide a *Final vs. Plan Quantity* spreadsheet for the entire project. The Consultant will measure or compute all final quantities for the project.

Final Change Order

A Final Change Order will be prepared that will reflect the Final Quantities and revise the total project contract amount to equal the work completed.

The Consultant is responsible for preparing the *Final Change Order* and providing it to the Contractor for their acceptance signature. The Consultant shall transmit all three signed copies to the City for their review, approval and signature.

The Consultant shall transmit a signed copy of the *Final Change Order* to the Contractor.

Final Punchlist Review

The Consultant shall make an inspection, when notified by the Contractor, that they have completed all items on the Final Punchlist.

Contractor's Final Pay Request

The Contractor is responsible for submitting a *Final Pay Request* to the Consultant for processing. This *Final Pay Request* shall be processed identically to the partial pay requests; with the exception that all previous retainages withheld shall be released.

Prior to processing the *Final Pay Request* the Consultant shall require the Contractor to submit an *Affidavit on Behalf of Contractor* form and *Consent of Surety Company to Final Payment* form. These form are the Contractor's guarantee that all bills for materials, supplies & labor have been paid

in full and that no additional claims will be made against the City as a result of the Contractor's actions and that the final payment shall not relieve the Surety Company of any of its obligations.

Record Drawings

The Consultant is responsible for producing the *Record Drawings* at the conclusion of the Project. The Consultant, Contractor and City shall maintain a set of record construction plans during the course of construction, carefully noting all design changes, underground utilities, etc. All sets of drawings shall be presented to the Consultant in a neat and understandable condition for final revisions. The Consultant shall carefully review the changes made for accuracy and completeness.

Certification Letter

The Consultant will prepare a *Certification Letter* for submittal to the MDEQ. This letter will provide documentation that all water and sewer mains that were installed as part of the project were installed according to the approved plans and were tested in accordance with the approved specifications. The Consultant will submit this letter to MDEQ along with the Record Drawings.

Submit Copies of Submittals to City

The Consultant will submit one (1) set of all submittals received to the City for their records.

Submit Certification Letter and Record Drawings to City & MDEQ

The Consultant shall closely review the record drawings prior to submitting copies to the City and MDEQ. The Consultant will submit three (3) sets of record drawings to the City along with a .PDF set and an AutoCAD file of the design line work. The Consultant will submit two (2) sets of record drawings to MDEQ along with the Certification Letter.

Miscellaneous Landowner Correspondence

The Consultant shall act as a liaison between the City and Landowners after construction has been completed. The Consultant will receive phone calls and visit the project site to help understand and address any issues that landowner's may have after construction.

Warranty Inspection

The Consultant will schedule and attend a Warranty Inspection. The primary objective of the inspection is to test all the facilities and materials for proper functioning prior to the expiration of the Contractor's warranty on parts and labor.

EXHIBIT "B"
AMENDMENT No. 3
COMPENSATION SCHEDULE AND PROCEDURE; REIMBURSEMENT OF EXPENSES

WEST 7TH STREET RECONSTRUCTION, CITY OF WHITEFISH
TASK 7 – BID TO AWARD PHASE
TASK 8 – CONSTRUCTION PHASE
TASK 9 – POST CONSTRUCTION PHASE

A. COMPENSATION

Compensation for the West 7th Street Reconstruction Project – Amendment No. 3 will be on an hourly basis not to exceed a ceiling limit of One Hundred Twenty Two Thousand Seven Hundred Dollars and Zero Cents ($122,700.00), without prior written authorization. This will bring the total contract ceiling amount for the West 7th Street Reconstruction Project to Four Hundred Thirty Seven Thousand One Hundred Dollars and Zero Cents ($437,100.00).

The West 7th Street Reconstruction Project – Amendment No. 3 cost proposal is shown on the Attachments "B-1".

Cost will be the Consultant's current billable hourly rates. Profit will be 15% of the Consultant's loaded labor.

B. METHOD OF PAYMENT

The Consultant will submit invoices each month, identifying the tasks performed and the number of hours worked by each staff member during the billing period. The consultant will indicate total cost to date and percent of project completion for the billing period.

C. REIMBURSABLE EXPENSES

An estimate of reimbursable expenses required for the proposed project is shown on Attachment "B-2" of this amendment. Other reimbursable expenses will be paid in accordance with the Consultant's January 1, 2015 Schedule of Reimbursable Expenses shown as Attachment "B-3".

Attachment "B-1"
Amendment No. 3
Cost Proposals

See separate attachments

ROBERT PECCIA & ASSOCIATES, INC.
ENGINEERING SERVICES CONTRACT
SCHEDULE OF ESTIMATED COSTS

WEST 7th STREET RECONSTRUCTION

SUMMARY OF ESTIMATED FEES

RPA Project #: 14105.000

ATTACHMENT B-1

	Initial Agreement			Contract Amendment No. 1		Contract Amendment No. 2	Contract Amendment No. 3				Total
	Task 1	Task 2	Task 3	Task 4	Task 5	Task 6	Task 7	Task 8	Task 9		
	SURVEYING	PRELIMINARY ENGINEERING	PRELIMINARY PUBLIC OUTREACH	LAND ACQUISITION	DESIGN PHASE	UTILITY RELOCATES	BID TO AWARD PHASE	CONSTRUCTION PHASE	POST - CONSTRUCTION PHASE		
RPA Fees =	$15,800.00	$45,400.00	$17,400.00	$3,000.00	$182,100.00	$22,900.00	$10,800.00	$99,000.00	$12,900.00		$409,300.00
Sub Fees =											
Clark Appraisal =				$1,000.00							$1,000.00
Ron Olson =				$2,000.00							$2,000.00
BBLA =					$20,000.00						$20,000.00
KB =					$4,500.00						$4,500.00
Laboratory =						$300.00					
Subtotal Fees =	$15,800.00	$45,400.00	$17,400.00	$6,000.00	$206,600.00	$23,200.00	$10,800.00	$99,000.00	$12,900.00		
	Total Fees =		**$78,600.00**		**$212,600.00**	**$23,200.00**			**$122,700.00**		**$437,100.00**

Summary of Estimated Reimbursable (Direct) Expenses

	Initial Agreement	Amendment No. 1	Amendment No. 2	Amendment No. 3
Computer Expense =	$1,980	$3,751	$402	$1,172
Mileage Expense =	$549	$300	$675	$1,969
Telephone, Postage and Fax =	$170	$40	$10	$120
Printing and Copies =	$230	$1,440	$50	$650
Survey Equipment Expense =	$2,800	$600	$1,050	$0
Misc. Supplies Expense =	$190	$110	$50	$100
Total Direct Expenses =	**$5,919.00**	**$6,241.00**	**$2,237.00**	**$4,010.25**

Summary of Total Contract

Initial Agreement =	$78,600.00
Contract Amendment No. 1 =	$212,600.00
Contract Amendment No. 2 =	$23,200.00
Contract Amendment No. 3 =	$122,700.00
Total Contract Amount =	**$437,100.00**

ROBERT PECCIA & ASSOCIATES
CIVIL ENGINEERING SERVICES CONTRACT
SCHEDULE OF ESTIMATED COSTS

West 7th Street Reconstruction
Whitefish, MT

Attachment B-1

TASK NO. 7
BID TO AWARD PHASE

RPA Project No. 14105.000
Date: January 2016

Work Item/Subtask	Operations Manager $56.48	Project Manager $42.73	Engineering Tech. $24.98	CADD Tech. $24.98	Admin. Asst. $20.22	Total Person Days
	Person Days					
TASK 7: BID TO AWARD PHASE						
Preparing Contract Documents	0.25	0.50	0.50	1.00	1.00	3.25
Preparing Official Bid Proposal		0.50			0.50	1.00
Advertise for Bids		0.25				0.25
Invitations to Bid	0.25				0.50	0.75
Pre-Bid Conference	0.25	0.50	0.50			1.25
Planholder's List					0.50	0.50
Issuing Addenda		0.50			0.50	1.00
Bid Opening		0.50				0.50
Bid Tabulations			0.50			0.50
Award Recommendations	0.25	0.25			0.25	0.75
Notice of Award and Executed Contract Documents	0.25	1.00	1.00		0.50	2.75
TOTAL PERSON-DAYS:	**1.25**	**4.00**	**2.50**	**1.00**	**3.75**	**12.50**
TOTAL PERSON-HOURS:	**10.0**	**32.0**	**20.0**	**8.0**	**30.0**	**100.0**
LABOR COST PER EMPLOYEE:	**$564.80**	**$1,367.36**	**$499.60**	**$199.84**	**$606.60**	**$3,238.20**

DIRECT EXPENSES

Subcontracted Services (None)	
Equipment (Survey GPS $400/day)	
Equipment (Computers)	$259.00
Equipment (Nuclear Densometer $650/month)	
Per Diem - Day	
Per Diem - Overnight	
Mileage - 3 trips	$56.25
Telephone, Postage and Fax	$10.00
Printing	$500.00
Misc. Supplies	
Total:	**$825.25**

Assumptions / Exclusions:

- None

SUMMARY OF ENGINEERING SERVICES

Direct Labor	$3,238.20
Overhead (Current OH Rate X Direct Labor) (1.6655)	$5,393.22
Subtotal Labor Cost:	$8,631.42
Direct Expenses	$825.25
Subtotal Project Costs:	$9,456.67
Profit (15% of Loaded Labor):	$1,294.71
Total Engineering Fee (Rounded):	**$10,800.00**

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ROBERT PECCIA & ASSOCIATES
CIVIL ENGINEERING SERVICES CONTRACT
SCHEDULE OF ESTIMATED COSTS

West 7th Street Reconstruction
Whitefish, MT

Attachment B-1

TASK NO. 8
CONSTRUCTION PHASE

RPA Project No. 14105.000
Date: January 2016

Work Item/Subtask	Operations Manager $56.48	Project Manager $42.73	Engineering Tech. $24.98	CADD Tech. $24.98	Admin. Asst. $20.22	Total Person Days
	Person Days					
TASK 8: CONSTRUCTION PHASE						
Project Newsletter		0.50			0.50	1.00
Public Meeting	0.25	0.50	0.50			1.25
Preconstruction Conference	0.25	0.25	0.50			1.00
Minutes of Pre-Con			0.25			0.25
Submittal Review Process		1.00	4.00		2.00	7.00
Construction Administration and Observation - Office	4.00	8.00	22.00			34.00
Construction Administration and Observation - Field (3/4 Time)	4.00	8.00	64.50			76.50
Partial Pay Requests		1.00	2.00			3.00
Change Orders		1.00	2.00			3.00
Contractor's Certificate of Completion		0.25	0.25			0.50
Project Punchlist			2.00			2.00
Final Project Inspection	0.50	0.50	1.00			2.00
TOTAL PERSON-DAYS:	**9.00**	**21.00**	**99.00**		**2.50**	**131.50**
TOTAL PERSON-HOURS:	**72.0**	**168.0**	**792.0**		**20.0**	**1052.0**
LABOR COST PER EMPLOYEE:	**$4,066.56**	**$7,178.64**	**$19,784.16**		**$404.40**	**$31,433.76**

DIRECT EXPENSES

Subcontracted Services (None)	
Equipment (Survey GPS $400/day)	
Equipment (Computers)	$585.00
Equipment (Nuclear Densometer $650/month)	
Per Diem - Day	
Per Diem - Overnight	
Mileage - 100 trips	$1,875.00
Telephone, Postage and Fax	$100.00
Printing	
Misc. Supplies	$100.00
Total:	**$2,660.00**

Assumptions / Exclusions:

- Construction Observation will be 3/4 time and will include six (6) hours per day on-site.

SUMMARY OF ENGINEERING SERVICES

Direct Labor	$31,433.76
Overhead (Current OH Rate X Direct Labor) (1.6655)	$52,352.93
Subtotal Labor Cost:	$83,786.69
Direct Expenses	$2,660.00
Subtotal Project Costs:	$86,446.69
Profit (15% of Loaded Labor):	$12,568.00
Total Engineering Fee (Rounded):	**$99,000.00**

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ROBERT PECCIA & ASSOCIATES
CIVIL ENGINEERING SERVICES CONTRACT
SCHEDULE OF ESTIMATED COSTS

TASK NO. 9
POST - CONSTRUCTION PHASE

RPA Project No. 14105.000
Date: January 2016

West 7th Street Reconstruction
Whitefish, MT

Attachment B-1

Work Item/Subtask	Operations Manager $56.48	Project Manager $42.73	Engineering Tech. $24.98	CADD Tech. $24.98	Admin. Asst. $20.22	Total Person Days
		Person Days				
TASK 9: POST-CONSTRUCTION PHASE						
Final Quantities			1.00			1.00
Final Change Order		0.25	0.25			0.50
Final Punchlist Review			1.00			1.00
Contractor's Final Pay Request		0.25	0.50		0.25	1.00
Record Drawings		1.00	2.00	5.00	0.50	8.50
Certification Letter		0.50	0.25			0.75
Submit Certification Letter & Record Drawings to City/MDEQ		0.25			0.25	0.50
Miscellaneous Landowner Correspondence			4.00			4.00
Warranty Inspection		0.50	0.75			1.25
TOTAL PERSON-DAYS:		**2.75**	**9.75**	**5.00**	**1.00**	**18.50**
TOTAL PERSON-HOURS:		**22.0**	**78.0**	**40.0**	**8.0**	**148.0**
LABOR COST PER EMPLOYEE:		**$940.06**	**$1,948.44**	**$999.20**	**$161.76**	**$4,049.46**

DIRECT EXPENSES

Subcontracted Services (None)	
Equipment (Survey GPS $400/day)	
Equipment (Computers)	$327.50
Equipment (Nuclear Densometer $650/month)	
Per Diem - Day	
Per Diem - Overnight	
Mileage - 2 trips	$37.50
Telephone, Postage and Fax	$10.00
Printing	$150.00
Misc. Supplies	
Total:	**$525.00**

Assumptions / Exclusions:

- None

SUMMARY OF ENGINEERING SERVICES

Direct Labor	$4,049.46
Overhead (Current OH Rate X Direct Labor) (1.6655)	$6,744.38
Subtotal Labor Cost:	$10,793.84
Direct Expenses	$525.00
Subtotal Project Costs:	$11,318.84
Profit (15% of Loaded Labor):	$1,619.08
Total Engineering Fee (Rounded):	**$12,900.00**

K:\Kal-Proj-Data\14105.000 - West 7th Street\B. Contract\3. Fee Calculations\Fee Estimates - West 7th Street.xlsx

Attachment "B-2"
Amendment No. 3
Estimated Reimbursable (Direct) Expenses

WEST 7TH STREET RECONSTRUCTION, CITY OF WHITEFISH
TASK 7 – BID TO AWARD PHASE
TASK 8 – CONSTRUCTION PHASE
TASK 9 – POST CONSTRUCTION PHASE

1. Subcontracted Services

None.

TOTAL ESTIMATED SUBCONTRACTED SERVICES = $ 0

2. Computer Expenses

Computer expenses will be incurred for use of software and computer stations. Computer expenses are calculated at $6.50/hour for CADD Time and $2.25/hour for PC Time.

TOTAL ESTIMATED COMPUTER EXPENSES = $ 1,172

3. Mileage Expenses

The basis for calculating mileage expenses is the assumption that round trip mileage between RPA Kalispell office and Whitefish is 30 miles. Mileage for RPA four-wheel drive vehicles would be charged at a rate of $0.625/mile. We estimate the following trips will be required:

Task 7 – 3 trips, Task 8 – 100 trips, Task 9 – 2 trips

TOTAL MILEAGE EXPENSES = $ 1,969

4. Telephone, Postage, and Fax

Postage and shipping charges will likely be incurred in delivering correspondence, reports, and mailing project related items to the City of Whitefish.

TOTAL TELEPHONE/POSTAGE/FAX CHARGES = $ 120

5. Printing and Copies

Printing and copying charges will be incurred in delivering correspondence, reports and plans to the City of Whitefish.

TOTAL PRINTING AND COPIES EXPENSES = $ 650

6. Survey Equipment Expense

We estimate the use of a GPS System for 0 days @ $ 400.00/day. We estimate the use of the Nuclear Densometer for 0 months @ $650/month.

TOTAL EQUIPMENT EXPENSES = $ 0

7. Misc. Supplies Expense (Stakes, Lathe, Paint, etc.)

Supply charges will be incurred during the construction phase including use of stakes, lathe, paint, etc.

TOTAL SUPPLIES EXPENSES = $ 100

Attachment "B-3"
Amendment No. 3
RPA Schedule of Reimbursable Expenses
January 1, 2015

See separate attachment

ROBERT PECCIA & ASSOCIATES, INC.
SCHEDULE OF REIMBURSABLE EXPENSES
January 1, 2015

TRAVEL EXPENSES:

Mileage Expense--Two Wheel Drive Vehicles	*$0.575 per mile or current Federal mileage rate*
Mileage Expense--Four Wheel Drive Vehicles	*$0.625 per mile*
SUE Truck - Mileage	*$1.00 per mile*
Per Diem	*State or Federally Allowable Rates*
Cessna 172	*$75.00 per hour*
Other	*$ at actual cost*

REPRODUCTION EXPENSES:

Plain Paper Photocopies	*$0.10 per copy*
Color Photocopies - 8 1/2 X 11	*$1.00 per copy*
Color Photocopies - 11 X 17	*$1.15 per copy*
All Other Outside Printing Expenses	*$ at actual cost*
Photographic Developing Charges	*$ at actual cost*

CONSTRUCTION ENGINEERING & SURVEYING EQUIPMENT:

Nuclear Densometer	*$100.00 per day/$200 per week/$650 per month*
Flow Recorder	*$10.00 per day/$30 per week/$100 per month*
Wind Recorder	*$75.00 per month*
Laser Level	*$20.00 per day/$75 per week/$225 per month*
Digital Level	*$75.00 per day/$350 per week/$1000 per month*
Line Locator	*$30.00 per day*
Robo - 5600	*$225.00 per day*
Robot S6	*$325.00 per day*
GPS - RTK System	*$400.00 per day*
GPS - Rover	*$225.00 per day*
Sewer Flow Meter	*$25.00 per day/$50 per week / $150 per month*
Confined Space Entry Equipment	*$100.00 per day*
Submersible Transducers (with data logger)	*$120.00 per day*
Nonsubmersible Transducers (with data logger)	*$100.00 per day*
Controlotron Ultrasonic Flow Meter	*$15.00 per hour/$100.00 per day*
4-Wheeler	*$100.00 per day*
Jackhammer	*$45.00 per day*
Turbidimeter	*$20.00 per day*
Trimble Juno GPS / GIS Hand Held	*$50.00 per day*
Troll 9500 (Water Quality Sampler)	*$560.00 per month*
SUE - Vacuum Truck Usage	*$150.00 per hour*

TRAFFIC & TRANSPORTATION EQUIPMENT:

Traffic Counters	*$50.00 per day*
Range Tracking System	*$50.00 per day*
Electronic Turning Movement Counters	*$15.00 per day*
Traffic Signs	*$20 per job per sign*

OFFICE EQUIPMENT & SUPPLIES:

Computers: Word Processing / Accounting	*$2.25 per hour*
Computers: CADD /Microstation/Corel Draw	*$6.50 per hour*
Fax Machine	*$1.00 per page*
Long Distance Telephone Charges	*$ at actual cost*
Postage Costs	*$ at actual cost*
Federal Express Services	*$ at actual cost*
Other Office Supplies (Specifically purchased for project)	*$ at actual cost*

SUBCONTRACTORS:

Invoiced at actual cost incurred by Consultant plus administrative charges.

OTHER EQUIPMENT:

All other equipment is included in the hourly rate charge, and the client will not be charged separately for such items. This policy is subject to change in the future. The above equipment list may be amended as necessary for future equipment purchases.

APPROVED BY: RPA BOARD OF DIRECTORS Date: 01/27/15

F:\Acctg\ADMIN\REIMBEXP 2015.xls

2015 Memo - Authorization to proceed to final design

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

March 31, 2015

Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

Mayor Muhlfeld and Councilors

Authorization to Proceed with Final Design of the West 7th Street Project as Presented in the Preliminary Design Layout

Introduction/History

Preliminary design work for the West 7th Street Reconstruction Project is complete and Robert Peccia and Associates have begun work on the final design of the project. Our consultants have held three public meetings. The most recent public meeting was held Wednesday, March 25th. Each of the public meetings have been very well attended. Attached drawings show the preliminary design layout for the project. The consultants have incorporated staff and the public's preferences, where possible, into the design.

The project will include two construction phases. The first phase will include relocation of the gas line. This work will be done by Northwestern Energy in the fall of 2015. The second phase will include the reconstruction of the road and utilities, construction of a bicycle/pedestrian path, installation of boulevard lighting and landscaping.

Current Report

At the February 16th City Council meeting, the Council gave City staff direction to not pursue undergrounding the Flathead Electric transmission lines on West 7th Street. At the March 2nd Council meeting, the Council approved an amendment to the RPA engineering contract allowing our consultants to proceed with final design.

Attached you will find drawings that illustrate the preferences of the West 7th Street neighborhood concerning the design of the project. The project includes a concrete bicycle/pedestrian path that would extend on the north side of West 7th Street from Karrow Avenue to Baker Avenue.

There is an additional section of bicycle/pedestrian path that is included in the City's Bicycle/Pedestrian Master Plan that will extend north from West 7th Street along the drainage to 6th Street. This path will not be ADA accessible, but there are alternative ADA routes available for pedestrians.

Financial Requirement

Construction costs for the West 7th Street Project, estimated at $2.39 million will be paid out of the Resort Tax account. Once the project is designed and bid it will come to the Council for their approval.

Request for Authorization

We respectfully request authorization to proceed with the final design of the West 7th Street Reconstruction Project as presented in the preliminary design layout.

Sincerely,

Karin Hilding, P.E., LEED A.P.
Interim Public Works Director

West Seventh Street Reconstruction

City of Whitefish

City Council Presentation

April 6, 2015

West Seventh Street Reconstruction

- **Summary of Public Involvement**
- **Council Action Requested**
  - Approve the recommended roadway alignment and typical sections.
  - Approve "No On-Street Parking" for West 7th Street.
  - Approve the O'Brien "one way – northbound" modification.
- **Schedule**

Summary of Public Involvement

- **Public Meeting No. 1 – December 10, 2014**
  - Approximately 60 attendees
  - Preliminary design efforts had yet to be started – Design Team wanted to hear from residents first
  - Reviewed previous planning documents and City standard street sections
  - Meeting "Hot Topics":
    - Steep grades at Karrow & Baker intersections
    - Traffic calming (speeding) on W 7th St
    - Safety concerns at O'Brien intersection
    - Minimize impacts to existing vegetation
    - Sanitary Sewer hook-ups
    - Path/Sidewalk Improvements

Summary of Public Involvement

- **Public Meeting No. 2 – February 11, 2015**
  - Approximately 40 attendees
  - Reviewed Overhead to Underground Utility Conversation Option
  - Reviewed Proposed Street Sections – 2 options provided for each neighborhood
  - Residents voted on their preferred options and provided comments on Response Sheets (over 25 sheets returned)

Summary of Public Involvement

- **Council Meeting – March 2, 2015**
  - Presented information on pursing an Overhead to Underground Utility Conversion option.
  - Estimated cost of $1.3M with one year project delay.
  - 69% of residents at Public Meeting No. 2 did NOT support pursing the conversion.
  - Council voted to NOT pursue the conversation.

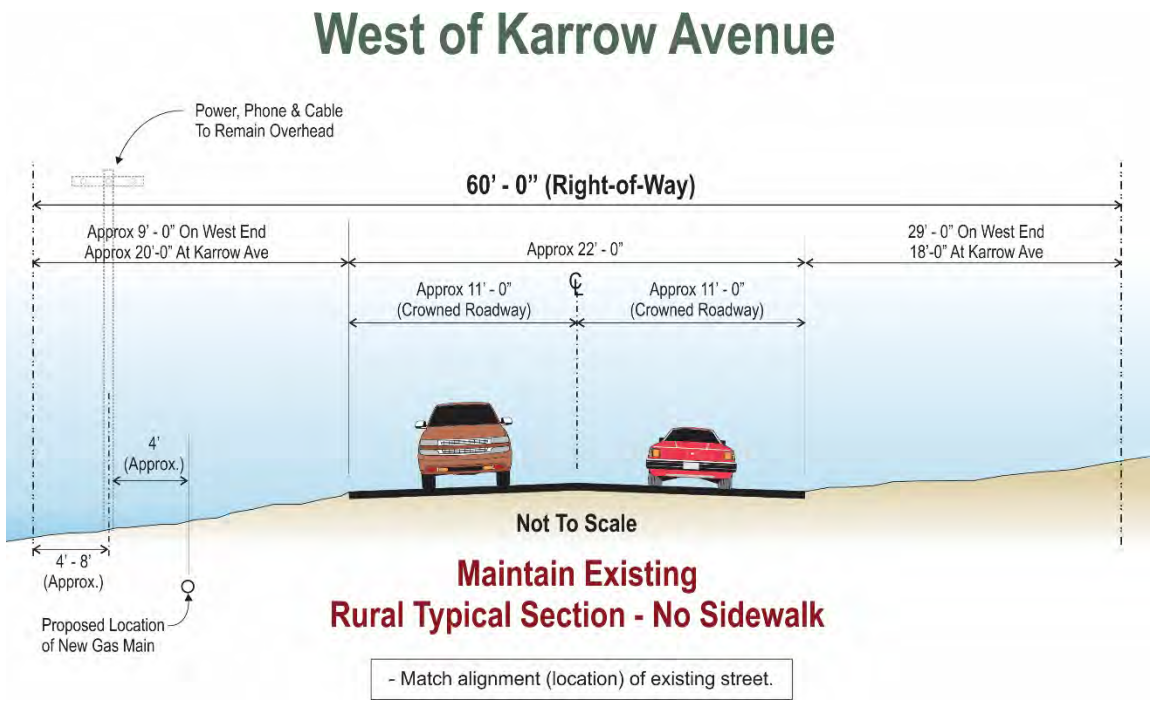
Summary of Public Involvement

- **Public Meeting No. 3 – March 26, 2015**
  - Approximately 30 attendees
  - Presented recommended roadway alignment and typical sections
    - Comments - 10’0” Wide Path & Streetlights
  - Reviewed gas main upgrade
  - Reviewed O’Brien “one way” option
  - Reviewed other design items
  - Reviewed Schedule

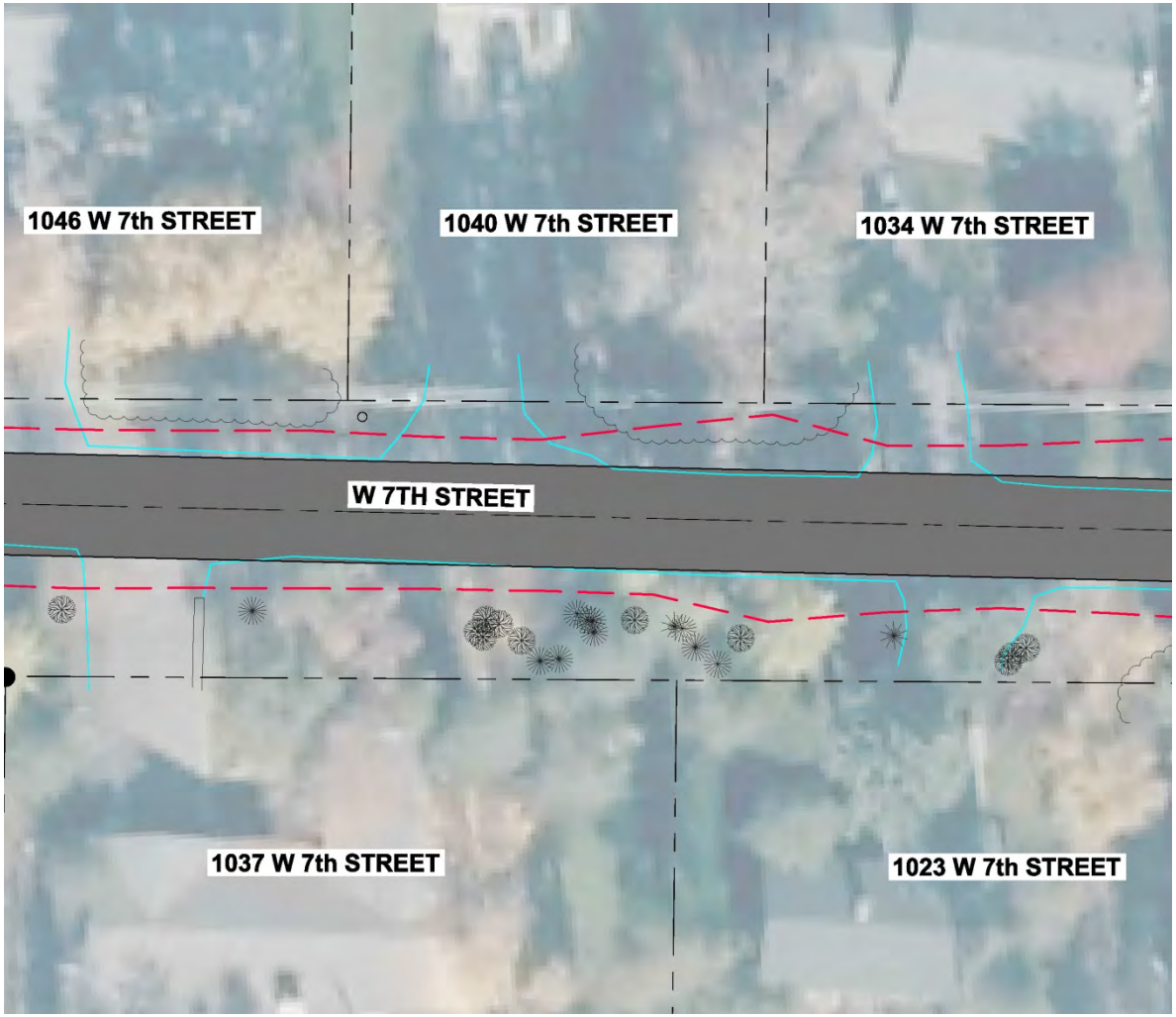
Recommended Roadway Alignment and Typical Sections

West of Karrow Avenue

- **The majority (63%) chose Option 1 "road in same location, no sidewalks".**

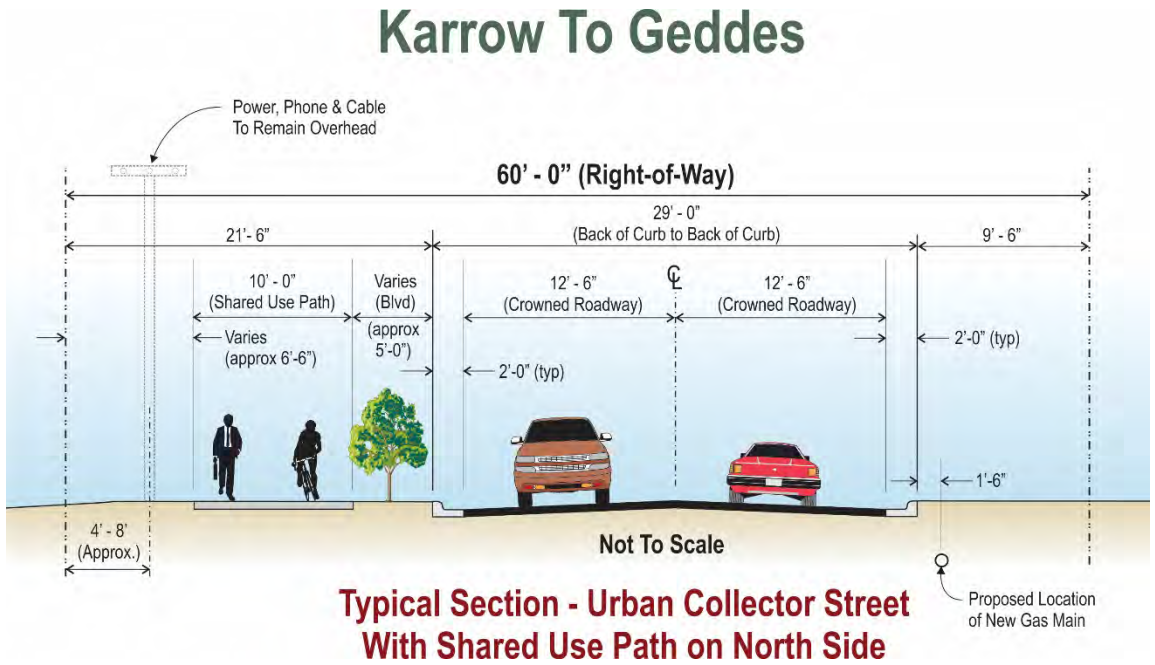


West of Karrow Avenue



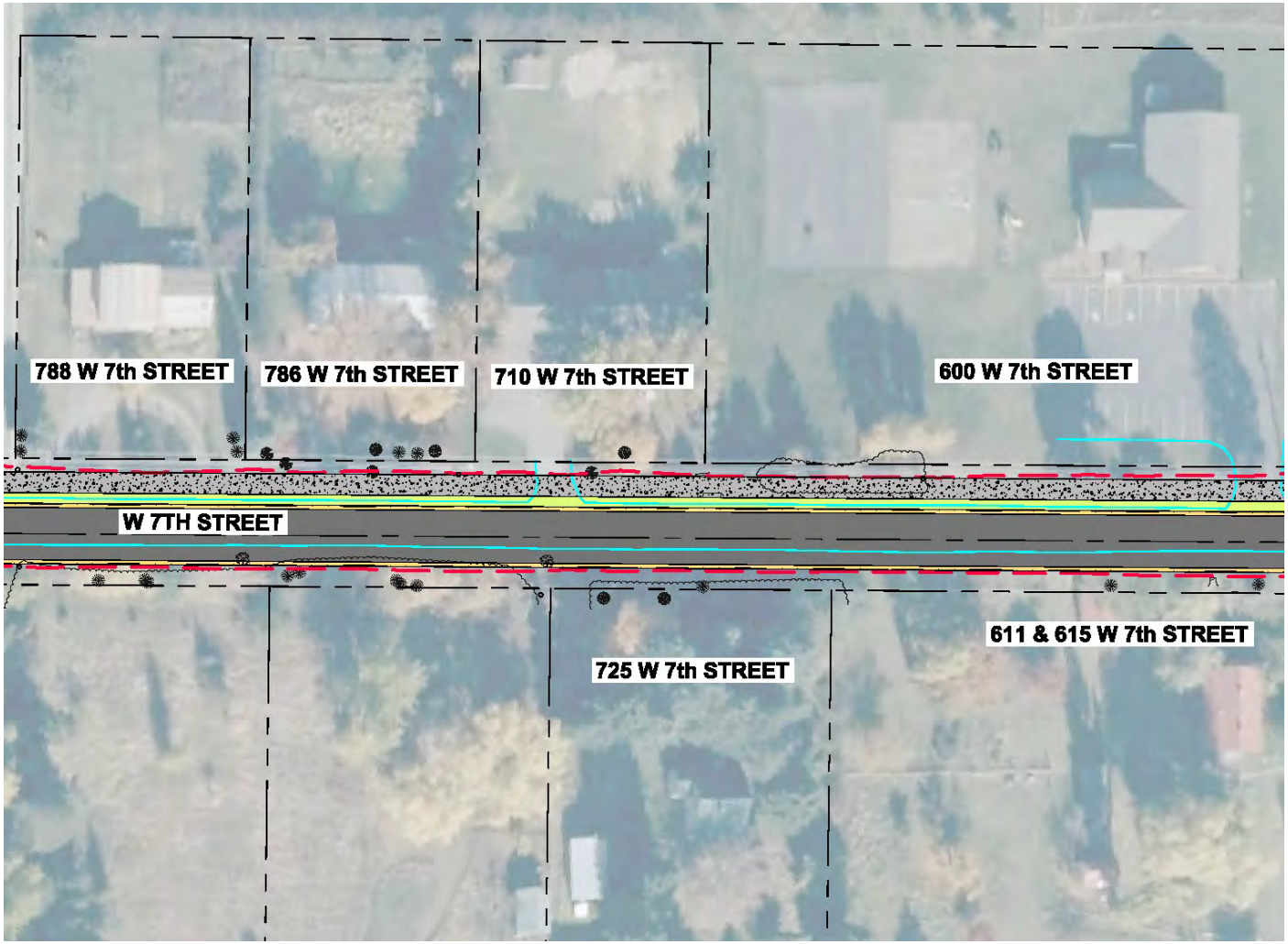
Karrow to Geddes

- The majority (68%) chose Option 1 "urban section – curb and gutter".
- Several comments were received asking that the path width be increased.



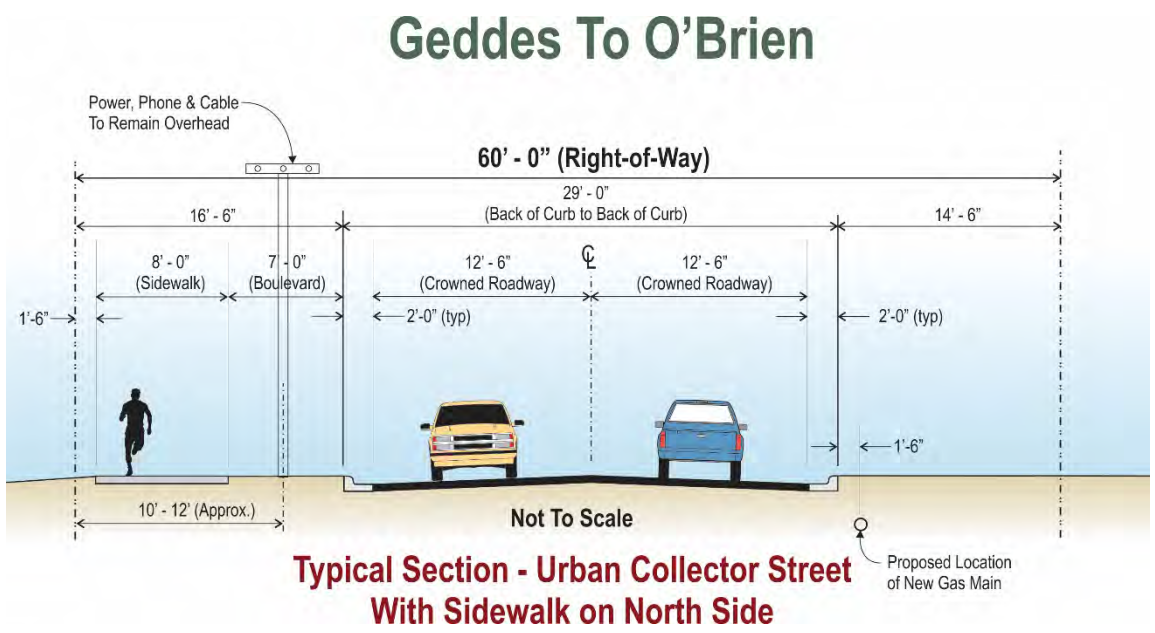
Typical Section - Urban Collector Street
With Shared Use Path on North Side

Karrow to Geddes



Geddes to O'Brien

- The majority (89%) chose Option 1 "sidewalk on north side only".
- Several comments were received asking that the sidewalk be widened.

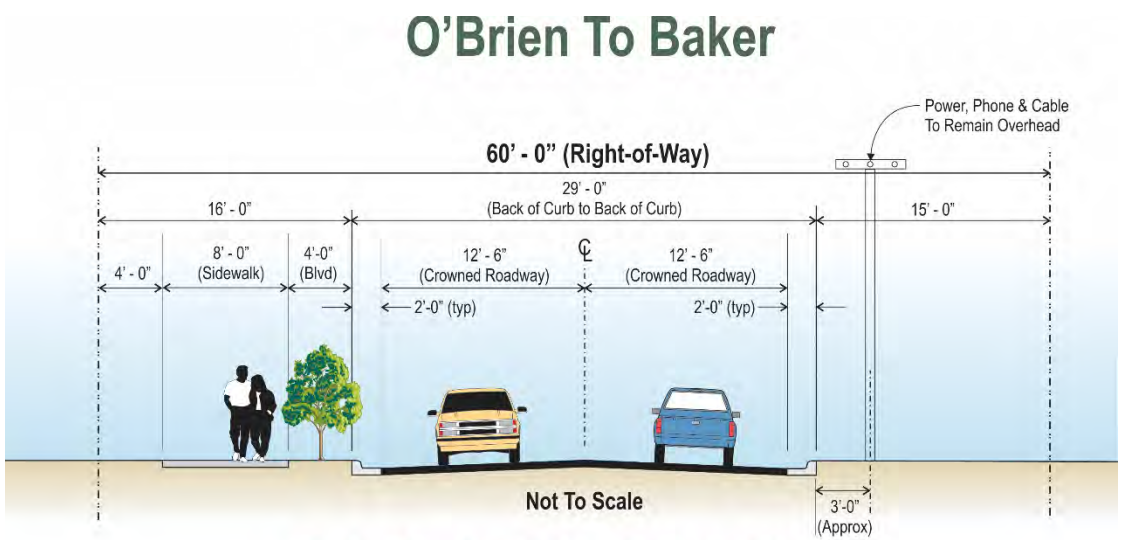


Typical Section - Urban Collector Street
With Sidewalk on North Side

Geddes to O'Brien

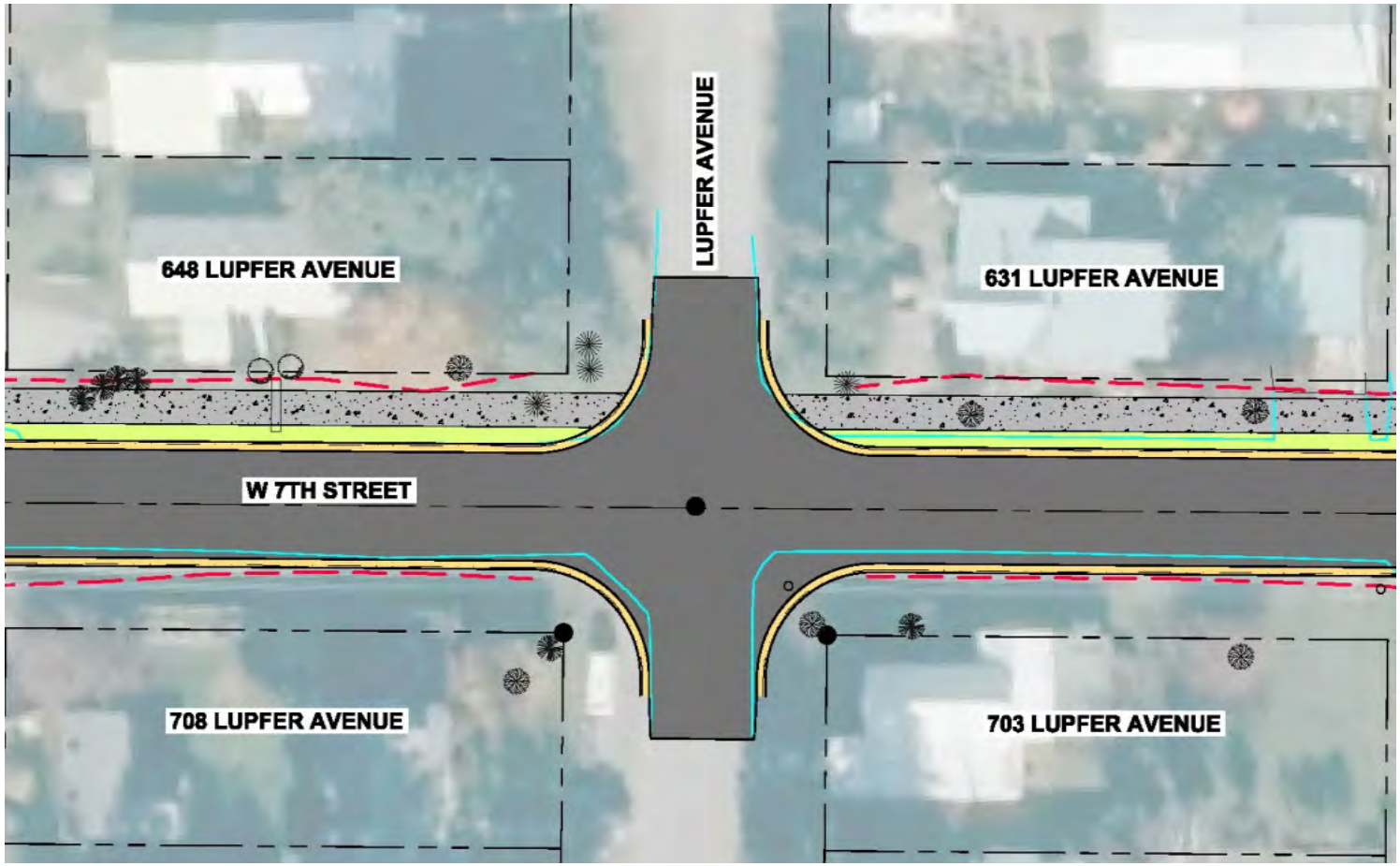
O'Brien to Baker

- The majority (71%) chose Option 2 "sidewalk on both sides, 4'-0" boulevard, landscaped slopes (no retaining walls).
- Several comments were received stating that only one wider sidewalk was preferred.



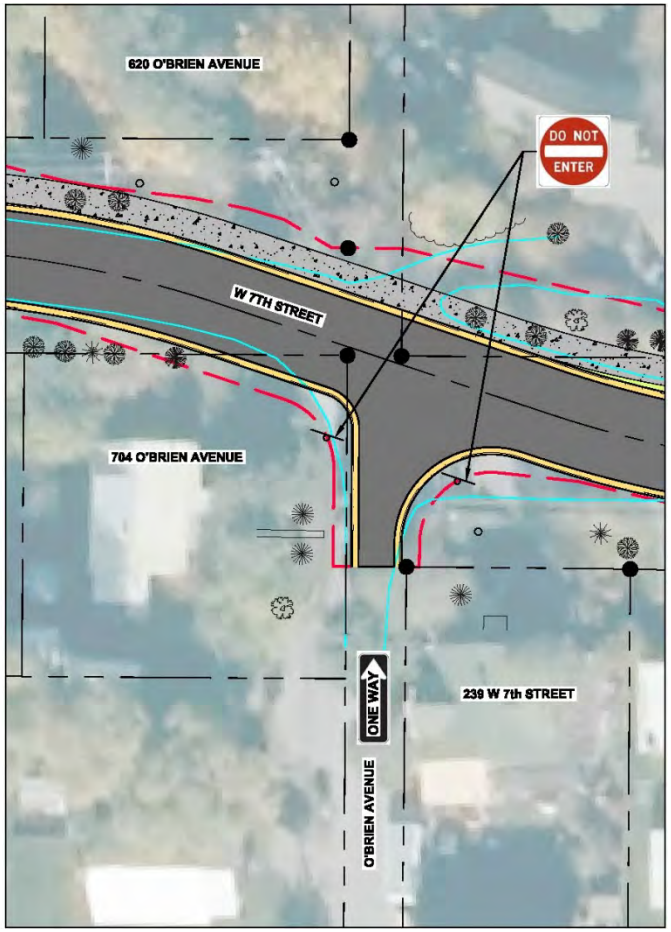
Typical Section - Urban Collector Street
With Sidewalk on North Side

O'Brien to Baker



O'Brien "One Way" Option

- Police & Fire Department Comments.
- Plan to remain 3-way intersection.
- Majority of public support.



Schedule

- Spring/Summer 2015 – Engineering Design
- Late Summer 2015 – Public Meeting No. 4
- Fall 2015 – Gas Upgrade
- Winter/Spring 2016 – Contract Documents and Bidding
- Spring/Summer/Fall 2016 – Roadway Reconstruction

Thank You!

- Questions or Comments?

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MANAGER REPORT

January 27, 2016

PUBLIC WORKS BIDDING OUTSEVERAL UPCOMING PROJECTS

In addition to the West 7th Street Reconstruction project, funded by Resort Taxes, which is on your February 1st agenda, Public Works is planning to bid out several other projects which are in the FY16 budget:

- Wastewater I&I project – this inflow and infiltration remediation project involves slip-lining some wastewater collection mains, relining some manholes, and replacement of manholes or manhole chimneys in order to eliminate groundwater and stormwater from getting into the collection lines. Eliminating or lessening treating this relatively clean water is an important preliminary step required in our wastewater discharge permit and consent decree. Eliminating or lessening this water infiltration is also the cheapest way to "buy capacity" for the wastewater treatment plant.

- Columbia Avenue Bridge Water Main replacement – this project will replace a water main under the Columbia Avenue bridge. This portion of the water main was shut-off when leaks developed in it several years ago. It is an important connection for looping the water system and improving water flows in that area.

- Lion Mountain Loop Road Water Main connection – This water main connection has also been planned for several years and lines were put under Hwy. 93 North this past summer to accommodate this new water main. This water main will create a looped water system from the Grouse Mountain water tank to the Meadowlark Lane, Mountain Park Drive, and State Park Road areas and improve their water flows and pressure. Once this project is done, water flows should increase enough that we can end the requirement for residential water sprinklers for new homes on Meadowlark Lane that was required because of low water pressure in that area.

- City Beach Lift Station Generator – under State and EPA requirements, all of our wastewater lift stations in the collection system need to have backup electrical generators at their sites so that sewer flow can be maintained during power outages and prevent any sewer backups into buildings. This project, also required by our Consent Decree with DEQ, will install a new generator at the City Beach Lift Station at the east end of City beach. This lift station is in a tight location and it will be a difficult installation.

CHARTER COMMUNICATIONS LETTER WITH SELECTED RATE INCREASES

Enclosed in the packet is a recent letter I received from Charter Communications with information about some selective rate increases that they are implementing for their cable television subscribers. These notices are required by our Cable Television Franchise Agreement with Charter.

MEETINGS

City Hall Steering Sub-committee (1/19) – The City Hall Steering Sub-committee met and continued their review of interior colors, countertops, and carpet.

Eagle Transit Focus Group (1/19) – Eagle Transit convened a focus group of city staff and Richard Hildner to discuss ways to improve the Eagle Transit services in Whitefish. We discussed schedule, the City bus, Chamber and community interest in trolley, and other ways to improve the current public transit services.

UPCOMING SPECIAL EVENTS

Whitefish Winter Carnival – Saturday, February 6th

REMINDERS

Please remember to turn in your Ethics Disclosures Forms to City Clerk Necile Lorang as soon as possible and before the end of January.

Monday, February 15, 2016 – City Hall closed for Presidents Day state holiday

Chuck

Respectfully submitted,
Chuck Stearns, City Manager

Charter
COMMUNICATIONS

received
1/19/16 CS

January 12, 2016

Dear Franchise Official:

Containing costs and efficiently managing our operations are critical to providing customers with the best value possible. Like every business, Charter faces rising costs that require occasional price adjustments. As a result, customers in your community will be notified of the following price adjustments through a billing statement message on or after January 15, 2015:

- *Effective on or after February 15, 2016 pricing will be adjusted for the Change of Service Computerized Fee from $2.99 to $4.99 and a Late Fee charge from $7.95 to $8.95.*

Charter continues to provide signigicant product enhancements, including adding new HD channels at no additional cost, and providing more than 10,000 On Demand choices, more than 1,500 of them in HD. As customers continue to expand their TV viewing to alternate devices such as tablets, Charter offers downloadable channel apps that enable customers to use these devices for viewing and to access their DVRs remotely. Also, Charter TV and Internet customers can now access the Charter Spectrum™ TV App, providing more than 100 live TV channels inside their home on their tablet or Smartphone at no additional charge.

Charter remains committed to providing excellent communications and entertainment services in your community and in each of the communities we serve. If you have any questions about these changes, please feel free to contact me.

Sincerely,

Erik Rasmussen | Sr. Mgr. Government Relations | 307-331-3448
611 E. Carlson St., Suite 103 | Cheyenne, WY 82009

611 E. Carlson Street, Suite 103
Cheyenne, WY 82009

MEMORANDUM
#2016-004

To: Mayor John Muhlfeld
City Councilors

From: Chuck Stearns, City Manager

Re: Staff Report – Sale of buildings on James R. Bakke Reserve property

Date: January 21, 2016

Introduction/History

The City of Whitefish received a very generous donation of a beautiful four acre parcel of land at 611 West 7th Street in 2015 from the estate of James R. Bakke. The deed was recorded on June 15, 2015 (see attached deed). Mr. Bakke, a local artist, lived on the property, I believe for his entire life, except at the very end of his life. The donation from the estate stipulated that the property would be used as a park or open space (and not as a cemetery).

The Park Board, after consulting with friends and associates of Mr. Bakke, has decided to leave the park as a natural park and name it the James R. Bakke Reserve. There are currently eight buildings on the property in various stages of functionality. The Park Board has decided to demolish six of the buildings, leave one building on site, and move one building to the Parks and Recreation Maintenance building on Monegan Road for use as a storage shed.

Rather than just demolish the buildings, we decided to see first if there was any public interest in buying any of the six buildings, either for moving the entire building or salvaging any of the materials from the buildings. To that end, we published the attached Invitation to Bid to see if any bidders would be interested in moving or salvaging any of the buildings.

Current Report

We opened bids for the sale of any of the six buildings on Thursday, January 21st at 3:00 p.m. There was only one bid submitted for one building – building #6, a small shed, for $300.00. That bid was from Mark Duff of Whitefish. Please see the attached bid tabulation.

Financial Requirement and Revenues

There is no financial cost to the City to award the sale of this building and the Park and Recreation Department will receive $300.00 for the sale of the building and they avoid demolition and landfill costs.

Recommendation

Staff respectfully recommends the City Council award the sale of building #6 on the James R. Bakke Reserve land to Mark Duff of Whitefish.

Return to:
Stephanie L. Walls PC
PO Box 1943
Whitefish, MT 59937

Debbie Pierson, Flathead County MT by NC
201500011752
Page: 1 of 2
Fees: $14.00
6/15/2015 10:51 AM

Approved 6/15/15 SB 0036250

PERSONAL REPRESENTATIVE'S DEED OF DISTRIBUTION

This instrument is executed the 27th day of May 2015, by the undersigned in the capacity of the duly appointed, qualified and acting Personal Representative of the Estate of James R. Bakke, deceased, who acquired title to the real property as James R. Bakke.

Proceedings for the administration of the estate are filed as Cause No. DP-13-107D in the District Court of the Eleventh Judicial District at Flathead County, Montana, and the undersigned, as Personal Representative, has paid and discharged all obligations of the Estate, determined the persons entitled to distribution of the Estate properties according to law, and has paid and discharged all taxes upon said Estate all as appears from the files in said cause.

NOW, THEREFORE, for the purposes of closing said Estate and making proper distribution, as provided by law, the undersigned, as such Personal Representative, does hereby, assign, transfer and convey all of the right, title and interest of said real property of said Estate, unto the City of Whitefish, hereinafter Grantee, in and to the real property in Flathead County, Montana, and more particularly described as follows:

The Tract of land containing four (4) acres of land, lying on the East side of the Southwest Quarter (SE1/4) of the Northwest Quarter (NW1/4) of the Southwest Quarter (SW1/4) of Section 36, Township 31 North, Range 22 West, M.P.M. or more particularly described as the East four Acres of the above described tract..

Together with all the tenements to have and to hold the same unto the said Grantee, and the heirs and assigns of the Grantee, forever.

This deed is granted in accordance the terms of that certain Will executed by James R. Bakke dated August 10, 2011 including the terms " to be preserved and utilized as a park and/or open spaces for the benefit of the citizens of the Whitefish community with the condition that the property shall not utilized for burial purposes or a cemetery" and other such terms contained in the Will, all of which this deed is made subject to, and shall continue to be controlling.

IN WITNESS WHEREOF, the undersigned executes and acknowledges this instrument as of the date above stated.

Terrell Abell, Pers. Rep.
Terrell L Abell, Personal Representative of the
Estate of James R. Bakke, Deceased

STATE OF MONTANA)
: ss.
County of Flathead)

One this 27th day of May, 2015, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Terrell L. Abell, Personal Representative of the Estate of James R. Bakke, deceased, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as such personal representative.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

(Notarial Seal)
STEPHANIE L WALLS NOTARIAL SEAL STATE OF MONTANA
STEPHANIE L WALLS
NOTARY PUBLIC for the
State of Montana
Residing at Whitefish, MT
My Commission Expires
October 26, 2015

Stephanie L Walls
Notary Public for the State of Montana
Printed Name: Stephanie L Walls
Residing at: Whitefish, MT
My Commission Expires: Oct 26, 2015

INVITATION TO BID

Notice is hereby given that sealed bids will be received at the City Clerk's Office, City Hall, 1005 Baker Avenue, Whitefish, Montana, 59937 until 3:00 p.m., Thursday, January 21, 2016 and will be opened and publicly read at that time. As soon thereafter as is possible, the City Council will consider the bids and a sale of the following property by the City of Whitefish, via a bill of sale will be made:

Purchase and removal of any number of six (6) buildings on the City owned property at 611 West 7th Street in the City of Whitefish, Flathead County, Montana.

Bidders may bid on any number of buildings. Bidders must state payment and closing dates. There are no minimum bids on each building. The City desires prompt payment and may take into account promptness offered by each bidder in determining the highest and best bid.

Bidders shall bid only on City-provided bid proposal forms, addressed to the City Clerk's Office, City of Whitefish, enclosed in a sealed envelope marked plainly on the outside, "Bid for Purchase of City property buildings - Opening January 21, 2016".

Each bidder shall submit cash, a certified check, bid bond, cashier's check, bank money order or bank draft payable to the City Clerk, Whitefish, Montana, and drawn and issued by a national banking association located in the State of Montana or by any banking corporation incorporated under the laws of the State of Montana for an amount of $500.00 as a good faith deposit. Personal checks not accepted.

The City reserves the right to reject any and all bids and if all bids are rejected, to re-advertise under the same or new specifications, or to make such an award as in the judgment of its officials best meets the City's requirements and the public interest. The City reserves the right to waive any technicality in the bidding which is not of a substantial nature.

Any objections to published specifications must be filed in written form with the City Clerk prior to bid opening at 3:00 p.m., January 21, 2016.

Bidders shall obtain further information and bid proposal forms and packets from the Whitefish City Manager at the above address or by calling (406) 863-2406.

Necile Lorang
City Clerk

PUBLISH: November 11, 2015
January 6, 2016
January 13, 2016

INTRODUCTION

The City of Whitefish desires to sell six (6) buildings on the City property which it owns at 611 West 7th Street, Whitefish, Montana. Therefore, the City is soliciting bid proposals from qualified buyers to purchase any of the six (6) buildings either individually or in groupings. The City will accept bids until 3:00 PM on January 21, 2016 at which time the City Clerk will open the bids. Thereafter, City officials will review the bids and will award the sale of the buildings.

PLEASE NOTE: The City reserves the right to reject any and all bids and if all bids are rejected, to re-advertise under the same or new specifications, or to make such an award as in the judgment of its officials best meets the City's requirements. The City reserves the right to waive any technicality in the bidding which is not of a substantial nature. The City is under no obligation to sell any of the buildings, so buildings may not be sold unless the prices bid are deemed sufficient.

The City of Whitefish acquired the Bakke property at 611 West 7th Street in 2015. The acquisition of the property was a donation from the estate of James Bakke who wished to donate the property to the City for use as a natural park. The City desires to remove the buildings from the property so as to have the park in a more "natural state". However, the City also desires that the buildings, materials, and contents be re-used to the fullest extent possible rather than being disposed in the landfill.

Successful bidders must remove the building and contents from the property by June 30, 2016. The successful bidder for Building #3 (garage) needs to remove the building and contents by April 1, 2016. Successful bidders may leave the foundation in place on the property for the City of Whitefish to remove, but buyers must remove the entire building and any personal property or contents in the building. Buyers are responsible for taking all trash from their building and the City will retain the bid bond as a performance bond for the successful bidders. The buyer will forfeit the performance bond if trash or debris is left at the site. Buyers may obtain trash dumpsters from North Valley Refuse and place them on site at buyer's cost.

LOCATION OF PROPERTY

The City property is located at 611 West 7th Street in Whitefish, Montana. As public property, prospective bidders are welcome to go on the property to inspect the exterior of the buildings and any buildings that are open. For access to the interior of any locked buildings, the City will hold an open house on the property at 10:00 a.m. on Monday, January 11, 2016 at 611 West 7th Street. Exhibit A is an aerial photo of the property with buildings marked. Exhibit B contains pictures of each building and a short description of the building and contents.

FINANCIAL INFORMATION AND BIDDING REQUIREMENTS

A bid bond or other suitable security (see requirements in Invitation to Bid) for $500.00 is required as security on the bid. The bid bond or other security shall be cashed for failure to complete a transaction if a bid is accepted by the City Council. The City will retain the bid bond as a performance bond for the successful bidders. The buyer will forfeit the performance bond if trash or debris is left at the site or if the building is not removed.

Exhibit C is the bid submittal sheet. Exhibit C contains the necessary conditions on which the City will award a bid and the bidder must sign and attest to all of these conditions.

CONCLUSION

If there are any additional questions, please call Chuck Stearns, City Manager, at the City of Whitefish, area code 406-863-2406. Bids will be accepted until 3:00 PM on January 21, 2016 and the City Council will make a decision on sales as soon thereafter as possible.

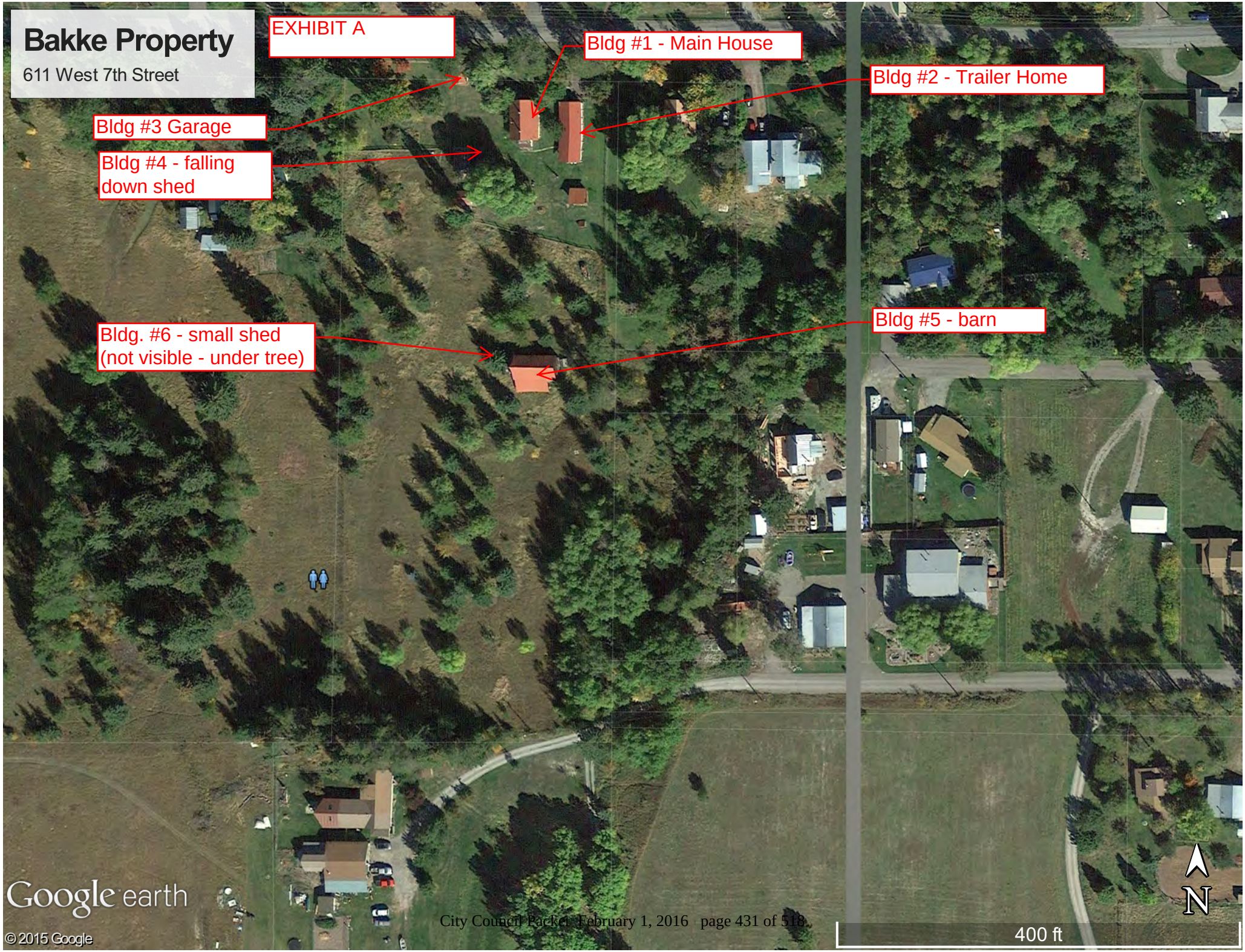
Bakke Property
611 West 7th Street
EXHIBIT A
Bldg #1 - Main House
Bldg #2 - Trailer Home
Bldg #3 Garage
Bldg #4 - falling down shed
Bldg. #6 - small shed (not visible - under tree)
Bldg #5 - barn
Google earth
© 2015 Google
N
400 ft

EXHIBIT B
PICTURES AND BRIEF DESCRIPTIONS OF EACH BUILDING

Building #1 – This building is the main house on the property. It was inhabited until 2013. The assessor records indicate it was built in 1918 and is 979 square feet of living space.

Building #2 – This building is the mobile home trailer on the property.

Building #3 – This building is the garage. It has a dirt floor and no foundation.

Building #4 – This building is a tear down barn or shed, but the barn wood or contents may have some value.

Building #5 – This building is the barn. It has many contents, old magazines, and some very nice barn wood.

Building #6 – A little shed.

EXHIBIT C
BID PROPOSAL - PURCHASE OF CITY (BAKKE) PROPERTY BUILDINGS
PAGE 1 OF 1

The undersigned bidder, having examined all the requirements and Exhibits A through C, hereby proposes to purchase from the City of Whitefish _____ building(s) from the City property at 611 West 7th Street in Whitefish, Montana. Bidders may bid on any or all of the buildings. Bidders do not have to bid on all buildings.

The undersigned bidder further agrees that the only persons or parties interested in this proposal are in all respects fair and without fraud; that it is made without collusion with any officials or employees of the City of Whitefish, and that the proposal is made without any connection or collusion with any person making another proposal.

Enclosed herewith is a _____
(personal or company checks not acceptable) as bid security in the amount of $500.00 which the undersigned agrees is to be forfeited to and become the property of the City of Whitefish as liquidated damages, should this proposal be accepted and the contract awarded to buyer and buyer fails to deliver the payment in the form prescribed. The City shall retain the bid bonds as a performance bond to ensure the removal of the building, contents, and trash. Otherwise, the security shall be returned to the undersigned upon completion of removal of the building(s).

In submitting this bid, it is understood that the City of Whitefish reserves the right to reject any and all bids or to award such sale as City officials determine is in the best interest of the City of Whitefish.

I/we _____ hereby propose to purchase the following buildings from the City of Whitefish for the prices indicated. I/we will be able to make payment and close on the transaction on _____, 2016.

Bakke Property, 611 West 7th Street – Building #1 – building and contents	$_____
Bakke Property, 611 West 7th Street – Building #2 – building and contents	$_____
Bakke Property, 611 West 7th Street – Building #3 – building and contents	$_____
Bakke Property, 611 West 7th Street – Building #4 – building and contents	$_____
Bakke Property, 611 West 7th Street – Building #5 – building and contents	$_____
Bakke Property, 611 West 7th Street – Building #6 – building and contents	$_____
Total Bid	$_____

Submitted by: _____

Authorized Signature: _____

State of Incorporation (if applicable) _____

Date: _____

BID TABULATION – SALE OF BAKKE PROPERTY BUILDINGS
OPENED: January 21, 2016 3:00 p.m.
Whitefish City Hall, 1005 Baker Avenue, Whitefish MT 59937

Attendance: Necile Lorang, Chuck Stearns, Maria Butts

Bidder: Mark L. Duff Address: 1400 E Edgewood Drive Whitefish, MT 59937	Bidder: Address:	Bidder: Address:
$500.00 Bid Security? forthcoming	$500.00 Bid Security? _____	$500.00 Bid Security? _____
Bakke Property, 611 West 7th Street – Building #1 – building and contents $_____	Bakke Property, 611 West 7th Street – Building #1 – building and contents $_____	Bakke Property, 611 West 7th Street – Building #1 – building and contents $_____
Bakke Property, 611 West 7th Street – Building #2 – building and contents $_____	Bakke Property, 611 West 7th Street – Building #2 – building and contents $_____	Bakke Property, 611 West 7th Street – Building #2 – building and contents $_____
Bakke Property, 611 West 7th Street – Building #3 – building and contents $_____	Bakke Property, 611 West 7th Street – Building #3 – building and contents $_____	Bakke Property, 611 West 7th Street – Building #3 – building and contents $_____
Bakke Property, 611 West 7th Street – Building #4 – building and contents $_____	Bakke Property, 611 West 7th Street – Building #4 – building and contents $_____	Bakke Property, 611 West 7th Street – Building #4 – building and contents $_____
Bakke Property, 611 West 7th Street – Building #5 – building and contents $_____	Bakke Property, 611 West 7th Street – Building #5 – building and contents $_____	Bakke Property, 611 West 7th Street – Building #5 – building and contents $_____
Bakke Property, 611 West 7th Street – Building #6 – building and contents $ 300.00	Bakke Property, 611 West 7th Street – Building #6 – building and contents $_____	Bakke Property, 611 West 7th Street – Building #6 – building and contents $_____
TOTAL BID: $ 300.00	TOTAL BID: $_____	TOTAL BID: $_____

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. 16-06, entitled: "RESOLUTION RELATING TO UP TO $9,800,000 TAX INCREMENT URBAN RENEWAL REVENUE BONDS, SERIES 2016; AUTHORIZING THE ISSUANCE AND PRIVATE NEGOTIATED SALE 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 regular meeting on February 1, 2016, 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 February, 2016.

_____
City Clerk

RESOLUTION NO. 16-06

RESOLUTION RELATING TO UP TO $9,800,000 TAX INCREMENT URBAN RENEWAL REVENUE BONDS, SERIES 2016; AUTHORIZING THE ISSUANCE AND PRIVATE NEGOTIATED SALE THEREOF

BE IT RESOLVED by the City Council (the "Council") of the City of Whitefish, Montana (the "City"), as follows:

Section 1. Recitals.

1.01. Under the provisions of Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43 (the "Act"), the City is authorized to create an urban renewal area, prepare and adopt a redevelopment plan therefor and amendments thereto, undertake urban renewal projects therein, provide for the segregation and collection of tax increment with respect to taxes collected in such area, issue its bonds to pay the costs of such projects and to refund bonds previously issued under the Act and pledge to the repayment of the bonds the tax increment and other revenues derived from projects undertaken within the urban renewal area.

1.02. Pursuant to the Act and Ordinance No. 87-3, adopted by the Council on May 4, 1987, as amended and supplemented, including by Ordinance No. 15-18, adopted by the Council on December 7, 2015, the Council created an urban renewal district (the "District"), adopted the City of Whitefish Urban Renewal Plan (as amended, the "Plan"), and approved as an urban renewal project the design and construction of a new City Hall facility of approximately 24,200 square feet, including basement space, to be located on the corner of Baker Avenue and 2nd Street (the "City Hall Project") and the design and construction of a new parking structure of approximately 81,400 square feet, including approximately 3,000 square feet of retail space and approximately 212 parking spaces, to be constructed on Baker Avenue adjacent to the City Hall Project (the "Parking Structure Project").

Section 2. Authorizations. Pursuant to the authorizations and findings recited in the Plan and in Section 1 hereof, it is hereby determined that it is in the best interests of the City to offer for sale and issue its Tax Increment Urban Renewal Revenue Bonds (Whitefish Urban Renewal District), Series 2016, in one or more series (collectively, the "Series 2016 Bonds"), in the maximum aggregate principal amount of $9,800,000, for the purpose of paying a portion of the costs of the City Hall Project and the Parking Structure Project, funding a deposit to the Reserve Account and paying costs associated with the sale and issuance of the Series 2016 Bonds. It is expected that the Series 2016 Bonds will be sold in two series, each in equal total principal amounts, one series denominated Tax Increment Urban Renewal Revenue Bond, Series 2016A (the "Series 2016A Bond") and the other series denominated Tax Increment Urban Renewal Revenue Bond, Series 2016B (the "Series 2016B Bond").

Section 3. Adequacy of Tax Increment. The City estimates that tax increment from the District will be at least $4,951,640 per fiscal year (based on tax increment from the District of $4,951,640 received by the City in fiscal year 2015). The City has previously issued and there are currently outstanding its Tax Increment Urban Renewal Revenue Refunding Bond, Series

2015A and Tax Increment Urban Renewal Revenue Refunding Bond, Series 2015B Bond (collectively, the "Series 2015 Bonds"). The maximum aggregate fiscal year payment of principal and interest on the Series 2015 Bonds and the Series 2016 Bonds is expected to occur in the last fiscal year such bonds will be outstanding (unless earlier prepaid); therefore the debt service reserves for each series of bonds will be contributed to the respective debt service payments in that fiscal year. The maximum aggregate payment of principal and interest on the Series 2015 Bonds and the Series 2016 Bonds in any fiscal year, assuming for the Series 2016 Bonds a maximum interest rate of 3.25% per annum and a term of 5 years, is $5,919,518, which is less than the sum of $4,951,640 and $1,698,300 (the aggregate debt service reserve amounts for the Series 2015 Bonds ($718,300) and the Series 2016 Bonds ($980,000)). At the time of issuance of the Series 2016 Bonds, other than the Series 2015 Bonds and the Series 2016 Bonds, there will be no other outstanding bonds or other obligations of the City payable from tax increment received in the District or secured by amounts in the debt service reserve account.

Section 4. Negotiated Sale and Terms.

4.01. This Council hereby determines that it would be in the best interests of the City to sell the Series 2016 Bonds, consisting of the Series 2016A Bond and the Series 2016B Bond, through a private negotiated sale to Glacier Bank and First Interstate Bank (together, the "Purchasers"). The Council expects that the Series 2016A Bond will be sold to Glacier Bank and the Series 2016B Bond will be sold to First Interstate Bank.

4.02. The Series 2016 Bonds shall be sold to the Purchasers on terms and at a purchase price within the following limitations and conditions: (1) the maximum aggregate principal amount of the Series 2016 Bonds shall not exceed $9,800,000, meaning that the maximum aggregate principal amount of the Series 2016A Bond shall not exceed $4,900,000 and the maximum aggregate principal amount of the Series 2016B Bond shall not exceed $4,900,000; (2) the maximum interest rate on the Series 2016 Bonds, assuming the Series 2016 Bonds are and continue to be tax exempt, shall be equal to the interest rate computed by taking the average of the four-year Federal Home Loan Bank of Des Moines Amortizing Index and the five-year Federal Home Loan Bank of Des Moines Amortizing Index as of the date of the Bond Purchase Agreement (as defined below), and adding thereto 110 basis points, but in any event and so long as bearing interest at a tax-exempt interest rate, not to exceed 3.25% per annum; (3) the purchase price of the Series 2016 Bonds shall be 100% of the principal amount thereof; and (4) the final stated maturity of the Series 2016 Bonds shall not be later than July 15, 2020. All costs of issuing the Series 2016 Bonds (including, without limitation, the fees and expenses of bond counsel, the fees and expenses of the City's municipal advisor, and the fees of the escrow agent) shall be paid by the City.

4.03. The Mayor, the City Manager and the City Finance Director, in consultation with Springsted Incorporated, the City's municipal advisor, are hereby authorized and directed to approve the principal amounts, maturity dates, interest rates and redemption provisions of the Series 2016 Bonds, subject to the limitations contained in this Section 4. Upon approving such terms, the Mayor, the City Manager and the City Finance Director are hereby authorized and directed to approve, execute and deliver to the Purchasers one or more bond purchase agreements (collectively, the "Bond Purchase Agreement"), containing the agreement of the City to sell, and the agreement of the Purchasers to purchase, the Series 2016 Bonds on the terms so

approved, and containing such other provisions as such officers shall deem necessary and appropriate. It is expected that there will be two Bond Purchase Agreements, one with Glacier Bank in connection with the Series 2016A Bond and one with First Interstate Bank in connection with the Series 2016B Bond. In the event of the absence or disability of any of the Mayor, the City Manager or the City Finance Director, any member of the City Council shall make such approvals and execute and deliver each Bond Purchase Agreement. The execution and delivery by two appropriate officers of the City of each Bond Purchase Agreement shall be conclusive as to the approval of such officers of the terms of the Series 2016 Bonds and the agreement of the City to sell the Series 2016 Bonds on such terms in accordance with the provisions thereof.

Section 5. Bond Resolution. The form of the Series 2016 Bonds and the final terms and conditions thereof shall be prescribed by a subsequent resolution to be adopted by this Council.

PASSED AND APPROVED by the City Council of the City of Whitefish, Montana, this 1st day of February, 2016.

_____
Mayor

Attest: _____
City Clerk

MEMORANDUM
#2015-015

To: Mayor John Muhlfeld
City Councilors

From: Chuck Stearns, City Manager

Re: Staff Report – "Parameters" Resolution for sale of Tax Increment "New Money" Bonds and Tax Increment Bonds for City Hall/Parking Structure

Date: January 27, 2016

Introduction/History

Beginning in 1987 when the Urban Renewal Plan was adopted, a new City Hall was anticipated as an urban renewal project for which Tax Increment Funds (TIF) could be used. Then in the 2005 Downtown Master Plan, the City Hall and Parking Structure projects were identified as catalyst projects for the continued development of downtown. The City Hall and Parking Structure were also identified as key projects in the 2015 Downtown Master Plan update. Both the 2005 Downtown Master Plan and the 2015 Downtown Master Plan were adopted as Growth Policy amendments.

The City Council began setting aside Tax Increment Funds annually in a City Hall Construction Fund on November 17, 2003 when they adopted Resolution No. 03-63. That fund currently has $909,107.67 of funds remaining in it and we have spent 2,019,259.33 so far on the City Hall/Parking Structure project.

On May 20, 2013, the City Council, on a 4-3 vote with the Mayor breaking a 3-3 tie, approved moving forward to build a City Hall and Parking Structure on the current City Hall site of Block 36. Since that time an architectural firm (Mosaic Architects), a General Contractor/Construction Manager (Martel Construction), and an Owner's Representative (Mike Cronquist), have all been selected and construction work has begun.

All of these plans and approvals have anticipated that Tax Increment Funds saved over the years plus a new tax increment bond issue would be the primary funding sources for a new City Hall and Parking Structure. When the City Council approved the City Hall and Parking Structure on May 20, 2013, they also set in motion a process which will result in $750,000.00 of the cost for the Parking Structure to be paid by downtown businesses and organizations in a 20 year Special Improvement District.

On December 1, 2014, the City Council approved using David MacGillivray of Springsted, Inc. of St. Paul, MN as the city's independent financial advisor for a tax increment bond for the City

Hall and Parking Structure and also to refund or refinance the existing tax increment bonds that were issued in 2009.

On April 20, 2015, the City Council approved proceeding to issue a Tax Increment refunding bond with First Interstate Bank and Glacier Bank to refinance the existing 2009 Tax Increment Bond that has interest rates between then and 2020 at 4% - 4.625% (refunding principal amount of bonds was $7,183,000.00). The City Council also approved that night to issue a new Tax Increment bond with First Interstate Bank and Glacier Bank later in 2015 or in early 2016 to provide new money and funding for the City Hall/Parking Structure.

The Tax Increment Refunding Bond Resolution, Resolution No. 15-14, was approved by the City Council on June 1, 2015 and we issued bonds at 2.62% average rate over the remaining five years of that existing TIF bond. That refunding saved $414,114.14 of interest costs over the last five years of the TIF bond ($386,134.45 in present value).

Current Report

Our Bond Counsel of Dorsey and Whitney of Missoula, MT and Minneapolis, MN has prepared what is called a "parameters" resolution for City Council consideration for the second TIF Bond issue to provide what we are calling the "New Money" bond issue as compared to the refunding of the prior existing TIF Bond. This "parameters" resolution authorizes the Mayor and staff to execute Bond Purchase Agreements with First Interstate Bank and Glacier Bank for the Tax Increment Bond (New Money) within "parameters" or limits as established within the Resolution. Because tax-exempt municipal bond pricing and rates change every day, we are planning to execute the Bond Purchase Agreement on February 8th and lock in the interest rate as of that date until we close on March 1st. The Mayor and staff cannot execute the Bond Purchase Agreement unless it is within the parameters which the City Council authorizes, so there is some cushion within the Resolution to allow for changing conditions. The most recent interest rate for the TIF Bond was 2..4% on January 22, 2016 as compared to the 3.25% maximum allowed in the Resolution. The amount of bonds issued will be $9,800,000.00 and debt service schedules and coverage calculations (at 3.25% interest rate) which Dave MacGillvray of Springsted, Inc. prepared are also provided in the packet with the report.

Financial Requirement

Even with the recent increased budget for the City Hall/Parking Structure project of $16,041,549.89 approved on January 19, 2016, we can leave the TIF bond issue at $9,800,000.00 thus staying below the $10,000,000.00 small issuer threshold in federal law. Staying below that threshold allows the bonds to be "bank qualified" meaning the banks can give us a lower interest rate by 0.15% than they otherwise would (see the banks' Term Sheet proposal from last year in the packet).

As approved on January 19th, we will defer the Depot Park Master Plan project Phase 2 for 2-3 years in order to pay for the increased City Hall/Parking Structure costs and use those TIF funds for the increased costs.

The TIF fund can pay for the increased costs of the project and this "New Money" Bond debt service payments. There is a revised TIF pro-forma schedule in the packet as well which demonstrates that the TIF fund can pay all the costs.

Recommendation

Staff Respectfully Recommends the City Council approve a Resolution relating to up to $9,800,000 Tax Increment Urban Renewal Revenue Bonds, Series 2016; Authorizing the Issuance and Private Negotiated Sale Thereof.

attachments

$9,800,000

City of Whitefish, Montana

Tax Increment Urban Renewal Revenue Bonds, Series 2016A

Sources & Uses

Dated 03/01/2016 | Delivered 03/01/2016

Sources Of Funds	
Par Amount of Bonds	$9,800,000.00
TIF Collections on hand	3,548,128.89
Project Costs Spent to Date	2,019,259.33
City Hall/Parking Structure Cash on hand	909,107.67
SID Net Proceeds	750,000.00
Impact Fees	135,055.00
Total Sources	**$17,161,550.89**
Uses Of Funds	
Deposit to Project Construction Fund	16,041,550.89
Deposit to Debt Service Reserve Fund (DSRF)	980,000.00
Costs of Issuance	140,000.00
Total Uses	**$17,161,550.89**

$9,800,000

City of Whitefish, Montana

Tax Increment Urban Renewal Revenue Bonds, Series 2016A

NET DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Interest	Total P+I	DSR	Existing D/S	Net New D/S	Revenue	Surpls(Deficit)
07/15/2016	-	-	118,552.78	118,552.78	(3,645.45)	1,428,505.80	1,543,413.13	2,564,785.50	1,021,372.37
07/15/2017	1,525,000.00	3.250%	306,150.00	1,831,150.00	(9,800.00)	1,541,812.20	3,363,162.20	5,386,049.00	2,022,886.80
07/15/2018	1,835,000.00	3.250%	254,150.00	2,089,150.00	(9,800.00)	1,544,739.20	3,624,089.20	5,655,352.00	2,031,262.80
07/15/2019	2,185,000.00	3.250%	191,668.75	2,376,668.75	(9,800.00)	1,539,670.60	3,906,539.35	5,938,119.00	2,031,579.65
07/15/2020	4,255,000.00	3.250%	117,650.00	4,372,650.00	(989,800.00)	821,385.00	4,204,235.00	6,235,025.00	2,030,790.00
Total	$9,800,000.00	-	$988,171.53	$10,788,171.53	(1,022,845.45)	$6,876,112.80	$16,641,438.88	$25,779,330.50	$9,137,891.62

SIGNIFICANT DATES

Dated	3/01/2016
Delivery Date	3/01/2016
First Coupon Date	7/15/2016

Yield Statistics

Bond Year Dollars	$30,405.28
Average Life	3.103 Years
Average Coupon	3.2500000%
Net Interest Cost (NIC)	3.2500000%
True Interest Cost (TIC)	3.2508478%
Bond Yield for Arbitrage Purposes	3.2508478%
All Inclusive Cost (AIC)	3.7469336%
Net Interest Cost in Dollars	988,171.53
Weighted Average Maturity	3.103 Years

$9,800,000

City of Whitefish, Montana

Tax Increment Urban Renewal Revenue Bonds, Series 2016A

Coverage Ratio

Date	Total Revenues	Total D/S	Coverage
07/15/2016	2,572,022.45	1,550,650.08	1.6586737x
07/15/2017	5,403,032.00	3,380,145.20	1.5984615x
07/15/2018	5,672,335.00	3,641,072.20	1.5578749x
07/15/2019	5,955,102.00	3,923,522.35	1.5177948x
07/15/2020	7,950,308.00	5,919,518.00	1.3430668x
Total	$27,552,799.45	$18,414,907.83	-

2016A TIF Rev - w Current | SINGLE PURPOSE | 1/25/2016 | 3:34 PM

Springsted

TIF Financial Plan July 2015 through July 2020

	A	C	I	J	K	L	M	N	O	P	Q
38			**FY 2016 Budget**	**FY 2016 Projected**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**		**Total**
39	**Beginning Cash Balance**		$ 2,504,964	$ 2,504,964	$ 424,267	$ 346,094	$ 1,335,123	$ 1,269,951	$ 3,104,585		
40	**Revenues**										
41	Property Taxes [1]		$ 5,158,326	$ 5,129,571	$ 5,386,049	$ 5,655,352	$ 5,938,119	$ 6,235,025			$ 28,344,116
42	State Entitlement Payment		248,865	248,865	248,865	248,865	248,865	248,865			1,244,325
43	Miscellaneous (Depot Park Grant)		10,000	10,000							10,000
44	Transfer from Impact Fees (ESC repayment) [2]		213,084	213,084	60,000	60,000	60,000	60,000			453,084
45	Transfer from Impact Fees (City Hall repayment) [3]					60,000	60,000	60,000			180,000
46	Special assessement		20,000	20,000							20,000
47	Retail Lease Revenue				18,000	54,000	54,000	36,000			162,000
48	Total Revenues		$ 5,650,275	$ 5,621,520	$ 5,712,914	$ 6,078,217	$ 6,360,984	$ 6,639,890	$ -		$ 30,413,525
49	**Expenditures**										
50	Proposed Additional TIF Bond Debt Service - City Hall/Parking Structure[4]				$ 1,152,237	$ 2,096,172	$ 2,378,112	$ 2,664,634	1,405,485		9,696,639
51	Current TIF Bond Debt Service - Refunding 2015A & 2015B[4]			112,394	2,206,667	1,550,590	1,548,993	1,547,492	54,695		7,020,830
52	Transfer to Debt Service Fund Account[5]		$ 3,119,108	3,129,120				(1,668,939)	(1,460,180)		$ -
53	Semi-annual School Payment [1]		680,000	846,574	842,953	885,100	929,355	975,823			4,479,805
54	Transfer to City Hall/Parking Structure Fund [6]		$2,250,080	2,250,080	1,043,914						3,293,994
55	Salaries and O&M[7]		388,657	388,657	400,317	412,326	424,696	437,437			2,063,433
56	Business Rehab Loan			-	30,000	30,000	30,000	30,000	-		120,000
58	Urban Renewal Projects:										-
59	Misc Urban Renewal Projects		150,000	-	15,000	15,000	15,000	15,000			60,000
60	Buy Local Campaign			50,000							50,000
61	Affordable Housing			60,000							60,000
63	Depot Park ($2 million - phase 1-4)		480,802	224,792			1,000,000	703,811			1,928,603
64	Ice Den Roof Renovations and E-Ceiling		8,000	8,000							8,000
65	Ped-Bike bridge to Skye Park (Total ~$829k)		61,600	61,600							61,600
67	Assist Private Developer - Boutique Hotel		150,000	150,000							150,000
72	Stairway at Stumptown Inn		21,000	21,000							21,000
73	Other Real Estate Committee Land Purchase		300,000	300,000							300,000
74	Housing Authority										-
75	Chamber ($96k)	$96,000									-
76	Depot Park Snow Lot (phase 5 of depot park)	$550,000									-
77	Install/refurbish water & sewer lines throughout district										-
78	Contingency		100,000	100,000	100,000	100,000	100,000	100,000			500,000
79	Total Approximate Non-Committed	$646,000									-
80	Total Expenditures		$ 7,709,247	$ 7,702,217	$ 5,791,087	$ 5,089,188	$ 6,426,156	$ 4,805,257	$ -		$ 29,813,904
81	Revenues less Expenditures		$ (2,058,972)	$ (2,080,697)	$ (78,173)	$ 989,029	$ (65,172)	$ 1,834,633	$ -		$ 599,621
82	**Ending Cash Balance**		$ 445,992	$ 424,267	$ 346,094	$ 1,335,123	$ 1,269,951	$ 3,104,585	$ 3,104,585		

1 Assumes 5% growth per year. Since FY2000 the average growth has been 9.62%.

2 Impact Fees transferred to TIF Fund to payoff TIF Bond issued for the ESC construction. FY17-FY20 based on a 7-year average.

3 After construction, City Hall impact fees will be transferred to TIF Fund to repay TIF Bond issued for the City Hall/Parking Structure Project - 7 year Average of collections used in estimating revenue. FY16 and FY17 revenues will be transferred directly to the Construction Fund.

4 For each bond the last year debt service payments use reserves on-hand of $980,000 (City Hall/Parking Structure Bonds @ 3.02% - debt service schedule prepared 1/25/16) and $718,300 (Current Bonds at 2.62%)

5 To ensure the debt service account is fully funded (12 months principal/6months interest in next 12 months) an initial transfer is made to the Debt Service Fund. In final years, based on lower future debt service requirements, the transfers from the TIF Fund are offset with cash already in the Debt Service Fund. This is simply a timing issue of the current debt service account requirements. Note that line 52 nets to $0.

6 Final transfer from the TIF fund to the City Hall/Parking Structure Fund in FY17 based on increase in construction budget and additional cash contributions from the TIF Fund (assumes $45,000 cash contribution from City Hall Impact Fees directly transferred from the Impact Fee Fund to the Construction Fund).

7 FY2017 through FY2020 assume a 3% growth per year based on the budgeted FY2016 figures.

Prepared: 01/26/16

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 a Resolution entitled: "RESOLUTION RELATING TO $8,219,500 WATER SYSTEM REVENUE BOND (DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM), TAXABLE SERIES 2016; 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 February 1, 2016 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 1st day of February, 2016.

_____
Necile Lorang, City Clerk

SUPPLEMENTAL RESOLUTION

Relating to

$8,219,500
WATER SYSTEM REVENUE BOND
(DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM),
TAXABLE SERIES 2016

CITY OF WHITEFISH, MONTANA

Adopted: February 1, 2016

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

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RESOLUTION NO. 16-07

RESOLUTION RELATING TO $8,219,500 WATER SYSTEM REVENUE BOND (DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM), TAXABLE SERIES 2016; 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 2016 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 Haskill Basin 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 2016 Bond (as hereinafter defined) to evidence the 2016 Loan (as hereinafter defined) for the purposes set forth herein; and

WHEREAS, the DNRC will fund the 2016 Loan in part, directly or indirectly, with proceeds of the State's General Obligation Bonds (Water Pollution Control 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.

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

"Additional Bonds" means any Bonds issued pursuant to Section 6.01 of the Original Resolution, as amended.

"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 2016 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 1998 Bond, Series 1999 Bond, Series 2006 Bond, Series 2007 Bond, Series 2009B Bond, Series 2015 Bond, the Series 2016 Bond and any Additional Bonds.

"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 2016 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 2016 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 2016 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.

"Construction Account" means the account created in the Water System Fund pursuant to Section 7.02 of the Original 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 Haskill Basin 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.

"General Revenue Bond Subaccount" means the subaccount so named in the Revenue Bond Account created under Section 7.04 of the Resolution, as amended hereby.

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

"Haskill Basin Bond" means the Series 2016 Bond and any Bonds issued to refund the Series 2016 Bond.

"Haskill Basin Net Revenues" are equal to the sum of Pledged Resort Tax Revenues plus Net Revenues.

"Haskill Basin Revenue Bond Subaccount" means the subaccount so named in the Revenue Bond Account created under Section 7.04 of the Resolution.

"Haskill Basin Project" means the improvements, interests, and activities, or rights therein, financed, refinanced or the cost of which is being financed by or reimbursed to the Borrower with proceeds of the 2016 Loan, described in Appendix A hereto.

"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 2016 Loan from the date of each advance thereof, payable by the Borrower on a Payment Date.

"Net Revenues" means the Revenues for a specified period less the Operating Expenses for the same period.

"Operating Account" means the account created in the Water System Fund pursuant to Section 7.03 of the Original Resolution.

"Operating Expenses" means the current expenses, paid or accrued, of operation, maintenance and minor repair of the System, excluding interest on the Bonds and depreciation, as calculated in accordance with generally accepted accounting principles, and shall include, without limitation, administrative expenses of the Borrower relating solely to the System, premiums for insurance on the properties thereof, labor and the cost of materials and supplies used for current operation and for maintenance, and charges for the accumulation of appropriate reserves for current expenses which are not recurrent regularly but may reasonably be expected to be incurred.

"Operating Reserve" means the reserve to be maintained in the Operating Account as required by Section 7.03 of the Original Resolution.

"Original Resolution" means Resolution No. 93-11 of the Borrower adopted on August 16, 1993.

"Pledged Resort Tax Revenues" means 70% of the Resort Tax Revenues resulting from the 1% increase in the Borrower's resort tax that went into effect July 1, 2015.

"Pledged Resort Tax Surplus Account" means the account so named created under Section 7.09 of the Original Resolution, as amended hereby.

"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 Haskill Basin 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 2016 Bond.

"Replacement and Depreciation Account" means the Account created in the Water System Fund pursuant to Section 7.07 of the Original Resolution.

"Reserve Account" means the account created in the Water System Fund pursuant to Section 7.05 of the Original Resolution, as amended hereby.

"Reserve Requirement" means, as of the date of calculation, an amount equal to one-half the sum of the highest cumulative amount of principal of and interest payable on all outstanding Bonds (including the Haskill Basin 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. 98-34, 99-21, 06-31, 07-30, 09-38, 12-36 and 15-50, adopted by the City Council of the City on July 6, 1998, August 2, 1999, May 15, 2006, August 7, 2007, September 21, 2009, November 5, 2012 and December 7, 2015, respectively, and as further amended and supplemented by this Supplemental Resolution and other supplemental resolutions.

"Resort Tax Act" means Montana Code Annotated, Title 7, Chapter 6, Part 15, as amended.

"Resort Tax Revenues" means the revenues derived from the resort tax levied by the City pursuant to the Resort Tax Act.

"Revenue Bond Account" means the account created in the Water System Fund pursuant to Section 7.04 of the Original Resolution, as amended hereby.

"Revenues" means all revenues and receipts from rates, fees, charges and rentals imposed for the availability, benefit and use of the System, and from penalties and interest thereon, and from any sales of property which is a part of the System and income received from the investment of such revenues and receipts, including interest earnings on the Reserve Account and the Operating Account, but excluding interest earnings on the Construction Account, Replacement and Depreciation Account and Surplus Account, and further excluding any special assessments or taxes levied for construction of any part of the System and proceeds of any grant or loan from the State or the United States, and any investment income thereon, to the extent such exclusion is a condition to such grant or loan, and Resort Tax Revenues.

"Series 1998 Bond" means the First Amended and Restated Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 1998, issued by the Borrower in the original principal amount of $155,000 pursuant to the Resolution as then in effect.

"Series 1999 Bond" means the First Amended and Restated Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 1999, issued by the Borrower in the original principal amount of $2,581,000 pursuant to the Resolution as then in effect.

"Series 2006 Bond" means the First Amended and Restated Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2006, issued by the Borrower in the original principal amount of $693,000 pursuant to the Resolution as then in effect.

"Series 2007 Bond" means the First Amended and Restated Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2007, issued by the Borrower in the original principal amount of $668,000 pursuant to the Resolution as then in effect.

"Series 2009B Bond" means the Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2009B, issued by the Borrower in the original principal amount of $120,100 pursuant to the Resolution as then in effect.

"Series 2015 Bond" means the Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2015, issued by the Borrower in the original principal amount of $120,100 pursuant to the Resolution as then in effect.

"Series 2016 Bond" means the Water System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Taxable Series 2016, issued to the DNRC to evidence the 2016 Loan.

"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.

"Supplemental Resolution" means this Resolution No. 16-07 of the Borrower adopted on February 1, 2016.

"Surplus Account" means the account created in the Water System Fund pursuant to Section 7.08 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 water system of the Borrower and all extensions, improvements and betterments thereof heretofore or hereafter constructed and acquired.

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

"2016 Loan" or "Loan" means the 2016 Loan made to the Borrower by the DNRC pursuant to the Program in the maximum amount of the Committed Amount to provide funds to pay a portion of the costs of the Haskill Basin Project, to fund a deposit to the Reserve Account and to pay costs associated with the sale and issuance of the Series 2016 Bond.

"Water System Fund" means the fund created by Section 7.01 of the Original Resolution, as amended hereby.

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

(a) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted government accounting standards.

(b) Terms in the singular include the plural and vice versa.

(c) All references to time shall refer to Helena, Montana time, unless otherwise provided herein.

(d) All references to mail shall refer to first-class mail postage prepaid.

(e) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(f) "Or" is not exclusive, but is intended to permit or encompass one, more or all of the alternatives conjoined.

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

Appendix A: a description of the Haskill Basin Project;

Appendix B: the form of the Series 2016 Bond; and

Appendix C: Collateral Documents.

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, together with any Resort Taxes approved, levied and appropriated to the undertaking pursuant to the Resort Tax Act, 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. In particular, under the Act, a water system, together with all parts of and appurtenances to the system, including supply systems, is an undertaking, and a municipality may improve any undertaking within or outside of the municipality and acquire by purchase rights in land in connection with the undertaking. In addition, the Borrower is authorized under Title 76, Chapter 6, Parts 1 and 2, M.C.A. (the "Open Space Act"), to provide for the preservation of open-space land, including by acquiring conservation easements, and to borrow and expend funds for those purposes.

(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 Haskill Basin 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 participate in the acquisition of the Haskill Basin Project.

(d) Prior Acts. On April 28, 2015, the voters of the City approved increasing the resort tax levied by the Borrower under the Resort Tax Act from 2% to 3%, effective July 1, 2015 and ending on January 31, 2025, with Resort Tax Revenues resulting from the 1% rate increase to be used as follows: (i) 25% for property tax relief that is in addition to the existing property tax relief; (ii) 70% to secure and be pledged to the repayment of a loan or a bond to finance a portion of the costs of, or to otherwise pay for, the Haskill Basin Project, except that if such portion of resort tax revenues received in a Fiscal Year is more than is needed in that Fiscal Year for such loan or bond, the excess will be applied to additional property tax relief in the next Fiscal Year; and (iii) 5% for merchants' costs of administration. Pursuant to this voter approval, and in accordance with the Resort Tax Act and Section 7-7-4424(1)(b) of the Act, the Borrower is authorized to pledge the Pledged Resort Tax Revenues to the repayment of the Series 2016 Bond.

(e) Outstanding Bonds. Pursuant to the Act and the Resolution, the Borrower has issued, and has outstanding, its Series 1998 Bond, Series 1999 Bond, Series 2006 Bond, Series 2007 Bond, Series 2009B Bond and Series 2015 Bond. The Series 1998 Bond, Series 1999 Bond, Series 2006 Bond, Series 2007 Bond, Series 2009B Bond and Series 2015 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.

(f) Additional Parity Bonds. The Borrower reserved the right under Section 6.01 of the Original Resolution, as previously amended and as further amended by Article XI herein, to issue Additional Bonds payable from the Revenue Bond Account of the Water System Fund on a parity as to both principal and interest with the outstanding Bonds, provided that if the Additional Bonds are issued to complete a Project, a certificate is to be signed by the Mayor, City Manager and City Finance Director or any of them stating that on the date of issuance of such Additional Bonds, Haskill Basin Net Revenues, if applicable, and Net Revenues of the System meet the requirements set forth in Section 6.01 of the Original Resolution, as amended by Section 11.3 of this Supplemental Resolution. Based on a certificate executed or to be executed by the Mayor, City Manager and City Finance Director, or any of them, it is hereby determined that the Borrower is authorized to issue the Series 2016 Bond in the maximum principal amount of $8,219,500 pursuant to Section 6.01 of the Original Resolution, as amended by Section 11.3 of this Supplemental Resolution, payable from and secured by the Haskill Basin Net Revenues, which include a pledge of the Net Revenues on a parity with the outstanding Series 1998 Bond, Series 1999 Bond, Series 2006 Bond, Series 2007 Bond, Series 2009B Bond and Series 2015 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 2016 Bond and to carry out and consummate all transactions contemplated by the Supplemental Resolution, the Series 2016 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 2016 Bond and the Collateral Documents and the incurrence of the Debt evidenced by the Series 2016 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 2016 Bond and the Collateral Documents, or the financial condition of the Borrower, or the transactions contemplated by the Resolution, the Series 2016 Bond and the Collateral Documents or the validity and enforceability of the Resolution, the Series 2016 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 Haskill Basin Project, the Series 2016 Bond or any Collateral Documents.

(c) Borrowing Legal and Authorized. The adoption of this Supplemental Resolution, the execution and delivery of the Series 2016 Bond and the Collateral Documents and the consummation of the transactions provided for in this Supplemental Resolution, the Series 2016 Bond and the Collateral Documents and compliance by the Borrower with the provisions of the Resolution, the Series 2016 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 2016 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 2016 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 2016 Bond and the Collateral Documents (including any necessary water rate increase) or for the Haskill Basin 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 2016 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 water rate increases.

(f) Binding Obligation. The Resolution, the Series 2016 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 Haskill Basin Project. The Haskill Basin Project consists and will consist of the 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 2016 Bond and the Collateral Documents and to pledge any revenues or other property pledged to the payment of the Series 2016 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 2016 Bond and the Collateral Documents.

Section 2.3 Covenants.

(a) Insurance. In addition to the requirements of Sections 8.03 and 8.04 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 2016 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 2016 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 2016 Bond;

(2) The Borrower shall forthwith, after the execution and delivery of the Series 2016 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 2016 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 8.06 of the Original Resolution, as amended. 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 Haskill Basin Project shown separately; and

(2) when adopted, the final budget for the System, with items for the Haskill Basin Project shown separately.

(g) Haskill Basin Project Accounts. The Borrower shall maintain Haskill Basin 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 2016 Loan and the Haskill Basin 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 2016 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 2016 Bond or any other funds of the Borrower in respect of the Haskill Basin Project or the Series 2016 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 Haskill Basin 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) The portion of the Haskill Basin Project being financed by the Loan shall be acquired by and shall, during the term of the Loan, be owned by the Borrower and not by any other Person, except as otherwise provided in the conservation easement. Notwithstanding the previous two sentences, the Borrower may transfer the Haskill Basin 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 Haskill Basin 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 2016 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 2016 Loan it will not contract with or permit any Private Person to manage the Haskill Basin 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 Haskill Basin 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 Haskill Basin 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 Haskill Basin 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 Haskill Basin 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 Haskill Basin 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 2016 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 2016 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 2016 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 2016 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 HASKILL BASIN PROJECT

Section 3.1 Use of Proceeds. The Borrower shall apply the proceeds of the 2016 Loan from the DNRC solely as follows:

(a) The Borrower shall apply the proceeds of the 2016 Loan solely to the financing, refinancing or reimbursement of the costs of the Haskill Basin Project, to fund a deposit to the Reserve Account and to pay costs of issuance of the Series 2016 Bond as set forth in Appendix A hereto and this Section 3.1. The 2016 Loan will be disbursed in accordance with Article IV hereof and Article VII of the Indenture. If the Haskill Basin Project has not been completed prior to Closing, the Borrower shall, as quickly as reasonably possible, complete the Haskill Basin Project and expend proceeds of the 2016 Loan to pay the costs of completing the Haskill Basin Project.

(b) No portion of the proceeds of the 2016 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 2016 Loan are to be used to reimburse the Borrower for Haskill Basin 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 2016 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 2016 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 Haskill Basin Project. Set forth in Appendix A to this Supplemental Resolution is a description of the Haskill Basin Project, which describes the property which has been or is to be acquired and the other activities to be funded from the 2016 Loan, and an estimated budget relating to the Haskill Basin Project. The Haskill Basin 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 Haskill Basin Project, an increase or decrease in the amount of Loan proceeds which will be required to complete the Haskill Basin Project and whether the change will materially accelerate or delay the schedule for the Haskill Basin Project;

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

(c) An Opinion or Opinions of Bond Counsel stating that the Haskill Basin 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 2016 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 2016 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 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 2016 Loan to pay costs of the Haskill Basin Project or as to the availability of additional funds under the Program to increase the principal amount of the 2016 Loan.

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

Section 3.4 Completion or Cancellation or Reduction of Costs of the Haskill Basin Project.

(a) Upon completion of the Haskill Basin Project, the Borrower shall deliver to the DNRC a certificate stating that the Haskill Basin 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 Haskill Basin Project, a separate completion certificate shall be delivered for each.

(b) If all or any portion of the Haskill Basin 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 2016 LOAN

Section 4.1 The 2016 Loan; Disbursement of 2016 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 $8,219,500 for the purposes of financing, refinancing or reimbursing the Borrower for all or a portion of the costs of the Haskill Basin Project, funding a deposit to the Reserve Account and paying costs of issuance of the Series 2016 Bond; provided the DNRC shall not be required to loan any proceeds of the State Bonds to the Borrower after June 30, 2016. 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 2016 Loan through the Trustee. In consideration of the issuance of the Series 2016 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 2016 Bond and the security therefor, in form and substance satisfactory to the DNRC;

(2) the Series 2016 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 2016 Loan;

(5) if all or part of a 2016 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, and (C) of the costs of such Project and that such costs have been paid by the Borrower;

(6) the items required by the Indenture for the portion of the 2016 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 2016 Bond to pay costs of the Haskill Basin 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.

(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 2016 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 2016 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 Haskill Basin Project costs are incurred faster than the Borrower projected at Closing, there may be delays in making disbursements of the 2016 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 2016 Loan disbursement, the Trustee shall note such disbursement on Schedule A to the Series 2016 Bond.

(h) The Borrower agrees that it will deposit in the Reserve Account upon receipt thereof, on the Closing Date of the 2016 Loan and upon any disbursement date, any proceeds of the 2016 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 2016 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 2016 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 2016 Loan.

Section 4.3 Termination of Loan Term. The Borrower's obligations under the Resolution and the Collateral Documents in respect of the Series 2016 Bond shall terminate upon payment in full of all amounts due under the Series 2016 Bond and the Resolution in respect thereof; provided, however, that the covenants and obligations provided in Article VI 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 2016 LOAN

Section 5.1 Repayment of 2016 Loan. The Borrower shall repay the amounts lent to it pursuant to Section 4.1 hereof in accordance with this Section 5.1. The 2016 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 2016 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 2016 Loan, the term "interest on the 2016 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 2016 Loan shall be payable on each January 1 and July 1, beginning on July 1, 2016 and concluding on January 1, 2025;

(b) the principal of the 2016 Loan shall be repayable on each Payment Date, beginning on July 1, 2016 and concluding on January 1, 2025, on the dates and in the amounts set forth on Schedule B to the Series 2016 Bond.

The payments of principal of and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the 2016 Loan shall be due on the dates and in the amounts shown in Schedule B to the Series 2016 Bond, as such Schedule B shall be modified from time to time as provided below. The portion of each such Loan Repayment consisting of principal and the portion consisting of interest and the amount of each Administrative Expense Surcharge and the Loan Loss Reserve Surcharge, shall be set forth in Schedule B to the Series 2016 Bond. Upon each disbursement of amounts of the 2016 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 2016 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 Haskill Basin Project pursuant to Section 4.1(c), 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 Haskill Basin Project has been delivered to the DNRC, the Trustee shall revise Schedule B to the Series 2016 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 2016 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 2016 Loan, if the Borrower so chooses, all reasonable expenses of the DNRC and the Trustee in connection with the 2016 Loan, the Collateral Documents and the Series 2016 Bond, including, but not limited to:

(a) the cost of reproducing this Supplemental Resolution, the Collateral Documents and the Series 2016 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 2016 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 2016 Bond, whether or not the Series 2016 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 2016 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 2016 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 2016 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 2016 Bond and to perform its other agreements contained in the Resolution, the Series 2016 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 2016 Bond, (b) shall perform all its other agreements in the Resolution, the Series 2016 Bond and the Collateral Documents and (c) shall not terminate the Resolution, the Series 2016 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 Haskill Basin 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 2016 Loan and other payment obligations of the Borrower hereunder and under the Series 2016 Bond shall be special, limited obligations of the Borrower payable solely out of the Haskill Basin 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 2016 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. No funds or property of the Borrower other than the Haskill Basin Net Revenues may be required to be used to pay principal of or interest on the Series 2016 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 Haskill Basin 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 2016 Bond.

Section 7.2 Assignment by DNRC. The DNRC will pledge its rights under and interest in the Resolution, the Series 2016 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 2016 BOND

Section 8.1 Net Revenues and Haskill Basin 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 1998 Bond, Series 1999 Bond, Series 2006 Bond, Series 2007 Bond, Series 2009B Bond, Series 2015 Bond and Series 2016 Bond, the Net Revenues to be derived from the operation of the System, including improvements, betterments or extensions thereof hereafter constructed or acquired. In addition, the Borrower is authorized to levy and collect the resort tax, and to pledge and appropriate the Pledged Resort Tax to the Series 2016 Bond. The Haskill Basin Net Revenues to be produced by (i) the Pledged Resort Tax, and (ii) such rates, charges and rentals derived from the operation of the System during the term of the Series 2016 Bond are expected to be more than sufficient to pay the principal and interest when due on such Series 2016 Bond, 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 2016 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 2016 Bond to evidence the 2016 Loan. The Series 2016 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 2016 Bond shall be issued in the maximum principal amount equal to the 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 2016 Loan. The principal of and interest on the Series 2016 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 2016 Bond shall be deemed made when advances of the 2016 Loan are made under Section 4.1, and such advances shall be payable in accordance with Schedule B to the Series 2016 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 2016 Bond, in whole or in part, only upon the terms and conditions under which it can prepay the 2016 Loan under Section 5.3.

Section 8.4 Negotiability, Transfer and Registration. The Series 2016 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 2016 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 2016 Bond shall be negotiable, subject to the provisions for registration and transfer contained in this Section. No transfer of the Series 2016 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 2016 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 2016 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 2016 Bond is registered as the absolute owner of the Series 2016 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 2016 Bond shall be executed on behalf of the Borrower by the manual signatures of the Mayor, the City Finance Director, and the City Clerk. Any or all of such signatures may be affixed at or prior to the date of delivery of the Series 2016 Bond. The Series 2016 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 2016 Bond shall cease to be officers of the Borrower before the Series 2016 Bond is issued or delivered, their signatures shall remain binding upon the Borrower. Conversely, the Series 2016 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 2016 Bond shall be delivered to the DNRC, or its attorney or legal representative.

Section 8.6 Form. The Series 2016 Bond shall be prepared in substantially the form attached as Appendix B.

ARTICLE IX

SECURITY FOR THE SERIES 2016 BOND

The Series 2016 Bond is issued as an Additional Bond under Section 6.01 of the Original Resolution, as amended by this Supplemental Resolution, and shall, with the Series 1998 Bond, Series 1999 Bond, Series 2006 Bond, Series 2007 Bond, Series 2009B Bond, Series 2015 Bond, and any other Additional Bonds issued under the provisions of Section 6.01 of the Original Resolution, be equally and ratably secured by the provisions of the Resolution, the Net Revenues and the Reserve Account, as further provided in Section 7.05 of the Original Resolution, as amended. The Series 2016 Bond is payable out of the Haskill Basin Net Revenues appropriated to the Haskill Basin Subaccount in the Revenue Bond Account of the Water System Fund. Pledged Resort Tax Revenues secure only the Series 2016 Bond, and no other Bonds. Upon each advancement of principal of the Series 2016 Bond, the City Finance Director shall transfer from proceeds of the Series 2016 Bond such amount to the Reserve Account to cause the balance therein to equal the Reserve Requirement, treating such principal amount as outstanding. Upon the first advance of proceeds of the Series 2016 Bond, the deposit to the Reserve Account shall be sufficient to cause the balance in the Reserve Account to equal the Reserve Requirement in respect of the Series 2016 Bond and the principal of the Series 2016 Bond so advanced. The Borrower shall keep, perform and observe each and every one of its covenants and undertakings set forth in the Resolution for the benefit of the registered owners from time to time of the Series 1998 Bond, Series 1999 Bond, Series 2006 Bond, Series 2007 Bond, Series 2009B Bond, Series 2015 Bond and Series 2016 Bond.

ARTICLE X

CONTINUING DISCLOSURE

The Borrower understands and acknowledges that the DNRC is acquiring the Series 2016 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 XI

AMENDMENTS

Section 11.1 Authorization. Pursuant to Section 9.02 of the Original Resolution, the Borrower reserved the right to amend the Resolution with the written consent of the DNRC.

Section 11.2 Consent of the 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) Section 1.01 of the Original Resolution is hereby amended to add the following definitions:

"General Revenue Bond Subaccount" means the subaccount so named in the Revenue Bond Account created under Section 7.04 of the Resolution.

"Haskill Basin Bond" means the Series 2016 Bond and any Bonds issued to refund the Series 2016 Bond.

"Haskill Basin Net Revenues" are equal to the sum of Pledged Resort Tax Revenues plus Net Revenues.

"Haskill Basin Revenue Bond Subaccount" means the subaccount so named in the Revenue Bond Account created under Section 7.04 of the Original Resolution, as amended.

"Pledged Resort Tax Revenues" means 70% of the Resort Tax Revenues resulting from the 1% increase in the Borrower's resort tax that went into effect July 1, 2015.

"Pledged Resort Tax Surplus Account" means the account so named created under Section 7.09 of the Original Resolution, as amended."

"Resort Tax Act" means Montana Code Annotated, Title 7, Chapter 6, Part 15, as amended.

"Resort Tax Revenues" means the revenues derived from the resort tax levied by the City pursuant to the Resort Tax Act.

(b) Section 6.01(D). Section 6.01(D) of the Original Resolution is hereby amended to read, in its entirety, as follows:

"D. The City reserves the right to issue Additional Bonds payable from the General Revenue Bond Subaccount in the Revenue Bond Account of the Water System Fund, on a parity as to both principal and interest with the then 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 Principal and Interest Requirements 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 City pursuant to Section 8.06, 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 Operating Expenses plus any additional annual Operating Expenses which the Accountant or engineer 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 General Revenue Bond Subaccount in the Revenue Bond Account if the City 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 Water System 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 City shall cause the balance in the Reserve Account to be increased, from the proceeds of the Additional Bonds or from surplus Net Revenues, to an amount equal to the Reserve Requirement. The City shall not issue additional Haskill Basin Bonds, other than Bonds issued to refund Outstanding Haskill Basin Bonds in accordance with Section 6.01(E) hereof."

(c) Section 6.01(E). Section 6.01(E) of the Original Resolution is hereby amended to read, in its entirety, as follows:

"E. The City reserves the right and privilege of refunding any or all of the Bonds subject to the following terms and conditions:

(a) Any matured Bonds may be refunded if moneys available for the payment thereof at maturity should be insufficient to make such payment in full.

(b) Any Bonds may be refunded prior to maturity as and when they become prepayable according to their terms.

(c) Provision may be made for the payment and refunding of any unmatured Bonds by the deposit with a duly qualified depository bank, as escrow agent, of cash sufficient, or of securities of the kinds authorized by law, the payments of interest on and principal of which are sufficient, to pay the principal amount of and premium, if any, on such Bonds with interest to maturity or to any prior date or dates on which they are prepayable, and have been called for redemption or provision has been irrevocably made for their redemption, on such date or dates.

(d) Any refunding revenue Bonds issued for the above purposes may be made payable from the Net Revenues on a parity as to interest with all then outstanding Bonds as described in Section 7.04(c), or, for refunding revenue Bonds issued to refund Haskill Basin Bonds, payable from Haskill Basin Net Revenues in the manner provided in Section 7.04; provided that (1) if not all of the Bonds of a series are refunded, the maturity of each refunding revenue Bond shall be subsequent to the last maturity of any then outstanding Bonds of such series which are not refunded or to be refunded out of moneys on deposit with such escrow agent, and (2) no Bondowner shall be required to accept a refunding revenue Bond in exchange for any Bond owned by him."

(d) Section 7.01. Section 7.01 of the Original Resolution is hereby amended to read, in its entirety, as follows:

"7.01. Bond Proceeds and Revenues Pledged and Appropriated. A special Water System Fund is hereby created and shall be maintained as a separate bookkeeping account on the official books of the City until all Bonds and interest and redemption premiums due thereon have been fully paid, or the City's obligations with reference to such Bonds has been discharged as provided in Section 10. All proceeds of Bonds and all other funds presently on hand derived from the operation of the System are irrevocably pledged and appropriated to the Water System Fund. In addition, there are irrevocably pledged and appropriated to the Water System Fund (i) all Revenues, and (ii)

subject to Section 7.09, all Pledged Resort Tax Revenues. Within the Water System Fund shall be separate accounts designated and described in Sections 7.02 through 7.09, to segregate income and expenses received, paid and accrued for the respective purposes described in those sections. The Revenues received in the Water System Fund shall be apportioned monthly as of the first day of each month, commencing September 1, 1993, and the Pledged Resort Tax Revenues shall be apportioned monthly as of the first day of each month, commencing March 1, 2016."

(e) Section 7.02. There is hereby added a final paragraph to Section 7.02 of the Original Resolution to read as follows in its entirety:

"The Haskill Basin Project Acquisition Subaccount is hereby created in the Construction Account. That portion of the proceeds of the Series 2016 Bond applied to a portion of the Haskill Basin Project will be deposited into or credited to the Haskill Basin Project Acquisition Subaccount. Such portion of the proceeds of the Series 2016 Bond may be received directly by the City or indirectly by receipt by an authorized third party, such as a title company, in accordance with written instructions of or for the benefit of the City. Receipt of such proceeds by such authorized third party shall be deemed to be receipt by the City into the Haskill Basin Project Acquisition Subaccount and expenditure of such proceeds to satisfy a portion of the purchase price of the Haskill Basin Project shall be deemed to be made from such subaccount."

(f) Section 7.04. Section 7.04 of the Original Resolution is hereby amended to read, in its entirety, as follows:

"7.04. Revenue Bond Account. The Revenue Bond Account is hereby established as a separate account within the Water System Fund, and there are hereby established two subaccounts within the Revenue Bond Account: the General Revenue Bond Subaccount and the Haskill Basin Revenue Bond Subaccount.

(a) Haskill Basin Revenue Bond Subaccount. Upon each monthly apportionment, there shall be set aside and credited to the Haskill Basin Revenue Bond Subaccount (i) Pledged Resort Tax Revenues in an amount equal to not less than one-sixth of the interest due within the next six months on all Haskill Basin Bonds then Outstanding and one-twelfth of the principal, if any, to become due within the next twelve months on all Outstanding Haskill Basin Bonds; and, to the extent that Pledged Resort Tax Revenues are insufficient, (ii) Net Revenues in the amount of such deficiency in the Haskill Basin Revenue Bond Subaccount as of the date of each monthly apportionment; provided that the City shall be entitled to reduce a monthly apportionment by the amount of any surplus previously credited and then on hand in the Haskill Basin Revenue Bond Subaccount. Money from time to time held in the Haskill Basin Revenue Bond Subaccount shall be disbursed only to meet payments of principal of and interest on the Haskill Basin Bonds as such payments become due; provided that on any date when the amount then on hand in the Haskill Basin Revenue Bond Subaccount, plus the amount in the Reserve Account allocable to the Haskill Basin Bonds, is sufficient with other moneys available for the purpose to pay or discharge all Haskill Basin Bonds and the interest accrued thereon in full, it may be used for that purpose. If any payment of

principal or interest becomes due on Haskill Basin Bonds when money in the Haskill Basin Revenue Bond Subaccount is temporarily insufficient therefor, such payment shall be advanced from available funds then on hand in the Pledged Resort Tax Revenue Surplus Account, the Reserve Account, the Replacement and Depreciation Account or the Surplus Account, in that order. If Pledged Resort Tax Revenues in an amount to pay all principal of and interest on Outstanding Haskill Basin Bonds comes available before a Principal Payment Date and Interest Payment Date, respectively, the City may substitute Net Revenues on hand in the Haskill Basin Revenue Bond Subaccount with Pledged Resort Tax Revenues and transfer such Net Revenues to the Reserve Account to satisfy any deficiency therein and, if there is no deficiency, to the Subordinate Obligations Account, if required or appropriate, and then to the Replacement and Depreciation Account or Surplus Account.

(b) General Revenue Bond Subaccount. Upon each monthly apportionment there shall be credited to the General Revenue Bond Subaccount out of the Net Revenues remaining after the credit to the Operating Account an amount equal to not less than one-sixth of the interest due within the next six months on all Bonds that are not Haskill Basin Bonds then Outstanding and one-twelfth of the principal, if any, to become due within the next twelve months on all Outstanding Bonds that are not Haskill Basin Bonds; provided that the City shall be entitled to reduce a monthly apportionment by the amount of any surplus previously credited and then on hand in the General Revenue Bond Subaccount. Money from time to time held in the General Revenue Bond Subaccount shall be disbursed only to meet payments of principal of and interest on the Bonds that are not Haskill Basin Bonds as such payments become due; provided that on any date when the amount then on hand in the General Revenue Bond Subaccount, plus the amount in the Reserve Account allocable to a series of Bonds that are not Haskill Basin Bonds, is sufficient with other moneys available for the purpose to pay or discharge all Bonds of that series and the interest accrued thereon in full, it may be used for that purpose. If any payment of principal or interest becomes due on Bonds that are not Haskill Basin Bonds when money in the General Revenue Bond Subaccount is temporarily insufficient therefor, such payment shall be advanced from available funds then on hand in the Reserve Account, the Replacement and Depreciation Account or the Surplus Account, in that order.

(c) Parity of Net Revenue Pledge. The Borrower shall allocate Net Revenues to that portion of the Haskill Basin Revenue Bond Subaccount required to be filled after application of Pledged Resort Tax Revenues and to the General Revenue Bond Subaccount pro rata, in proportion to the Principal and Interest Requirements then payable (i.e., after deducting the amount of Pledged Resort Tax Revenues then in the Haskill Basin Revenue Bond Subaccount from the Principal and Interest Requirements of the Haskill Basin Bonds) on all Outstanding Bonds."

(g) Section 7.05. Section 7.05 of the Original Resolution is hereby amended to read, in its entirety, as follows:

"7.05. Reserve Account. The Reserve Account is hereby established as a separate account within the Water System Fund. Upon delivery of the Series 1993 Bond,

the City shall credit to the Reserve Account an amount equal to the Reserve Requirement. Upon each monthly apportionment, if the balance in the Reserve Account is less than the Reserve Requirement, all Net Revenues in the Water System Fund remaining after the required credits to the subaccounts in the Revenue Bond Account shall be credited to the Reserve Account until the balance therein equals the Reserve Requirement.

If on any Interest Payment Date or Principal Payment Date there shall exist a deficiency in the subaccounts, or either of them, in the Revenue Bond Account, the City shall immediately transfer from the Reserve Account to the applicable subaccount or subaccounts in the Revenue Bond Account an amount equal to such deficiency and, if such amount exceeds the amount available in the Reserve Account, then pro rata, in the manner described in Section 7.04(c).

If the City issues Additional Bonds the City shall, upon issuance of the Additional Bonds, increase the balance in the Reserve Account to the Reserve Requirement, calculated after giving effect to the issuance of such Additional Bonds. Except as provided in Section 7.10, money held in the Reserve Account is to be used only to pay maturing principal and interest when money in the Revenue Bond Account is insufficient therefor or to pay or defease a series of Bonds as provided in Section 7.04.

If at any time (including, but not limited to, any principal payment date and any redemption date), the balance in the Reserve Account exceeds the Reserve Requirement, the City shall transfer such excess to the Revenue Bond Account to establish the required balance therein and, if such balance is established therein, to the Subordinate Obligations Account, if required or appropriate, and then to the Replacement and Depreciation Account or Surplus Account."

(h) Section 7.09. A new Section 7.09 is hereby added to the Original Resolution to read as follows in its entirety:

"7.09. Pledged Resort Tax Revenue Surplus Account. The Pledged Resort Tax Revenue Surplus Account is hereby established as a separate account within the Water System Fund. Any amount of Pledged Resort Tax Revenues from time to time remaining after the applications thereof required by Section 7.04 shall be credited to the Pledged Resort Tax Revenue Surplus Account. Amounts in the Pledged Resort Tax Revenue Surplus Account at the end of any Fiscal Year may be transferred to the Haskill Basin Revenue Subaccount to satisfy any deficiency therein and, if there is no such deficiency, may be transferred to the Borrower's general fund and applied to reduce property taxes in the following Fiscal Year."

(i) Renumbering of Existing Sections 7.09 and 7.10. Section 7.09 of the Original Resolution is hereby renumbered as Section 7.10, and all references in the Original Resolution to "Section 7.09" shall be amended to be to "Section 7.10." Section 7.10 of the Original Resolution is hereby renumbered as Section 7.11, and all references in the Original Resolution to "Section 7.10" shall be amended to be to "Section 7.11."

(j) Amendment to Final Sentence of Section 7.08. The final sentence of Section 7.08 of the Original Resolution is amended to read as follows in its entirety (underlining denotes additions; strike-throughs, deletions):

"Except as provided in Sections 7.09 and 7.11 ~~7.10~~, no money shall at any time be transferred from the Surplus Account or any other account of the Water System Fund to any other funds of the City, nor shall such moneys at any time be loaned to other City funds or invested in warrants, special improvement bonds or other obligations payable from other funds."

(k) Section 8.09. Section 8.09 of the Original Resolution is hereby amended to read, in its entirety, as follows:

"8.09. Rates and Charges. 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 City and its inhabitants, and to all customers within or without the boundaries of the City, 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 replacement and 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 water services shall be maintained and shall be revised whenever and as often as may be necessary, according to schedules such that:

(i) the Revenues for each Fiscal Year will be at least sufficient to pay the current Operating Expenses, to maintain the Operating Reserve, to produce Net Revenues during each Fiscal Year not less than 110% of the maximum Principal and Interest Requirements on all Outstanding Bonds that are not Haskill Basin Bonds in the current or any future Fiscal Year, to maintain the amount in the Reserve Account at the Reserve Requirement (which Reserve Requirement takes into account the Haskill Basin Bonds), and to pay the principal of and interest on any Subordinate Obligations and to establish necessary reserves for the repair or replacement of the System; and

(ii) the Haskill Basin Net Revenues produced during each Fiscal Year will be not less than 110% of the maximum Principal and Interest Requirements on all Outstanding Bonds, including Haskill Basin Bonds, in the current or any future Fiscal Year.

If as of the close of any Fiscal Year with respect to each of the tests described above, the Net Revenues or Haskill Basin Net Revenues, respectively, actually received during such year have been less than required hereby, the City will forthwith prepare a schedule of altered rates, charges and rentals which are just and equitable and sufficient to produce Net Revenues, that portion of Haskill Basin Net Revenues comprised of Net Revenues,\ and Surplus 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.

The establishment of the above ratio of Net Revenues available for each of the subaccounts in the Revenue Bond Account and of the above ratio of Haskill Basin Net Revenues available for the Haskill Basin Revenue Bond Subaccount is deemed necessary for the issuance of the Bonds, including the Haskill Basin Bonds, upon terms most advantageous to the City. The excess of the Net Revenues over the Principal and Interest Requirements of the Bonds and the Reserve Requirement and the excess of Pledged Resort Tax Revenues over the Principal and Interest Requirements of the Haskill Basin Bonds may be used as authorized in Section 7 of the Original Resolution. In the estimation of the Council, any excess of Net Revenues over principal and interest payments actually due and the balance required to be maintained in the Reserve Account will be needed to pay or to provide reserves for payment of replacements, renewals and improvement costs to provide adequate service for the present population and the increase thereof reasonably to be expected."

ARTICLE XII

MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

Section 12.8 Payments Due on Holidays. If the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Supplemental Resolution or the Series 2016 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 2016 Bond.

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

Section 12.10 Authentication of Transcript. The officers of the Borrower are hereby authorized and directed to furnish to the DNRC and to Bond Counsel certified copies of all

proceedings relating to the issuance of the Series 2016 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 2016 Bond, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the Borrower as to the truth of the statements of fact purported to be shown thereby.

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

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Adopted by the City Council of the City of Whitefish, Montana, on this 1st day of February, 2016.

_____
John M. Muhlfeld, Mayor

Attest: _____
Necile Lorang, City Clerk

(SEAL)

APPENDIX A

Description of the Haskill Basin Project

The Haskill Basin Project includes the acquisition by the City, as co-grantee with the Montana Department of Fish, Wildlife and Parks, of a conservation easement with respect to approximately 3,020 acres in and around Haskill Basin for the purposes of protecting and preserving water quality and quantity, including the source drinking water supply for the City's municipal water system.

Estimated Budget for Application of Proceeds of Series 2016 Bond

Costs	**Series 2016 Bond**	**U.S. Federal Forest Legacy Grant**	**Habitat Conservation Grant**	**F.H. Stoltz Lumber Company**	**Total:**
Loan Reserves	$459,500				$459,500
Bond Counsel and related costs	$60,000				$60,000
Easement Acquisition	$7,700,000	$7,000,000	$2,000,000	$3,280,000	$19,980,000
TOTAL PROJECT COSTS	$8,219,500	$7,000,000	$2,000,000	$3,280,000	$20,499,500

APPENDIX B

[Form of the Series 2016 Bond]

UNITED STATES OF AMERICA
STATE OF MONTANA
FLATHEAD COUNTY

CITY OF WHITEFISH

WATER SYSTEM REVENUE BOND
(DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM),
TAXABLE SERIES 2016

No. R-1 $8,219,500

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 Haskill Basin Revenue Bond Subaccount established in the Revenue Bond Account of its Water 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 Haskill Basin Revenue Bond Subaccount established in 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 2016 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 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 Water 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 $8,219,500 (the "Series 2016 Bond"). This Series 2016 Bond is issued to finance a portion of the costs of the acquisition of certain improvements to the water system of City (the "System"), to fund a deposit to the Reserve Account for the Series 2016 Bond, and to pay costs of issuance. The Series 2016 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, and Title 7, Chapter 6, Part 15, each as amended, and ordinances and resolutions duly adopted by the governing body of the City, including Resolution 93-11, adopted by the City Council on August 16, 1993, as amended and supplemented by Resolution Nos. 98-34, 99-21, 06-31, 07-30, 09-38, 12-36, 15-50 and 16-07, adopted by the City Council of the City on July 6, 1998, August 2, 1999, May 15, 2006, August 7, 2007, September 21, 2009, November 5, 2012, December 7, 2015 and February 1, 2016, respectively (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 2016 Bond is issuable only as a single, fully registered bond. The Series 2016 Bond is issued on a parity and is equally and ratably secured by the Net Revenues of the System with the City's Borrower's outstanding First Amended and Restated Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 1998 (the "Series 1998 Bond"), First Amended and Restated Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 1999 (the "Series 1999 Bond"), First Amended and Restated Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2006 (the "Series 2006 Bond"), First Amended and Restated Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2007 (the "Series 2007 Bond"), Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2009B (the "Series 2009B Bond") and Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2015.

Reference is made to the Resolution for a more complete statement of the terms and conditions upon which the Series 2016 Bond has been issued, the Haskill Basin 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 Net Revenues on a parity with the Series 1998 Bond, the Series 1999 Bond, the Series 2006 Bond, the Series 2007 Bond, the Series 2009B Bond, the Series 2015 Bond and the Series 2016 Bond (collectively, the "Bonds") or otherwise, the conditions upon which the Resolution may be amended, the rights, duties and obligations of the Borrower, and the rights of the owners of the Series 2016 Bond. The Pledged Resort Tax Revenues form a part of the Haskill Basin Net Revenues and are pledged only to the payment of the Series 2016 Bond and not to the payment of other Bonds, as provided in the Resolution.

The City may prepay the principal of the Series 2016 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 2016 Bond is prepaid in part, such prepayments shall be applied to principal payments in inverse order of maturity.

The Series 2016 Bond, including interest and any premium for the redemption thereof, is payable solely from the Haskill Basin Net Revenues pledged for the payment thereof and does 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 2016 Bond is registered as the absolute owner hereof, whether this Series 2016 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 2016 Bond may be transferred as hereinafter provided.

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 Water System Fund into which the Revenues of the System as described in Section 7.01 of the Original Resolution, as amended, including all additions thereto and replacements and improvements thereof, will be paid, and a separate and special Haskill Basin Revenue Bond Subaccount within the Revenue Bond Account established in that fund, into which, unless earlier paid, will be paid each month, out of Haskill Basin Net Revenues then on hand, 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 the Series 2016 Bond, and a Reserve Account in that fund into which shall be paid available Net Revenues sufficient to establish and maintain a reserve therein equal to, as of the date of calculation, an amount equal to the Reserve Requirement (giving effect to any mandatory sinking fund redemption); that funds in the applicable subaccount within 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 and as described more particularly in the Resolution; 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 on Bonds other than Haskill Basin Bonds in any subsequent Fiscal Year and Haskill Basin Net Revenues for each Fiscal Year at least equal to 110% of the principal and interest payable on all Bonds, including Haskill Basin Bonds, 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 at to Net Revenues on a parity with the Series 1998 Bond, the Series 1999 Bond, the Series 2006 Bond, the Series 2007 Bond, the Series 2009B Bond, the Series 2015 Bond and the Series 2016 Bond upon certain conditions set forth in the Resolution, but no obligation will be otherwise incurred and made payable from the Net Revenues, with respect to Bonds, unless the lien thereof shall be expressly made subordinate to the lien of the Series 1998 Bond, the Series 1999 Bond, the Series 2006 Bond, the Series 2007 Bond, the Series 2009B Bond,

the Series 2015 Bond, the Series 2016 Bond and other Additional Bonds on such Net Revenues and that no obligation will be incurred and made payable from the Haskill Basin Net Revenues, other than a Bond issued to refund the Series 2016 Bond; that all provisions for the security of this Series 2016 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 2016 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 2016 Bond and the premium, if any, and interest hereon are payable solely from the Haskill Basin Net Revenues pledged and appropriated to the Haskill Basin Revenue Bond Subaccount within 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 2016 Bond does not cause either the general or the special indebtedness of the City to exceed any constitutional, statutory or charter limitation.

IN WITNESS WHEREOF, the City of Whitefish, Montana, by its governing body, has caused this Bond to be executed by the signatures of the acting Mayor, City Finance Director, and the City Clerk, and has caused the official seal of the City to be affixed hereto, and has caused this Bond to be dated as of the ____ day of February, 2016.

_____

John M. Muhlfeld, Mayor

(SEAL)

_____

Dana M. Smith, City Finance Director

_____

Necile Lorang, City Clerk

REGISTRATION AND TRANSFER

This Bond shall be fully registered as to both principal and interest. No transfer of this Bond shall be valid unless and until (1) the registered holder of the Bond, or its 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
February ___, 2016	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
02/--/2016	$8,219,500	$8,219,500	

SCHEDULE B

Date	Principal	Interest	Administrative Expense Surcharge	Loan Loss Reserve Surcharge	Total Loan Payment

APPENDIX C

COLLATERAL DOCUMENTS

OFFICIAL BALLOT
CITY OF WHITEFISH, MONTANA
RESORT TAX RATE AMENDMENT ELECTION
TO BE CONDUCTED BY MAIL BALLOT
APRIL 28, 2015

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the blank before the words "FOR this amendment" if you wish to vote for the amendment; if you are opposed to the amendment, make an X or similar mark in the blank before the words "AGAINST this amendment."

To protect and preserve water quality and quantity, including the source drinking water supply for the municipal water system of the City of Whitefish, through the acquisition of a conservation easement or other interests in and around Haskill Basin, shall the existing resort tax rate be amended from 2% to 3% effective July 1, 2015 and ending on January 31, 2025, with resort tax revenues resulting from the 1% rate increase to be used as follows: (i) 25% for property tax relief that is in addition to the existing property tax relief; (ii) 70% to secure and be pledged to the repayment of a loan or a bond to finance a portion of the costs of, or to otherwise pay for, the acquisition of the conservation easement or other interests, except that if such portion of resort tax revenues received in a fiscal year is more than is needed in that fiscal year for such loan or bond, the excess will be applied to additional property tax relief in the next fiscal year; and (iii) 5% for merchants' costs of administration?

_____ FOR this amendment

_____ AGAINST this amendment

Flathead County Clerk & Recorder
Historic Courthouse
800 S Main St – Room 114
Kalispell, MT 59901-5420

Website: http://flathead.mt.gov/clerk_recorder

Debbie Pierson
Clerk & Recorder
Auditor/Surveyor
Election Administrator
Ph. (406) 758-5530 F. (406) 758-5865
E-mail: dpierson@flathead.mt.gov

Whitefish City
ATTN: City Clerk
PO Box 158
Whitefish, MT 59937

May 12, 2015

I, Debbie Pierson, Election Administrator for the County of Flathead, do hereby certify the results of the Special Election held on April 28, 2015 for the Resort Tax Rate Amendment for the City of Whitefish, Montana as follows:

4158 Ballots were sent
2057 Ballots were cast

49% Voter Turnout

1721 FOR this amendment
335 AGAINST this amendment

Certified this 12th day of May, 2015

DEBBIE PIERSON
ELECTION ADMINISTRATOR

By Monica R Eisenzimer

Monica R. Eisenzimer

Election and Recording Services Manager

Staff Report

To: Mayor John Muhlfeld and City Councilors

From: Dana Smith, Finance Director

Date: January 25, 2016

Re: Resolution 16-07 relating to $8,219,500 Water System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Taxable Series 2016; Authorizing the Issuance and Fixing the Terms and Conditions Thereof

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Introduction/History

At January 19th meeting, the City Council approved the following resolutions related to the Haskill Basin Watershed Conservation Easement (Conservation Easement) with F.H. Stoltze Land and Lumber Company and Montana Fish Wildlife, and Parks:

- Resolution 16-01 – The Whitefish City Council's approval of the Deed of Conservation Easement and a purchase agreement with TPL to purchase their interest in the option/easement.

- Resolution 16-02 – The Whitefish City Council's approval of the MRMP.

- Resolution 16-03 – The Whitefish City Council approval of a new public recreational trail easement on the land with the F.H. Stoltze Land and Lumber Company, effective as all other documents when all documents are recorded.

In addition, the City Council will consider the water system and road access agreement and the City's exchange of the two orphan parcels for that easement. These items were postponed at the January 19th meeting due to the appraisal of those parcels of land not being available for the City Council's review.

Earlier on April 28, 2015, 83.71% of Whitefish voters approved increasing the Resort Tax rate from 2% up to 3% from July 1, 2015 until January 31, 2025 with 70% of the proceeds of this 1% increase to be used to pay the debt service on a $7,700,000 bond issue with financing from the State of Montana State Revolving Fund (SRF) loan program to fund the City's portion of the Conservation Easement purchase.

Current Report

To provide the funding for the $7,700,000 that the City will contribute to the acquisition of the Conservation Easement, the total SRF loan will equal $8,219,500 in order to provide the necessary debt service reserves of $459,500 as security for our debt service payments and to pay issuance costs of $60,000 for bond counsel services. Taking into account the necessary debt service reserves, bond counsel costs, and updated appraisal value, the total project cost is now $20,499,500. Appendix A of Resolution 16-07 illustrates an overview of the costs and funding sources for the entire project.

There are two sections of the Resolution that should also be noted. Section 8.2 of Resolution 16-07 states that "the City Council has investigated the facts necessary and herby finds, determines, and declares it to be necessary and desirable for the Borrower to issue the Series 2016 Bond to evidence the 2016 Loan." Also, as with all water or wastewater revenue bonds of the City, as noted in 8.09 of Resolution 16-07, "no free service shall be provided to any person or corporation."

Dorsey & Whitney, the City's bond counsel, prepared Resolution 16-07. City Manager, Chuck Stearns, and I have both reviewed and revised the Resolution with Dorsey & Whitney.

Financial Requirement

The interest rate for the SRF loan is 2.5% with the final payment due on January 1, 2025, just before the Resort Tax is set to expire (January 31, 2025). The average annual payment is approximately $1,032,000. However, you will notice in the amortization schedule included in the packet that the principal payments have been scheduled to increase over the life of the loan. The increasing payment schedule allows the Resort Tax revenue to grow over time to meet the increasing debt service requirements. Currently the closing date is anticipated to be February 11, 2016, but this is subject to change as there are many moving parts for the Conservation Easement acquisition.

Coverage requirements of a typical water revenue bond require that net revenues of the system total at least 110% of the maximum cumulative principal and interest due in any one fiscal year for all outstanding water system bonds. Resolution 16-07 amends the original bond resolution to include new terminology (Haskill Basin Net Revenues) relating to the use of Resort Tax revenues in the coverage calculation. It is important to note that the Resolution only permits Resort Tax revenues to be used for the Water System Revenue Bond incurred by the City to finance the purchase of the Conservation Easement. The coverage calculations by the DNRC are included in the packet. Due to adequate coverage, no water rate increase is required to issue this bond.

As a Water System Revenue Bond, the loan will be recorded in the accounting records of Water Fund. However, the loan will be secured and paid for using Resort Tax revenues resulting from a portion of the 1% increase. Monthly transfers of the allocated revenue for the month will be made from the Resort Tax Fund to the Water Fund to fund only the debt payments on this loan. If Resort Tax revenues in any given year are insufficient to pay the principal and interest when due, the Water Fund will temporarily make any debt service payments. When available, future Resort Tax revenues will the repay the Water Fund. Included in this packet is the updated projection worksheet for Resort Tax revenues and required loan payments through January 1, 2025. Although the projections indicate some years with deficiencies, a positive cash balance is expected when the bond is paid in full. At that time, any extra funds no longer needed for the repayment of the loan will be included in the next fiscal year's property tax relief.

The FY16 Budget provides for the purchase of the Conservation Easement in the Resort Tax Fund. However, after discussions with bond counsel and our auditor, a budget amendment will be necessary at year-end since the capital project and related asset should be recorded in the Water Fund, which is where the liability is required to be recorded.

Recommendation

Staff respectfully requests that the City Council approve Resolution 16-07 relating to the $8,219,500 Water System Revenue Bond (DNRC Pollution Control State Revolving Loan Program), Taxable Series 2015; Authorizing the Issuance and Fixing the Terms and Conditions Thereof.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

STEVE BULLOCK, GOVERNOR
1625 ELEVENTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE: (406) 444-2074
FAX: (406) 444-2684

PO BOX 201601
HELENA, MONTANA 59620-1601

MEMORANDUM

To: Chuck Stearns
City of Whitefish

From: Anna Miller
Department of Natural Resources and Conservation

Subject: Whitefish Drinking Water SRF Loan $8,219,500 Coverage Calculation

Date: December 8, 2015

I have reviewed the FY 2016 financial information of the City's Drinking Water system. The drinking water fees and a portion of the resort taxes will be pledged to the debt of the water system for this loan. I have estimated closing dates just to see if coverage is made. Currently there are six loans outstanding. The City is looking at borrowing funds for a total of $8,219,500.

Coverage Calculation

The highest year's debt service for all outstanding water revenue bonds plus the Haskill Basin Bond is $1,455,554 in fiscal year 2019. Coverage with respect to all outstanding water revenue bonds and the Haskill Basin Bond is $1,455,554 x 110% = $1,601,109.

The highest year's debt service for all outstanding water revenue bonds other than the Haskill Basin Bond is $550,960 in fiscal year 2018. Coverage with respect to all bonds other than the Haskill Basin bond is $550,960 x 110% = $606,056.

Calculation for Haskill Basin Loan using 2016 Budgeted Pledged Resort Tax Revenue, Water System Revenue and Water System Expenses

Water System Budgeted Revenue FY 2016	$ 2,875,000
Water System Budgeted Expenses FY 2016	$<1,766,818>
Water System Net Revenues	$ 1,108,182
Pledged Resort Tax Revenues FY 2016	$ 807,678
Total Haskill Basin Net Revenues	$ 1,915,860

Haskill Basin Net Revenues	$ 1,915,860
Coverage Needed	$<1,601,109>
Coverage **is** made by	$ 314,751

Calculation for water system revenue bonds other than Haskill Basin Bond using 2016 Budgeted Water System Revenue and Water System Expenses

Water System Budgeted Revenue FY 2016	$ 2,875,000
Water System Budgeted Expenses FY 2016	$<1,766,818>
Total Water System Net Revenues	$ 1,108,182

Water System Net Revenues	$ 1,108,182
Coverage Needed	$< 606,056>
Coverage **is** made by	$ 502,126

The coverage for the Haskill Basin Bond is in place. I have attached the 2016 budgeted revenue and expenses for Whitefish. There is a copy of the estimated payment schedules. I will adjust the dates on the payment schedules once we know the closing date.

Please call if you have questions. My number is 406-444-6689.

cc: Paul LaVigne – DEQ w/
Janice Yearry – DNRC w/
Courtney Ellis – Dorsey & Whitney w/
Whitefish $8,219,500 SRF file w/
Dana Smith – Whitefish w/

AM:jy

SRF-

STATE OF MONTANA
GENERAL OBLIGATION BONDS
WASTEWATER
(REVOLVING FUND PROGRAM)

BORROWER: Whitefish

PROJECT NAME:		FINAL LOAN PAYMENT:	7/1/2025
LOAN COMMITMENT:	$8,219,500	# OF LOAN PAYMENTS:	18
LOAN AMOUNT:	8,219,500	PROJECT NUMBER:	
INTEREST RATE:	2.50%	DATE OF FUNDING:	2/10/2016

	PAYMENT DUE	LOAN LOSS RESERVE	ADM EXPENSE SURCHARGE	INTEREST PAYMENT	PRINCIPAL PAYMENT	O/S LOAN BALANCE	TOTAL AMOUNT OF PAYMENT	
1	7/1/2016	8,048.26	8,048.26	64,386.08	356,500.00	7,863,000.00	$436,982.60	
2	1/1/2017	9,828.75	9,828.75	78,630.00	316,000.00	7,547,000.00	$414,287.50	$851,270.10
3	7/1/2017	9,433.75	9,433.75	75,470.00	331,000.00	7,216,000.00	$425,337.50	
4	1/1/2018	9,020.00	9,020.00	72,160.00	356,000.00	6,860,000.00	$446,200.00	$871,537.50
5	7/1/2018	8,575.00	8,575.00	68,600.00	361,000.00	6,499,000.00	$446,750.00	
6	1/1/2019	8,123.75	8,123.75	64,990.00	391,000.00	6,108,000.00	$472,237.50	$918,987.50
7	7/1/2019	7,635.00	7,635.00	61,080.00	390,000.00	5,718,000.00	$466,350.00	
8	1/1/2020	7,147.50	7,147.50	57,180.00	426,000.00	5,292,000.00	$497,475.00	$963,825.00
9	7/1/2020	6,615.00	6,615.00	52,920.00	425,000.00	4,867,000.00	$491,150.00	
10	1/1/2021	6,083.75	6,083.75	48,670.00	461,000.00	4,406,000.00	$521,837.50	$1,012,987.50
11	7/1/2021	5,507.50	5,507.50	44,060.00	466,000.00	3,940,000.00	$521,075.00	
12	1/1/2022	4,925.00	4,925.00	39,400.00	495,000.00	3,445,000.00	$544,250.00	$1,065,325.00
13	7/1/2022	4,306.25	4,306.25	34,450.00	496,000.00	2,949,000.00	$539,062.50	
14	1/1/2023	3,686.25	3,686.25	29,490.00	540,000.00	2,409,000.00	$576,862.50	$1,115,925.00
15	7/1/2023	3,011.25	3,011.25	24,090.00	541,000.00	1,868,000.00	$571,112.50	
16	1/1/2024	2,335.00	2,335.00	18,680.00	591,000.00	1,277,000.00	$614,350.00	$1,185,462.50
17	7/1/2024	1,596.25	1,596.25	12,770.00	606,000.00	671,000.00	$621,962.50	
18	1/1/2025	838.75	838.75	6,710.00	671,000.00	0.00	$679,387.50	$1,301,350.00
		106,717.01	106,717.01	853,736.08	8,219,500.00		9,286,670.10	

Whitefish Water System Loans

	1998A WRF I $400,000	1998B WRF II $5,839,000	2006 WRF III $895,835	2007 WRF IV $900,000	2009B WRF ARRA $120,100	2015 WRF V $120,000	2015* SRF $8,219,500	Total
2017	27,210	396,870	57,869	53,576	6,596	7,092	851,270	1,400,483
2018	27,690	397,390	57,834	54,620	6,551	6,875	871,538	1,422,498
2019	14,140	397,750	57,765	53,630	6,507	6,775	918,987	1,455,554
2020	-	197,960	57,685	54,629	6,462	7,675	963,825	1,288,236
2021	-	-	57,571	53,594	6,416	8,538	1,012,988	1,139,107
2022	-	-	58,435	54,547	6,372	8,387	1,065,325	1,193,066
2023	-	-	57,265	54,468	6,326	8,238	1,115,925	1,242,222
2024	-	-	58,084	54,354	6,281	8,087	1,185,462	1,312,268
2025	-	-	57,869	54,229	6,236	7,937	1,301,350	1,427,621
2026	-	-	58,620	54,070	6,191	7,787		126,668
2027	-	-	29,326	53,900	6,147	7,638		97,011
2028	-	-	-		6,102	7,488		13,590
2029					6,056	7,337		13,393
2030					3,011	7,188		10,199
2031						7,037		7,037
2032						6,888		6,888
2033						7,737		7,737
2034						8,550		8,550
2035						8,350		8,350
2036						8,150		8,150
Total	69,040	1,389,970	608,323	595,617	85,254	153,754	9,286,670	12,188,628

Reserve needed is half a years debt service: $918,987 divided by two = 459,494

*WW SRF funds but using DW revenues as backup to resort tax

Resort Tax Growth Estimates and Ability to Pay 9 year SRF Loan
Prepared: 1/26/2016

	FY15 EQUIVALENT BASED ON ACTUAL	FY16 BUDGET	BOND YR 1 FY17 ESTIMATE	BOND YR 2 FY18 ESTIMATE	BOND YR 3 FY19 ESTIMATE	BOND YR 4 FY20 ESTIMATE	BOND YR 5 FY21 ESTIMATE	BOND YR 6 FY22 ESTIMATE	BOND YR 7 FY23 ESTIMATE	BOND YR 8 FY24 ESTIMATE	BOND YR 9 FY25 ESTIMATE	Year Totals
Estimated growth rate of Resort Tax Revenues			5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	
1% increase Resort Tax Revenues (actual or estimated)	$ 1,106,850	$ 1,106,850	$ 1,162,193	$ 1,220,302	$ 1,281,317	$ 1,345,383	$ 1,412,652	$ 1,483,285	$ 1,557,449	$ 1,635,322	$ 1,144,725	$13,349,478
Full amount less 25% for property tax relief		$ 815,527	$ 856,303	$ 899,119	$ 944,075	$ 991,278	$ 1,040,842	$ 1,092,884	$ 1,147,528	$ 1,204,905	$ 843,433	$ 9,835,895
Amount of money needed for $8,219,500 SRF loan of 2.5% for 9 years (based on DNRC revised amortization SRF calculations)		$ 436,983	$ 839,626	$ 892,950	$ 938,587	$ 988,625	$ 1,042,913	$ 1,083,312	$ 1,147,976	$ 1,236,312	$ 679,387	$ 9,286,671
Net - Revenues less expenditures		$ 378,544	$ 16,677	$ 6,169	$ 5,488	$ 2,653	$ (2,071)	$ 9,572	$ (448)	$ (31,407)	$ 164,046	$ 549,224

Resort Tax ends 1/31/2025
Can use reserves of $459,500 to pay a portion of the last debt service payment

Staff Report

To: Mayor John Muhlfeld and City Councilors

From: Dana Smith, Finance Director

Date: January 21, 2016

Re: 2nd Quarter (Mid-Year) Financial Report for Fiscal Year 2016

This quarterly financial report provides a summary version of the financial results of the City during the second quarter of fiscal year 2016. The first section is an overview of the City's financial condition specifically related to property tax supported funds. Subsequent sections provide further analysis and details of the second quarter ended December 31, 2015.

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 FY14 second quarter cash balance in column (a), the FY15 second quarter cash balance in column (b) and the FY16 second quarter cash balance in column (c) for comparison purposes.

Cash Balance in Property Tax Supported Funds

	a	*b*	*c*	*d (c-b)*
	Dec 31, 2013 Cash Balance	Dec 31, 2014 Cash Balance	Dec 31, 2015 Cash Balance	One Year Change
General	$1,158,818	$1,136,767	$1,132,294	($4,473)
Parks & Recreation	($104,639)	($24,691)	($131,126)	($106,435)
Law Enforcement	$29,614	($2,890)	($9,635)	($6,745)
Library	$23,138	$74,633	$103,328	$28,695
Fire & Ambulance	$292,149	$217,949	$293,681	$75,732
	$1,399,080	$1,401,768	$1,388,542	($13,226)

Total cash in property tax supported funds as of December 31, 2015 decreased by $13,226 or 0.9% compared to the balance on December 31, 2014. The decrease in the General Fund, Parks & Recreation Fund, and Law Enforcement Fund was largely offset by the increase in the Library and Fire & Ambulance Funds. The changes in each property tax supported fund from the prior year second quarter are discussed in detail below.

General Fund – The General Fund cash balance compared to a year ago has decreased by $4,473 or 0.4%. However, expenditures and revenues are tracking as expected with about 3% growth over the prior year. Therefore, the decrease noted is largely due to budget anticipating the spend-down of cash on-hand in the General Fund and starting the year with a slightly lower cash balance than in FY15.

Parks & Recreation Fund – The Parks & Recreation Fund continues to have a negative cash balance as of December 31, 2015. Although a negative cash balance is typical for the Parks & Recreation Fund at the end of the second quarter, compared to last year the cash balance for the second quarter of FY16 is $106,435 lower. Unexpected costs, lower transfers from the General Fund (property tax support), the transition of the ice rink management, and timing of revenue collections for other programs have all contributed to the negative cash balance. Specifically, the ice rink required significant equipment repairs as approved by the City Council. As of December 31, 2015, expenditures exceed revenues by $105,154 for the ice rink, but due to the management contract that amount will be reduced to a $45,000 loss. In addition, Whitefish Legacy Partners will be submitting a payment for expenditures made this fiscal year, which have resulted in a negative cash balance of $15,673 and is included in the total negative cash balance of the Parks & Recreation Fund.

Law Enforcement Fund – The Law Enforcement Fund had a negative cash balance of $9,635 as of December 31, 2015. Although revenues exceeded expenditures for the quarter by $23,569, the reversal of the short-term loan from the General Fund in the first quarter had the cash balance revert to a negative balance again. Grant monies are expected to be received in the coming month for expenditures that were made during the second quarter (COPS Grant) totaling $16,479. Projected ending cash balance for FY16 was also very low at $5,664 and will likely still be the case come year-end.

Library Fund – The Library Fund continues to have a solid cash balance with revenues exceeding cash balance.

Fire & Ambulance Fund – The Fire and Ambulance Fund ended the second quarter of FY16 with a higher cash balance than the prior year second quarter by $75,735, or 34.7%. This is largely due to revenues exceeding expenditures, budgeted salary increases for firefighters not being in effect until January 2016 (timing of union negotiations), and the increase in the budgeted transfer from the General Fund for FY16 increasing $20,000, or 2.5%.

Summary – Overall the decrease in the total cash balance from the prior year second quarter is minimal when looking at all property tax supported funds. Expenditures are tracking as expected with some deviations that are discussed in further detail below. Revenues are following the budget and the anticipated trend, with some minor delays in collections due to the timing of programs and grant revenue collections. The City finances remain in generally good condition with areas to monitor during the remainder of the fiscal year.

Financial Highlights

- The Columbia Falls Building Code Contract revenues collected through the second quarter of FY16 are 2% higher than the prior second quarter and are already at 84% of the FY16 budget.

- License and permit revenues in the Building Code Fund are down by 8% for the same period last year and are at 46% of the FY16 budget. It is important to note that the City Hall and Parking Structure permits have not been paid yet, but are expected to be paid by the contractor in the next few weeks. The total building permit fees (not including impact fees) for the City Hall and the Parking Structure/Retail space total approximately $38,570 and $44,877, respectively.

- Impact Fees are at 71% of the budgeted revenue for FY16 and are tracking similar to FY13 due to the large building projects in the City. The 71% of budgeted revenue is further broken down among the various impact fees as follows: Paved Trails (42% of budget), Park Maintenance Building (42% of budget), Emergency Service Center (80% of budget), City Hall (76% of budget), and Stormwater (60% of budget). These figures do not include impact fees for the City Hall and the Parking Structure project which will total about $17,378 and $66,367, respectively (including water and wastewater impact fees).

- Zoning Plan Review Fees, Conditional Use Fees, and Architectural Review Fees all continue to generate revenue above expectations. Total fees collected are already 59%, 69%, and 91% of the budgeted revenue to be received in FY16.

- The Resort Tax collections depict an increase of 44%, but that is skewed by the increase in the Resort Tax rate from 2% to 3% as of July 1, 2015. Year-to-date the Resort Tax collections are at 57% of the FY16 budget. On a comparative 2% basis, Resort Tax is up 1.28% or $13,977.

- Water and Wastewater Impact Fee revenue continues to track higher than expected. Water Impact Fees are at 79%, while Wastewater Impact Fees are at 62% of the FY16 budget. These figures do not include the anticipated impact fees collected from the City Hall and Parking Structure project.

- Ambulance Service Charges are down 27% from the prior year first quarter, or $216,656. This significant decrease is the result of ambulance billing being delayed due to the lack of available staff time. The preparation, packing, and moving of City Hall have all contributed to this timing issue, as well as, the new setup of the interim location. Currently the City has well over 300 calls that have yet to be billed so that revenue has not been recorded to date. Staff is working to correct this issue and we expect better revenue counts by the end of the third quarter.

Expenditure Review

Total expenditures in the majority of funds at the end of the second quarter were at or below the expected percentage of budget authority to be used (50%), except the Residential Light District #1 (63%), the Commercial Light District #4 (65%), Stormwater Fund (63%), Parkland Acquisition & Development (90%), Whitefish Trail Construction Fund (55%), and the Parks & Recreation Fund (55%).

The Stormwater Fund, Parkland Acquisition & Development Fund, and Whitefish Trail Fund had higher expenditures during the second quarter of FY16 due to the timing of capital projects such as stormwater improvements, Skye Park bridge, and trail improvements. Therefore, the percentage of budgets will vary and are deemed reasonable. Furthermore, to benefit from discounts available for bulk purchases, both Lighting Districts have also had an increase in repair and maintenance supplies. Additional purchases throughout the remainder of the fiscal year should be minimal. The Parks & Recreation Fund during the past three years has expended anywhere from 49% to 55% of its budgeted authority by the end of the second quarter. This higher expenditure total in the first half of the fiscal year is expected due to the higher amount of maintenance needed at city parks and properties in the summer, repairs at the ice rink, and the timing of operations of city beach and summer camp.

In addition to the fund totals, a review of line-items revealed the following potential issues that will be monitored throughout this year since they are significantly higher than expected by the end of the second quarter:

- General Fund
  - Overtime in the Administrative Services account and the Cemetery Services account is higher than expected at 104% and 96% of the budget, respectively. Although the dollar amount is small, the budget had been increased from the prior year and it would typically be expected that 50% of the budget be expended at this time. The primary reason for this increase in overtime was the prepping, packing, and moving of City Hall. Since the first quarter, less overtime has been incurred. In addition, it was noted that 14% of the recorded overtime in the Administrative Services account was directly related to the Whitefish Local Government Study Commission which has adequate budget available in other expenditure lines under the Administrative Services account to offset the overtime costs incurred. Though these line-items are higher than expected, the total for both accounts are below 50% of the total budget.

- Street and Alley Fund/Wastewater Fund
  - The Contracted Workers line-item in the Street fund is at 180% and the Wastewater Fund is at 245% of the budget. The total charged to these accounts, however, is offset in each fund by savings in the salaries and wages and employer contributions line-items. These line-item differences are related to the customer service clerk position in public works that has not been filled to-date, but for which temporary help continues to be needed. Both funds are still within the expected expenditure trends through the second quarter.

- Parks & Recreation Fund
  - City Parks & Properties
    - The Utility Services line-item was at 111% at the end of the second quarter. This overage is somewhat attributed to additional parks and properties being added to the Parks Department, as well as the need to irrigate park properties more heavily from July through September due to the unusually dry summer.

- Other Purchased Services was at 116% of the budget for FY16 at the end of the second quarter. The primary use of this was for equipment rentals, construction debris taken to the County land fill, and engineering services for Armory Park.

- The Contracted Workers account was also higher than expected, especially since no budget was identified for this line-item. Based on discussions with the Parks & Recreation Director, however, contracted labor was necessary due to issues filling Seasonal/Temporary positons at the City. The total Seasonal/Temporary line-item was at 55% and when taking into account the $25,211 of Contracted Workers that is in a different line-item, Seasonal/Temporary wages would be 97% of the budget. The prior year did not follow this trend. Another issue compounding this is that the budget for Seasonal/Temporary workers in the City Parks & Properties activity was decreased by $12,000 due to a re-allocation of Seasonal/Temporary wages.

- Overall the City Parks & Properties account is at 69% of the expenditure budget which is higher than expected. Staff is aware of these concerns and overages and are monitoring all expenditures of the Department closely.

▪ City Beach
  - The Repairs and Maintenance Services account was 98% of the budget at the end of the second quarter. These expenditures will likely increase when City Beach operations startup again for the summer of 2015, but this has been the trend for the past two years.

▪ Community Ice Rink
  - Repair and Maintenance Services was 165% of the budget. Due to the numerous equipment issues at the facility, this overage was expected when reviewing accounts. However, these expenditures were not expected at the time of budget preparation. In addition, to proceed with transferring the management of the facility, these expenditures were necessary so the City could turn over a functioning facility to the new management group. It is estimated that $60,000 in unexpected repairs were necessary. The management agreement (effective November 22, 2015) provides that payments from the management group to the City will provide enough revenue to for expenditures to exceed operational revenues by $45,000 (a portion of the unexpected repairs) at the end of FY16.

- Youth Programs
    - Seasonal/Temporary wages was 208% of the budget at the end of the second quarter. This higher than expected amount is likely due to the budget being decreased by $5,200 based on the re-allocation of Seasonal/Temporary wages among the different activities of the Parks & Recreation Department with no changes made in staffing at the program level. This will be an item that needs to be corrected in preparing the budget for FY17.

- Summer Camp
    - Seasonal/Temporary wages account was 83% of the budget, but this is expected due to the timing of the summer camp program. This line-item continues to track similar to prior years.

- Fire and Ambulance Fund
    - Repair & Maintenance Services is at 95% of the budget at the mid-year point for Ambulance Services. Despite purchasing new fire and ambulance vehicles/equipment during the past few years, some of the fleet is very old and is requiring additional repairs. Since these costs will likely increase during the second half of FY16 we will monitor the line-item and Fund closely. As of December 31, 2015 the total Fund expenditures total only 38% of the budget.

- Building Codes Fund
    - The Contracted Workers line-item is 183% of the budget, which is expected since the department needed additional help due to staffing issues, a delay in hiring the new position, and an increase in workload. Although expected, this should be monitored throughout the year and will likely see a minimal increase due to filling the new position budgeted in FY16. Overall the Fund is only 38% of the budget.

- Street Light Districts #1 (Residential) and #4 (Commercial)
    - The Repair and Maintenance Supplies line item is at 107% and 106% of the budget, respectively, with each Fund at 63% and 65% at the end of the second quarter. This is primarily due to bulk purchases to take advantages of discounts and to stock inventory to use when repairs are needed. The Department is aware of the budget constraints due to the bulk purchases in the first half of FY16.

Additional Detailed Analysis

The following discussion further highlights the attached three spreadsheets.

General Fund Revenue (line 9 to 17)
Total General Fund revenues are 58% of budget and have increased by 3% from the prior year second quarter. The increase is primarily noted in property tax revenue with some varying changes in the other revenue types and is expected since the FY16 budget provides for an increase in property tax revenue over the prior year. Miscellaneous revenue is also higher than the prior year second quarter, but this type of revenue varies year to year. Despite an overall increase in revenue, Municipal Fines & Forfeitures revenue is down by 10% or $10,155 compared to a year ago.

General Fund Expenditures, Net Revenue, & Cash (line 20 to 34)
Total General Fund expenditures are on track at 48% of the FY16 budget.

The General Fund cash balance was $1,132,294 compared to $1,136,767 at the end of the prior year's second quarter (see J33). The graph on page 1 of the spreadsheets shows the General Fund cash balance trends for the past three 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 12% or more each year is important to ensure an adequate cash balance throughout the year, which was also the direction received from the City Council during the budget process for the FY16 Budget.

Other Property Tax Supported Funds (p.2, line 71 to 97)
The funds supported by property taxes have continued to have expenditures exceed revenues similar to prior year at the end of the second quarter (see H35). 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 revenues and expenditures are down. The decrease in revenue is higher than the decrease in expenditures and is primarily driven by ambulance revenues being down due to billing delays.

Other Tax, Fee, & Assessment Supported Funds (p.2, line 103 to 144)
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 57% of the budgeted revenues as of the end of the second quarter of FY16. Compared to the prior year there is a significant increase, but this is expected since the Resort Tax rate was increased from 2% to 3% as of July 1, 2015.

Street and Alley operations are in good financial condition even though expenditures exceeded revenues. The increase in expenditures (see J111) through the second quarter was expected since two years' worth of street overlay projects were completed this summer.

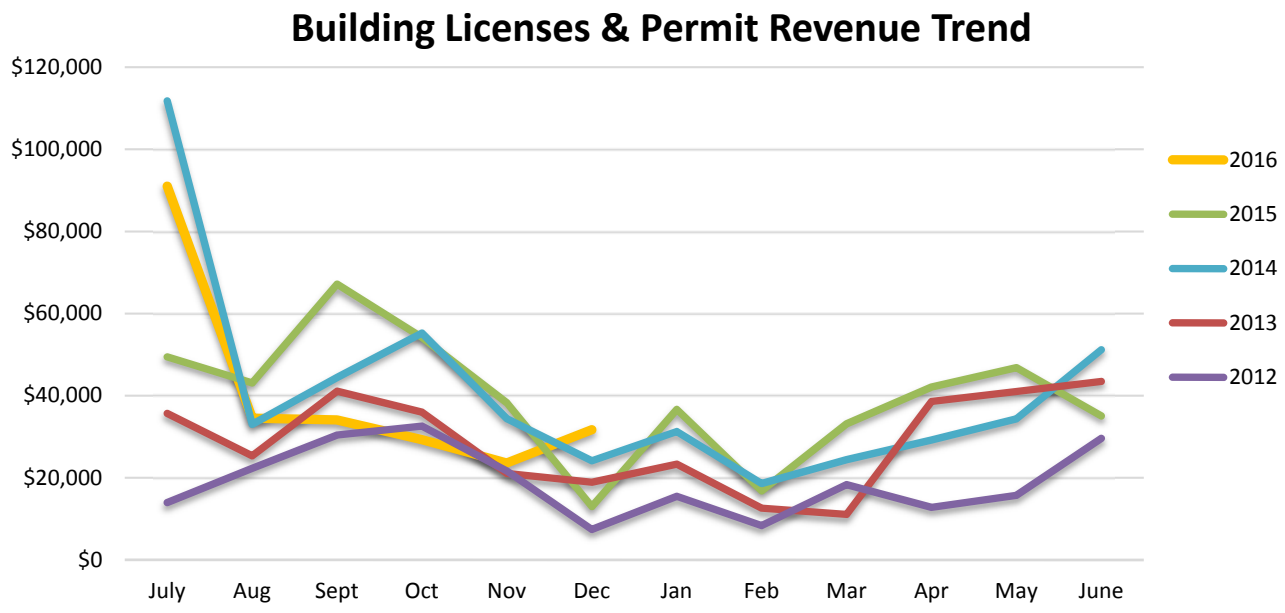
During the first quarter, the *Tax Increment Fund* had a significant decrease in expenditures of 62% or $584,563. This significant decrease was the result of the last $750,000 payment being made to the school FY15 However, during the second quarter a transfer of $2,250,080 from the Tax Increment Fund to the City Hall/Parking Structure Construction Fund was recorded based on the FY16 Budget.

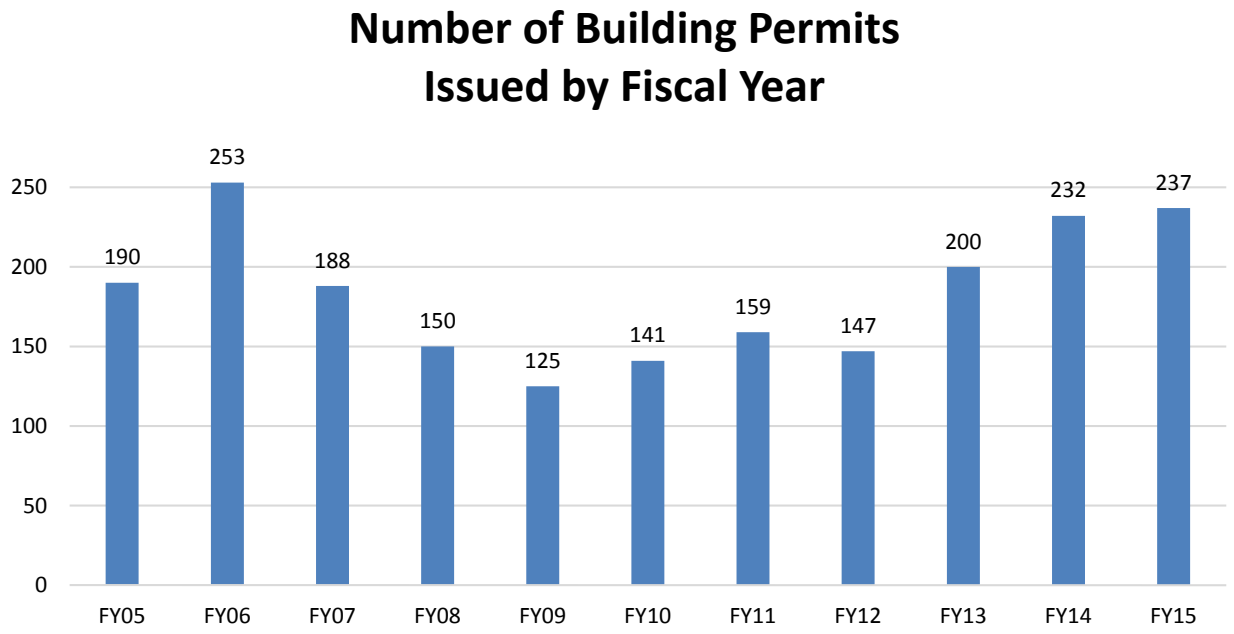
Impact Fee revenues have increased $37,934 (see J121) compared to the second quarter of FY15. This increase is due to the numerous building projects in the City. The current figures are trending with FY13 when impact fees were paid for the new high school building. During the second quarter, 50% of all budgeted transfers for impact fees were recorded since we are now 50% through the year. Projects that have used impact fees in FY16 include Skye Park Bridge and the installation of stairs at the 2nd Street Bridge.

Both *Street Lighting Funds #1 (Residential) and #4 (Commercial)* had higher than anticipated expenditures, but the overage was due to a bulk supply purchase which provides for some savings and keeps inventory on hand in case of needed repairs.

In prior years the *Building Code Fund* received loans from the General Fund to support operations during the recession and as a result was classified as a property tax supported fund. However, with a loan balance less than $25,000 and an expected pay-off this fiscal year, the fund is now reported as a fund supported by fees. The higher revenue collection in the Building Code Fund from both the City of Whitefish and the contract with the City of Columbia Falls has continued into FY16.

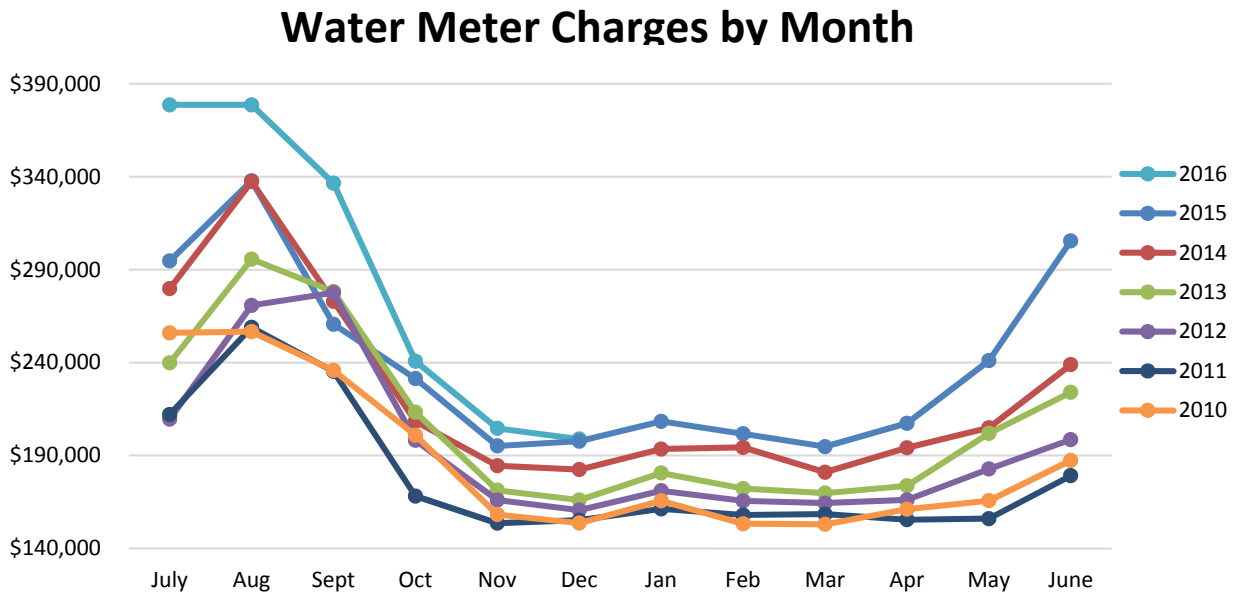
Due to staffing issues, the City has contracted with the City of Kalispell Building Department to complete the plan review for some commercial projects, which will likely use the plan review revenue in the coming months. However, other permit revenue is included in the licenses and permits revenue of the Fund. The City Hall/Parking Structure Project will result in about $83,447 of additional building permit revenue that has not been received to date. Below are two graphs depicting revenue and permits issued.





Enterprise Funds (p.3)

Metered Water Sales continue to be up about 14%, or $207,705, while Wastewater Service Charges are up 10%, or $114,708. As depicted in the graph below, Water Sales increased significantly from May 2015 through September 2015. The growth in revenue in the first quarter was not related to the increase in rates, but instead was attributed to the increase in water usage by customers during the dry summer months when the City experienced minimal precipitation and higher temperatures starting in May. This change in usage also affected the Wastewater Charges. During the second quarter, the usage decreased, but growth was tracking as expected due to the rate increases of 1.3% for Water and 2.3% for Wastewater that went into effect as of October 1, 2015.



Capital expenditures in the Water and Wastewater Funds are significantly more than the prior year second quarter as expected due to the various projects budgeted each year. A few of the major capital projects that the City has financed (shown in non-operating revenue) or paid for includes the Highway 93-Phase II Utility Improvement Project (Water and Wastewater), the Birch Point Lift Station Project (Wastewater), and the Cow Creek Extension Project (Wastewater).

The Solid Waste Fund had an increase in revenues of 2% through the second quarter. A 3% rate increase also became effective as of October 1, 2015. Expenditures are trending similar to the prior second quarter with expenditures at 49% of the expected FY16 budget though 3% higher due to an increase in the budget budget.

Debt Summary

	Balance as of December 31, 2015
TIF 2015 Refunding (ESC)	$ 7,183,000
Water Revenue Bonds*	$ 2,670,000
Wastewater Revenue Bonds*	$ 3,531,218
SID 166 Bond	$ 725,000
Ice Rink Loan	$ 63,624
Ambulance Loan	$ 108,328
Police Vehicle Loan	$ 8,218
Fire Engine Loan	$ 438,057
Fire Pumper Loan	$ 196,392
Fire SCBA Loan*	$ 230,453
TOTAL	**$15,154,290**
Change from June 30, 3015	*$ 907,936*

*New debt incurred during the first half of FY16 include the Fire SCBA Loan of $230,453, the Water Revenue Bond for the HWY 93 – Phase II project for $120,000, and the Wastewater Revenue Bond for HWY 93 – Phase II Project for $960,000.

Other Items

On January 20th, the City received the $452,406 in grant revenue (CTEP) that was budgeted to fund the Skye Park Bridge project.

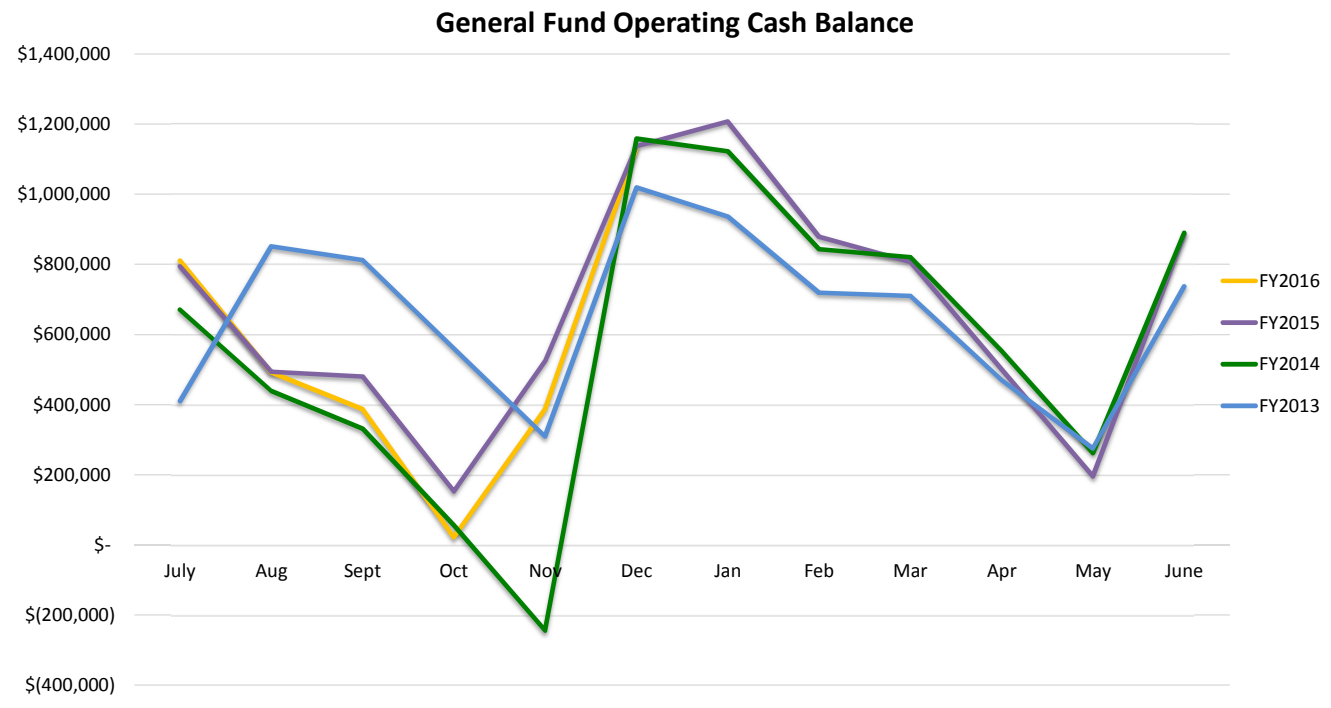
The City plans to issue and close on bonds for the Haskill Basin Conservation Easement in February and the City Hall/Parking Structure Project on March 1, 2016.

Overall the City's finances remain in generally good condition with areas to monitor during the remainder of the fiscal year. Please contact me if you have any questions on this report.

City of Whitefish
Quarterly Financial Review
Second Quarter of Fiscal Year 2016 (Mid-Year)
October 1, 2015 - December 31, 2015

50% of Fiscal Year Complete

General Fund Revenues	YTD Dec 31, 2013		YTD Dec 31, 2014		YTD Dec 31, 2015			
	Dollars	**% of Budget**	**Dollars**	**% of Budget**	**Dollars**	**% of Budget**	**Chng Prev YR**	**% Chng Prev Yr**
Property Taxes	$1,008,636	52%	$1,019,473	50%	$1,093,058	50%	$73,585	7%
Total Licenses and Permits	$32,150	53%	$33,929	56%	$35,354	55%	$1,425	4%
Intergovernmental Revenue	$391,595	51%	$409,425	50%	$420,349	50%	$10,923	3%
Charges for Services	$147,915	71%	$141,430	59%	$126,835	56%	($14,596)	-10%
Fines and Forfeitures	$111,112	43%	$102,554	45%	$92,399	42%	($10,155)	-10%
Miscellaneous	$47,736	118%	$2,978	19%	$9,458	17%	$6,480	218%
Investment Earnings	$13,350	67%	$7,900	53%	$6,487	43%	($1,413)	-18%
Resort Tax & SID Revolving Transfer In	$693,432	100%	$668,831	100%	$679,023	100%	$10,192	2%
Total General Fund Revenues	$2,445,926	61%	$2,386,520	58%	$2,462,961	58%	$76,441	3%
General Fund Expenditures								
Municipal Court	$132,188	47%	$133,446	45%	$132,823	45%	($623)	0%
Prosecution Services	$52,100	53%	$39,256	36%	$0	0%	($39,256)	-100%
Administrative Services	$36,171	44%	$36,785	46%	$47,008	44%	$10,223	28%
Legal Services	$17,835	45%	$19,044	45%	$33,964	32%	$14,920	78%
Community Planning	$154,753	44%	$151,030	38%	$161,731	43%	$10,701	7%
Transfer to Park Fund	$301,500	50%	$374,919	54%	$325,619	50%	($49,300)	-13%
Transfer to Law Enforcement Fund	$922,500	50%	$942,500	50%	$1,042,500	50%	$100,000	11%
Transfer to Fire Fund	$287,500	50%	$407,500	50%	$417,500	50%	$10,000	2%
Transfer to Library Fund	$17,185	50%	$17,186	50%	$17,186	50%	$0	0%
Cemetery/Other	$96,683	50%	$36,944	45%	$32,659	33%	($4,285)	-12%
Total General Fund Expenditures	$2,018,414	50%	$2,158,610	49%	$2,210,990	48%	$52,380	2%
General Fund Revenues Less Expenditures	$427,512		$227,910		$251,971		$24,061	11%
General Fund Operating Cash Balance	$1,158,818		$1,136,767		$1,132,294		($4,473)	0%
Prop Tax Supported Funds (no General) Net	($95,028)		($31,382)		($99,196)		($67,814)	
Prop Tax Supported Funds (no General) Cash	$240,262		$265,001		$256,248		($8,753)	
Total General & Prop Tax Supported Funds Net	$332,484		$196,528		$152,775		($43,753)	
Total General & Prop Tax Supported Funds Cash	$1,399,080		$1,401,768		$1,388,542		($13,226)	



	A	D	E	F	G	H	I	J	K
68	**Property Tax Supported Funds**	YTD Dec 31, 2013		YTD Dec 31, 2014		YTD Dec 31, 2015			
69		**Dollars**	**% of Budget**	**Dollars**	**% of Budget**	**Dollars**	**% of Budget**	**Chng Prev YR**	**% Chng Prev Yr**
70									
71	Parks and Rec Operating Cash Balance	($104,639)		($24,691)		($131,126)		($106,435)	-431%
72	Parks, Rec & Community Services Revenues	$778,653	47%	$797,372	47%	$735,752	41%	($61,619)	-8%
73	Parks, Rec & Community Services Exp.	$770,487	49%	$789,135	50%	$943,757	55%	$154,622	20%
74	Revenues less Expenditures	$8,167		$8,237		($208,005)		($216,241)	
75									
76	Law Enforcement Operating Cash Balance	$29,614		($2,890)		($9,635)		($6,745)	-233%
77	Law Enforcement Revenues	$973,518	44%	$995,337	41%	$1,111,241	43%	$115,904	12%
78	Law Enforcement Expenditures	$1,011,258	45%	$1,015,467	41%	$1,087,672	42%	$72,205	7%
79	Revenues less Expenditures	($37,740)		($20,130)		$23,569		$43,699	
80									
81	Library Operating Cash Balance	$23,138		$74,633		$103,328		$28,695	38%
82	Library Revenues	$104,783	48%	$111,747	53%	$107,981	49%	($3,766)	-3%
83	Library Expenditures	$102,029	49%	$93,901	40%	$101,063	39%	$7,162	8%
84	Revenues less Expenditures	$2,754		$17,846		$6,918		($10,928)	
85									
86	Fire & Ambulance Cash Balance	$292,149		$217,949		$293,681		$75,732	35%
87	Fire & Ambulance Taxes, Penalty and Interest	$273,992	52%	$276,831	50%	$268,107	52%	($8,724)	-3%
88	Ambulance Services Revenue	$480,509	51%	$509,008	51%	$292,352	27%	($216,656)	-43%
89	Total Fire & Ambulance Revenue	$1,321,267	36%	$1,726,382	47%	$1,480,263	41%	($246,118)	-14%
90	Fire & Ambulance Expenditures	$1,389,475	36%	$1,763,717	47%	$1,401,942	39%	($361,775)	-21%
91	Revenues less Expenditures	($68,208)		($37,335)		$78,322		$115,657	
92									
93	**Total Property Tax Supported Funds (not including General Fund)**								
94	Total Property Tax Supported Cash	$240,262		$265,001		$256,248		($8,753)	-3%
95	Total Property Tax Supported Revenue	$3,178,221		$3,630,837		$3,435,237		($195,600)	-5%
96	Total Property Tax Supported Expenditures	$3,273,249		$3,662,219		$3,534,434		($127,786)	-3%
97	Revenues less Expenditures	($95,028)		($31,382)		($99,196)		($67,814)	
98									
99	**Other Tax, Fee & Assessment Supported Funds**								
102									
103	Resort Tax Operating Cash Balance	$1,629,362		$1,312,953		$2,543,426		$1,230,473	94%
104	Resort Tax Collections	$1,243,209	64%	$1,308,913	63%	$1,878,463	57%	$569,550	44%
105	Resort Tax Investment Earnings	$4,942	82%	$2,440	49%	$2,717	54%	$277	11%
106	Resort Tax Expenditures and Transfers	$1,761,012	58%	$1,859,176	57%	$997,003	9%	($862,173)	-46%
107	Revenues less Expenditures	($512,861)		($547,823)		$884,177		$1,432,000	
108									
109	Street and Alley Operating Cash Balance	$1,067,127		$1,257,036		$1,136,473		($120,563)	-10%
110	Street and Alley Revenues	$681,340	51%	$689,071	50%	$715,311	53%	$26,240	4%
111	Street and Alley Expenditures	$641,615	37%	$526,195	24%	$994,430	46%	$468,235	89%
112	Revenues less Expenditures	$39,725		$162,876		($279,119)		($441,995)	
113									
114	Tax Increment Operating Cash Balance	$1,597,730		$1,584,256		$2,450,550		$866,293	55%
115	Tax Increment Property Taxes, Penalty & Interest	$2,182,338	49%	$2,274,272	49%	$2,665,332	52%	$391,060	17%
116	Tax Increment Revenues	$2,282,484	49%	$2,416,007	48%	$2,909,051	51%	$493,044	20%
117	Tax Increment Expenditures & Transfers	$2,543,509	46%	$2,831,317	46%	$2,935,966	38%	$104,649	4%
118	Revenues less Expenditures	($261,025)		($415,310)		($26,915)		$388,394	
119									
120	Impact Fees Cash Balance	$565,732		$792,669		$313,049		($479,620)	-61%
121	Impact Fee Collections - Revenues	$182,876	142%	$128,306	55%	$166,240	71%	$37,934	30%
122	Impact Fee Collections - Expenditures	$43,578	12%	$200	0%	$253,494	44%	$253,294	126647%
123	Revenues less Expenditures	$139,298		$128,106		-$87,254		($215,361)	
124									
125	Street Lighting #1 Operating Cash Balance	$54,121		$52,833		$34,172		($18,660)	-35%
126	Street Lighting District #1 (Rsdntl) Revenues	$39,306	51%	$39,633	52%	$39,777	52%	$145	0%
127	Street Lighting District #1 (Rsdntl) Exp.	$48,559	51%	$31,225	38%	$50,036	63%	$18,811	60%
128	Revenues less Expenditures	($9,253)		$8,408		($10,259)		($18,667)	
129									
130	Street Lighting #4 Operating Cash Balance	$43,956		$20,939		$2,297		($18,642)	-89%
131	Street Lighting District #4 (Cmmrcial) Revenues	$32,453	53%	$32,050	48%	$37,743	51%	$5,693	18%
132	Street Lighting District #4 (Cmmrcial) Exp.	$54,289	42%	$41,447	46%	$53,944	65%	$12,497	30%
133	Revenues less Expenditures	($21,836)		($9,396)		($16,201)		($6,805)	
134									
135	Building Codes Operating Cash Balance	$170,213		$136,142		$105,611		($30,531)	-22%
136	Payable to the General Fund	($460,977)		($171,699)		($21,158)		$150,541	-88%
140	License and Permits Revenues	$303,099	98%	$265,181	63%	$244,206	46%	($20,975)	-8%
141	Building Codes Expenditures without C. Falls	$153,140	49%	$151,905	41%	$168,700	38%	$16,795	11%
142	*Columbia Falls Contract Revenues*	$32,414	108%	$41,444	104%	$42,132	84%	$688	2%
143	*Columbia Falls Contract Expenditures*	$14,332	49%	$15,037	50%	$16,572	39%	$1,535	10%
144	Revenues less Expenditures	$168,042		$139,683		$101,066		($38,617)	
145									

	A	D	E	F	G	H	I	J	K
146		YTD		YTD		YTD			
151	**Enterprise Funds**	Dec 31, 2013		Dec 31, 2014		Dec 31, 2015			
152		**Dollars**	**% of Budget**	**Dollars**	**% of Budget**	**Dollars**	**% of Budget**	**Chng Prev YR**	**% Chng Prev Yr**
153									
154	Water Operating Cash Balance	$1,270,047		$1,862,063		$3,121,040		$1,258,977	68%
155	Water Debt Reserve Cash Balance	$1,180,552		$922,156		$380,159		($541,997)	-59%
156	Water Impact Fee Cash Balance	$670,766		$872,516		$1,074,038		$201,522	23%
157	Water - Metered Water Sales	$1,465,488	61%	$1,517,536	61%	$1,725,241	60%	$207,705	14%
158	Water - Operating Revenues	$1,687,962	64%	$1,732,541	62%	$1,913,698	61%	$181,157	10%
159	Water - Operating Expenditures	$697,533	43%	$805,279	47%	$787,948	45%	($17,330)	-2%
160	Operating Revenues less Expenditures	$990,429		$927,262		$1,125,749		$198,487	
162									
163	Non Operating Revenue	$101,000	30%	$759	0%	$121,000	26%	$120,241	15840%
164	Water Capital Expenditures	$174,670	13%	$249,555	15%	$425,025	22%	$175,470	70%
165	Water Debt Service	$271,389	50%	$272,630	49%	$271,770	47%	($860)	0%
166									
167									
168	Wastewater Operating Cash Balance	$678,066		$1,161,363		$1,655,685		$494,322	43%
169	Wastewater Debt Reserve Cash Balance	$326,027		$342,933		$255,319		($87,614)	-26%
170	Wastewater Impact Fee Cash Balance	$571,758		$182,019		$174,049		($7,970)	-4%
171	Wastewater - Sewer Service Charges	$1,092,436	53%	$1,142,583	54%	$1,257,291	52%	$114,708	10%
172	Wastewater - Other Operating Revenues	$1,105,587	53%	$1,306,881	54%	$1,398,964	53%	$92,083	7%
173	Wastewater - Operating Expenditures	$693,645	42%	$695,534	39%	$770,898	41%	$75,363	11%
174	Operating Revenues less Expenditures	$411,942		$611,346		$628,066		$16,720	
176									
177	Non Operating Revenue	$1,953	1%	$16,181	1%	$974,184	39%	$958,003	5920%
178	Wastewater Capital Expenditures	$138,374	7%	$495,379	19%	$1,501,992	43%	$1,006,613	203%
179	Wastewater Debt Service	$97,195	33%	$112,225	39%	$121,534	33%	$9,309	8%
180									
181									
182	Solid Waste Operating Cash Balance	$139,281		$130,869		$170,404		$39,535	30%
183	Solid Waste Revenues	$386,533	52%	$407,867	53%	$414,116	51%	$6,248	2%
184	Solid Waste Expenditures	$320,905	43%	$384,138	50%	$394,537	49%	$10,398	3%
185	Revenues less Expenditures	$65,628		$23,729		$19,579		($4,150)	
186									
187									
188	**Capital Project Funds**								
189									
190	City Hall Project Cash Balance	$2,011,423		$2,098,031		$3,285,640		$1,187,609	57%
191	City Hall Project - Revenues and Transfers In	$4,452	2%	$2,934	1%	$2,303,458	19%	$2,300,523	78397%
192	City Hall Project - Expenditures	$20,222	5%	$157,605	16%	$1,315,202	9%	$1,157,597	734%
193	Revenues less Expenditures	($15,771)		($154,670)		$988,256		$1,142,926	
200									
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231									

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.

After Packet

received
1-28-16

Robert Horne, Jr., AICP
151 Wedgewood Lane
Whitefish, MT 59937
(406) 250-6632
rhorne@appcom.net

Honorable Mayor and Members of Council
City of Whitefish
P.O. Box 158
Whitefish, MT 59937

January 28, 2016

Re: PUD

Dear Mayor and members of Council:
I attended the Planning Board meeting on January 21, and listened to most of the testimony on the City's Planned Unit Development (PUD) overlay. As you are aware, a great deal of concern was expressed by members of the public, both for the proposed amendment involving density averaging, and the PUD overlay as a whole.

I provided brief testimony in favor of allowing "density averaging" in the PUD. That is simply the practice of allowing an application to be submitted that averages the permitted densities across the entire property when that property is subject to two or more underlying zoning districts. Density averaging is a logical and reasonable practice, and I cannot imagine responsibly developing a project like, say, the Second Street Residences without it. As you may recall, the Kauffman property on East Second Street (upon which the Second Street Residences are being developed) was zoned WR-1 on the westerly one-quarter, and (rezoned to) WER on the easterly three-quarters. This means that strictly according to the underlying zones, the most intense development would have been allowed on the most environmentally sensitive part of the site. Density averaging allowed dwelling units to be shifted to the most developable parts of the site.

While I support density averaging, I also agree that the PUD needs to be rethought and rewritten. Development challenges facing Whitefish are more complex than ever before, and the current PUD is no longer serving the community as well as it should. The current PUD is a tool to develop individual properties and to 'minimize adverse impacts to surrounding neighborhoods'. But the PUD could be so much more. It could support neighboring patterns and actually make better, stronger neighborhoods. It could reinforce connections between neighborhood activity centers and make neighborhoods more vital and more complete. It could implement the Growth Policy far better than it does today. Perhaps more importantly, if we eventually adopt affordable housing regulations, the PUD could be a partnership opportunity for those that must produce affordable housing under the regulations and those that wish to develop housing-----a strategy that can put far more affordable and employee housing on the ground than regulations alone.

To actually do all of these things, however, a community conversation must take place. Dave Taylor made a good (and good faith!) effort to kick-start the rewriting of the PUD by providing the Planning Board with model ordinances and PUDs from other communities. However, it's impossible to know what pieces and parts of other codes might work for Whitefish until you know what you want the PUD to accomplish and how you want it to work. Yes, looking at best practices from other communities is a useful exercise, but it isn't the place to start. If we truly want the PUD to help us deal effectively with the type of issues Whitefish faces today----and tomorrow---the place to start is a community conversation about what we want it to address, and how. That conversation must involve the folks who spoke to the Planning Board as well as other neighborhood groups----and they must be genuinely **listened to**. It must involve design professionals like Eric Mulcahy and Bruce Boody, who submitted letters to the Board about the PUD. It should involve local architects and builders who can help us identify the issues to be addressed by the new PUD and to assist us in alpha testing the finished draft before it goes to the Planning Board. Alpha testing is terribly important-----we need to know if what we come up with actually works.

I am proposing that I be allowed to direct this effort, working hand in glove with the planning staff of course. I could do this either as a volunteer or a very lowly paid consultant; money is not my interest here. In fact, I am looking forward to moving toward semi-retirement, and so whatever compensation I might receive can be worked out. I figure I have two choices: I can just continue to work on my other projects and do nothing, or, I can offer to do something. Offering to use my training and experience to do **something** to move the PUD project forward is my choice. Thank you for considering the course of action I propose.
Respectfully submitted,

Robert Horne, Jr., AICP

cc: Tom Tornow
Don and Judith Spivey
Wendy Coyne
Barbara Morris
Mayre Flowers
Bruce Boody
Eric Mulcahy
Chuck Stearns
David Taylor
Wendy Compton-Ring
Lori Collins
Kevin Gartland
Whitefish City Planning Board

after Packet

received
2-1-16

Susan Priliman
West 3rd Street
Whitefish, MT

February 1, 2016

Attn: Mayor Muhlfeld and City Councilors

I am unable to attend tonight's meeting but wish to express deep concern about the proposed blended PUD zoning. I'm very concerned that this is an attempt to blur lines and confuse zoning issues, with a great potential loss of the character of our neighborhoods and communities. Zoning standards should not be reworked and manipulated in ways that leave our citizens with a higher degree of uncertainty about potential development in their neighborhoods – development that could have a very negative impact on their quality of life and the state of their investments. I am concerned that efforts are being made to specifically support the interests of developers who want to get their foot in a back door by way of confusing language or some technicality that can be interpreted to their advantage and allow them to increase densities or uses in areas that are now protected by existing zoning classifications.

It is hard to imagine that the approval process for projects that may be allowed by such altered zoning would not be outrageously expensive, time consuming, confusing and rife with legal and community conflict. I can foresee benefit only to developers, who most often do not live in the areas affected, and who may have the time and resources to drag those who are affected through a lengthy, ugly process for their financial gain and to the detriment of public trust. Our development standards need to benefit the whole community. They need to be fair and predictable and understandable, and they need to respect and protect our neighborhoods and the rights of homeowners. These proposed zoning changes look a lot like rule bending in an attempt to give a one-sided advantage to developer interests and a decided disadvantage to the rest of us.

We have recently been through a very long process with the Highway 93 W Corridor Study and the subsequent plan. Residents worked diligently to gain assurances and predictability regarding the kind of development that could be allowed in, or close to, their neighborhoods within the corridor. Although some specific assurances have been promised, current PUD regulations in the plan still allow up to 10-15% commercial uses in residential areas. This text within the plan could effectively obliterate these assurances and the predictability that was so hard fought. The proposed new text change that allows for blending densities and uses would even further undercut what residents worked so hard to secure. I strongly encourage the Council to reject this text change and to carefully rewrite the PUD section of the Whitefish zoning code to more fairly protect neighborhoods such as the Westside corridor.

Thank you,

Susan Prilliman

after Packet

received
2-1-16

Subject: County sets date for consideration of final zoning around Whitefish
From: Mayre Flowers <Mayre@flatheadcitizens.org>
Date: 2/1/2016 8:37 AM
To: City of Whitefish <nlorang@cityofwhitefish.org>, Necile Lorang <nlorang@cityofwhitefish.org>, Chuck Stearns <cstearns@cityofwhitefish.org>, "pbarberis@cityofwhitefish.org" <pbarberis@cityofwhitefish.org>, Andy Feury <afeury@cityofwhitefish.org>, Jen Frandsen <jfrandsen@cityofwhitefish.org>, Richard Hildner <rhildner@cityofwhitefish.org>, Frank Sweeney <fsweeney@cityofwhitefish.org>, Jmuhfield@cityofwhitefish.org, Angela Jacobs <ajacobs@cityofwhitefish.org>, kwilliams@cityofwhitefish.org
CC: Citizens for a Better Flathead <Mayre@flatheadcitizens.org>

Please note that the commissioners have set the date for their next consideration of the Rural Whitefish Zoning District. The public comment on this has closed and the county planning office has told us that they have prepared no new materials for the commissioner's consideration. This agenda item has been provided time for the commissioners to discuss this decision before taking any action and thus it would be valuable to attend. The resolutions the county will be considering are resolutions of intent whose passage will likely be followed with a 30 day protest period, before final adoption.

Thursday, February 11, 2016
8:45 a.m. Public comment on matters within the Commissions' jurisdiction
9:00 a.m. Monthly meeting w/ Mark Mussman, Planning & Zoning Office
9:30 a.m. Bi-monthly meeting w/ Jed Fisher, Weed/Parks/Maintenance
9:45 a.m. Meeting w/ Kevin Howell re: Verizon tower lease
10:15 a.m. a) Bi-monthly meeting w/ Kim Crowley, Library
b) Consideration CIP Amendment: Bigfork Library furniture and shelving
10:30 a.m. a) Discussion and Consideration of Adoption of Resolution of Intent: Rural Whitefish Text Amendment/ Flathead County Zoning Regulations
b) Discussion and Consideration of Adoption of Resolution of Intent: Creation of Rural Whitefish Zoning District
2:00 p.m. PAM: AOA Board meeting
6:30 p.m. PAM: Fair Board meeting 01/29

Mayre Flowers, Executive Director
Citizens for a Better Flathead
PO Box 771, Kalispell, MT 59903
406-756-8993 (W), 406-253-0872 (Cell) 406-756-8991 (Fax) 406-755-4521(H)
Mayre@flatheadcitizens.org

Received at Meeting 2-1-16

February 1, 2016

Whitefish City Council and staff

Comments on proposed Zoning Text Amendment WZTA 15-01 and the Planning Board recommendation to rewrite the WPUD Regulations

I am here to talk primarily about the recommendation from the Planning Board to rewrite the WPUD Regulations as well as issue a moratorium on "Blending" (Density Transfers) until that is complete. I also support their action to deny the proposed amendment. I believe those changes should and will be subsumed within a WPUD rewrite.

First some general comments to all of you. Each time I look at your "packet" I am surprised to see that it seems to include hundreds of pages—tonight's is over 500. You each get these packets twice a month. That's amazing, as you are all unpaid elected volunteers having to deal with this mass of information. Each of you has also accepted addition responsibilities such as committee or board members. I am humbled by what you do for all of us and all here tonight owe you a debt of gratitude. Thank you.

Tonight you are dealing with two relevant actions from the Planning Board—the proposed Ordinance amending the WPUD Regulations and the recommendation mentioned above.

Although I recommended denial of the proposed Ordinance, I typically pay little attention to the "whereas" provisions of any Ordinance nor do I know what legal role they play in the process. However, in this case, I glanced through them and surprisingly found two that I question.

1. The "whereas" dealing with the 2/19/2015 Planning Board meeting where it states staff was directed to ***look at*** revising the WPUD Regulations. I participated in that meeting. Both the minutes and tape of that meeting make it very clear that the Planning Board directed staff to ***rewrite*** that regulation. My remarks to the Planning Board on 1/21/2016 include the actual text of the motion directing staff to do that rewrite.
2. Also the "whereas" dealing with the work session on 6/28/15 indicating that the Planning Board directed the Planning Staff to focus on a quick fix and consider a rewrite later. I was in that meeting as was David Hunt, who is here with me this evening. Neither David nor I remember any such explicit direction. Unfortunately there are no minutes or tape of that meeting so it is impossible to be more specific—that was 7 months ago. Rather, both David and I agree that we felt it was a stepping stone toward fulfillment of the 2/19/2015 directive.

Before addressing specifics of the rewrite recommendation I need to clarify that I am not opposed to development , PUD's or Density Transfers (Blending). After dealing with this for many months I believe the wording of the current WPUD Regulations does not deal with PUD's and Blending effectively against today's needs in Whitefish for citizens, planning staff or the city.

Whitefish is a wonderful place to live and raise a family—that is why most of us live here. As a community we are getting rave reviews from several sources like ski magazines and the most recent issue of Sunset Magazine. Our community will grow and it is the hope of all of us here that growth can be managed in a manner that preserves the character of our community.

I've been focused on this regulation off and on since the Fall of 2014 and have become more and more convinced that there is much more than just making Blending more clear and cleaning up some legal irregularities that need to be addressed, thus the recommendation for a total rewrite. Let me illustrate a few of the needs.

Section 11-2S-3B contains a list of 16 Whitefish Zoning Districts with applicable housing density allowances with just a PUD and again with the Affordable Housing bonuses. It is unclear where some of these densities came from It would seem for, at least some districts, there is a density bonus just because it is a PUD and then an additional bonus is available for Affordable Housing. Some of the listed densities seem unrealistic such as WR-4, where the allowable density with Affordable Housing is up to 53 rental or condominium units per acre. With some of the other regulations such as height limits, it is unclear how one could ever achieve those densities. All these densities need to be reexamined.

Some of these districts don't seem to fit a PUD environment, particularly with "Blending". However, our regulations don't make that clear and *in theory* any of the 16 could be combined with any other(s) in a PUD and Blending could apply.

We looked at how many other municipalities handle PUDs and Blending and settled on Kalispell and Flathead County, our neighbors, as examples of dealing with PUD's and Blending in different and, we believe, more appropriate manners. Both support PUDs and Blending but do it differently than Whitefish. They both establish independent PUD structures for Residential, Commercial, Industrial and Mixed PUDs. Within each they explicitly define which zoning districts can be included with associated ground rules.

They both also suggest using the normal Zone Change process when an applicant wants to include a district not listed. i.e., rezone a piece to a zoning classification that works for the chosen PUD structure. You will hear more about this later. We need to explore and address these problems as well.

Affordable housing is important and is one of the goals of the WPUD regulations but we have yet to realize any units from already approved PUDs. Possibly we'll get 6 when the 60 unit Whitefish Crossing apartment development is completed. We need to make sure that Affordable Housing is not only included but that there are mechanisms in place that insure they are realized. Maybe 10% is the wrong requirement, possibly it should be larger. This area needs special focus.

One of the more egregious WPUD situations is the combining of Commercial and Residential districts into one overlay zone and where Blending is used creating serious impacts for adjacent homeowners. Many of the people here are concerned about just that possibility. I'm sure you will hear more about those challenges this evening. David Taylor and Eric Mulcahey both state that the only place we can do major PUD housing developments is along the US 93 south corridor where they would be sandwiched in between commercial WB-2 businesses. Each of those possible sites has a strip of WB-2 land along 93 against WR-1 or WLR single family properties on both the East and West side of US 93. I don't agree that the US 93 South corridor provides the only available large PUD development sites, but am certain high density residential developments there, for many reasons, face enormous challenges to be successful. That's something else that needs attention.

Our current WPUD regulations allow a PUD on a parcel as small as 1 acre. That doesn't seem to make practical sense and needs attention.

The current provision that allows 15% of a Residential PUD to be Commercial seems questionable and deserves attention.

More areas need attention and we have concluded that the most effective way to address these is to initiate the rewrite recommended. Here is how one might approach it. Establish a committee representing a cross-section of interests in our community who are concerned and have the time to commit . The make-up of such a committee should be approved by council before the hard work starts, probably in one of your work sessions. That committee should spend the necessary time to define what collectively we are trying to achieve and how we will approach achieving it. That process,too, should be approved by Council. When those steps are accomplished the *entire group* should stay involved in every facet of the work until

completed in draft form for review. Once amended as appropriate it can go forward through the necessary approval processes.

The entire WPUD Regulation is only 10 pages long and once the real rewrite is started it should not take long to complete.

Certainly the whole process should be completed in less than 6 months, *hopefully much less,* assuming there is a concentrated focus on the work.

The recommendation before you also included a moratorium on Blending until the rewrite is completed. In my presentation to the Planning Board last week I offered two kinds of relevant moratoriums—a rewrite with a moratorium on all PUD activity and one with a moratorium on Blending which the Planning Board unanimously adopted. You could easily attach a time limit on the effort to insure this is not an open-ended process. I personally believe the moratorium on all PUD activities is the most appropriate as it frees the staff from having to focus on interim proposals while this work effort is under way. The choice is yours.

Respectfully submitted.

Don Spivey
117 Park Knoll Lane, Whitefish

Received at Meeting 2-1-16

PO Box 771 ● 35 4th Street West
citizens@flatheadcitizens.org

CITIZENS FOR A BETTER FLATHEAD
www.flatheadcitizens.org

Kalispell, Montana 59903
T: 406.756.8993 ● F: 406.756.8991

To: Whitefish City Council

Re: PROPOSED CODE AMENDMENTS PUD AVERAGE DENSITY CLARIFICATION STAFF REPORT #WZTA-15-01

Date: Feb. 1, 2016

Citizens for a Better Flathead, having reviewed the staff report, offers the following additional comments to those in your packet that we presented at the city planning board:

1. For a long time, PUD's have been looked at as a progressive planning tool that offer flexibility to the developer and a higher quality development for the community with clear public benefits. Your role as council in the process has been to be the gatekeeper of the final decision---ensuring that in the end there was indeed a win-win for the developer and for the community. But I think what you read from the planning board public comments and what you are hearing here tonight is that the existing PUD regulations are outdated for one of the fastest growing cities in the state and that it is becoming more and more difficult to ensure that there can be a win-win outcome given the various confusing, as well as legally challenging, interpretations of how a PUD can be applied in Whitefish and what standards it must meet. Add on top of that the proposed amendment before you tonight---which we have in our planning board comments pointed out remains legally flawed---and we have to join in the chorus of voices calling for you to follow the Planning Board's recommendation to deny the proposed text amendment and further support their request for a rewrite of the entire PUD chapter and a moratorium on blending until that is finished.

   While we have seen a number of PUD's in the past be applied in low density situations with similar zones be acceptable to the neighborhoods where they have been introduced, as was outlined in Mr. Hunt's comments, the more recent proposals with high densities and blending of densities and uses has raised significant concerns in neighborhoods where these are being proposed. This has been a good wake up call for folks like myself who hadn't taken a closer look at your PUD regulations in a good while. In taking a closer look we find that not only is the blended or transfer density proposal before you tonight flawed, but also we see significant concerns with your existing regulations. As both prior testimony and that this evening of Mr. Hunt and Mr. Spivey set forth even the existing regulations if applied as is no longer make sense when applied in certain locations or in certain mixes of zones. And given the legal standards of due process that this council must meet in justifying approving a PUD in one location and not in another, we would again urge you to step back and look at how the city's PUD regulations can be made to:
   - More clearly and measurably define public benefits,
   - Be legally compliant with other aspects of your code and state law,
   - Secure the type and quality of affordable housing the city actually needs (as opposed to just high-rise apartments, and
   - Provide greater predictability for both developers and neighbors, all while ensuring that the character and charm of this special city is retained.

2. In two weeks you will have before you proposed zoning for the Westside Corridor Plan. Having looked at the PUD issue and the concerns it has raised for us and others, I went back to look at how applying a PUD ---with blending or just under the existing regulations ---on top of some of these new corridor specific zones might wreck havoc and I have many questions and concerns. As has been pointed out, The West Side Corridor plan focuses on a mere 45 acres where zoning alternatives should be made available ---or in other words the only area in this whole corridor where new zones are proposed. The specifics of what should and should not be allowed in this area have been, as you are well aware, hotly debated. Allowing a PUD to be overlaid in this area---as currently proposed before you in this amendment or without careful review of flaws in the existing PUD regulations could rip apart the potential consensus/compromise that has been achieved. So again, I urge you to step back and recommend that you deny the proposed text amendment before you tonight and further support the request for a rewrite of the entire PUD chapter and a moratorium on blending until that is finished.

3. Having said this I want to add a final word of concern about how to go about a rewrite process. The whole community is a stakeholder in this process. And there are stakeholder groups with different desired outcomes from local developers, to outside developers, from property owners ready to sell, property owners wanting to protect their investment. Your own planning staff after two years of being asked to suggest revisions has not come up with a suggestion that has the support of the community at large. So what next?

   What is not needed is a committee appointed with a consultant and a mission to simply achieve a majority vote. (If that sounds like the Westside Corridor process ---and it should---I hope you will agree we don't need to repeat that troubled process.) I think we need a different approach. At this point there are a lot of residents who know more about PUD's than they may have ever wanted to learn, and they are a resource to be tapped. There are those who traditionally represent those wishing to develop who understand this issue from a side that is valuable for residents to understand and respect---we all want Whitefish to remain a great place. There is also your planning staff who can get answers and pose important questions for everyone to weigh. So we encourage you to open a committee process to those who volunteer to see this task through say within a six-month time line. Let this self-selected committee first come back to you with a process for their working together that they have arrived at some consensus on out of a given set of a couple of meetings. Allow that they can work as sub-groups or as a whole to try to find a way forward. In the end and with a deadline to be met, you would be presented either a common proposal or the best thinking on a number of alternatives. Then as always you will be the one making the final decision.

Received at Meeting 2-1-16

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Anne Lent

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2/1/16

Whitefish City Council:

We wish to go on record supporting a complete rewrite of the Whitefish Planned Unit Development chapter of the Whitefish city code.

We are opposed to the proposed zoning text amendment and we urge that there be a moratorium on all density transfers (blending) until that rewrite is complete. We are supportive of declaring a time limit on that rewrite – 6 months seems adequate.

Thank You,

Charles McCarty
Anne Lent

After Packet - 2 pages of changes

RESOLUTION NO. 16-07

RESOLUTION RELATING TO $8,219,500 WATER SYSTEM REVENUE BOND (DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM), TAXABLE SERIES 2016; 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 2016 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 Haskill Basin 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 2016 Bond (as hereinafter defined) to evidence the 2016 Loan (as hereinafter defined) for the purposes set forth herein; and

WHEREAS, the DNRC will fund the 2016 Loan ~~in part, directly or indirectly, with proceeds of the State's General Obligation Bonds (Water Pollution Control State Revolving Fund Program) (the "State Bonds") and in part, directly or indirectly, with funds provided by the United States Environmental Protection Agency~~with Recycled Money (as hereinafter defined).

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

"Pledged Resort Tax Revenues" means 70% of the Resort Tax Revenues resulting from the 1% increase in the Borrower's resort tax that went into effect July 1, 2015.

"Pledged Resort Tax Surplus Account" means the account so named created under Section 7.09 of the Original Resolution, as amended hereby.

"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 Haskill Basin Project.

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

"Recycled Money" means payments and prepayments of principal of loans made under the Program, and any other amounts transferred to the Principal Subaccount in the Revenue Subaccount in the State Allocation Account (as such terms are defined in the Indenture).

"Regulations" means the Treasury Department, Income Tax Regulations, as amended or any successor regulation thereto, promulgated under the Code or otherwise applicable to the Series 2016 Bond.

"Replacement and Depreciation Account" means the Account created in the Water System Fund pursuant to Section 7.07 of the Original Resolution.

"Reserve Account" means the account created in the Water System Fund pursuant to Section 7.05 of the Original Resolution, as amended hereby.

"Reserve Requirement" means, as of the date of calculation, an amount equal to one-half the sum of the highest cumulative amount of principal of and interest payable on all outstanding Bonds (including the Haskill Basin 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. 98-34, 99-21, 06-31, 07-30, 09-38, 12-36 and 15-50, adopted by the City Council of the City on July 6, 1998, August 2, 1999, May 15, 2006, August 7, 2007, September 21, 2009, November 5, 2012 and December 7, 2015, respectively, and as further amended and supplemented by this Supplemental Resolution and other supplemental resolutions.

"Resort Tax Act" means Montana Code Annotated, Title 7, Chapter 6, Part 15, as amended.

"Resort Tax Revenues" means the revenues derived from the resort tax levied by the City pursuant to the Resort Tax Act.